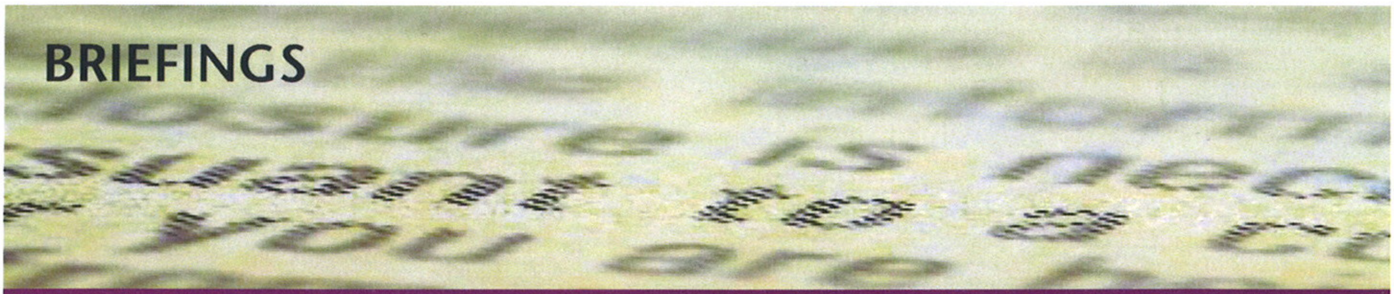


NEGLIGIBLE VALUE CLAIMS – WORTH NEXT TO NOTHING?

Julie Butler explains how losses on purchased milk quota may benefit farmers

At the time of writing, capital losses and 'negligible value claims' have possibly been to the forefront of many tax practitioners', stockbrokers' and property developers' minds – but what of farmers and landowners?

This article explains the tax rules for negligible value claims in general terms, and with specific reference to purchased milk quotas and farmers.

What is negligible?

The rules for negligible value claims are in s 24, Taxation of Chargeable Gains Act 1992 (TCGA 1992). Guidance is found in the HMRC *Capital Gains Manual* at CG13121 onwards.

'Negligible' is not defined in TCGA 1992. The HMRC manual says that negligible means 'worth next to nothing' (CG13124 'Assets lost/destroyed/negligible value: meaning of negligible'). But of course this is just their opinion because statute does not say what negligible is.

What are the mechanics of the claim?

If a taxpayer owns an asset which has become of negligible value (ie it is worth next to nothing) the taxpayer can make a claim to be treated as if they had disposed of the asset and then immediately reacquired it for its value at the time the claim is made. The deemed disposal of the asset will result in a capital loss. There is no time limit for making a negligible value claim but the taxpayer must still own the asset when they make the claim.

When a taxpayer makes a claim he or she can, if they want to, specify that the deemed disposal took place on another date during the two tax years before their claim is made, provided the asset was also worthless on the earlier date and he or she owned it on that date. The resulting loss is then treated as arising in the tax year in which that date fell.

The claim can be made by companies as well as individual owners of assets.

In the specific case of purchased milk quota, it is possible to make a negligible value claim provided the conditions are met. The quota must have been purchased in order for there to be a loss of value.

Farmers can use the loss arising from their negligible value claim on purchased milk quota against capital gains arising in the same year, or carry it forward to be used against future capital gains. There are specialist milk quota and entitlement brokers who will provide a letter confirming market value at a selected date. The law does not specify the form of claim but it may be advisable to accompany it with a professional valuation.

What does TCGA 1992 say?

While the definition of negligible is vague (in that it is not defined), the conditions and detail of the potential for the claim are explained clearly in s 24(2), TCGA 1992:

Where the owner of an asset which has become of negligible value makes a claim to that effect:

a) this Act shall apply as if the claimant had sold, and immediately reacquired, the asset at the time of the claim or (subject to paragraphs (b) and (c) below) at any earlier time specified in the claim, for a consideration of an amount equal to the value specified in the claim.

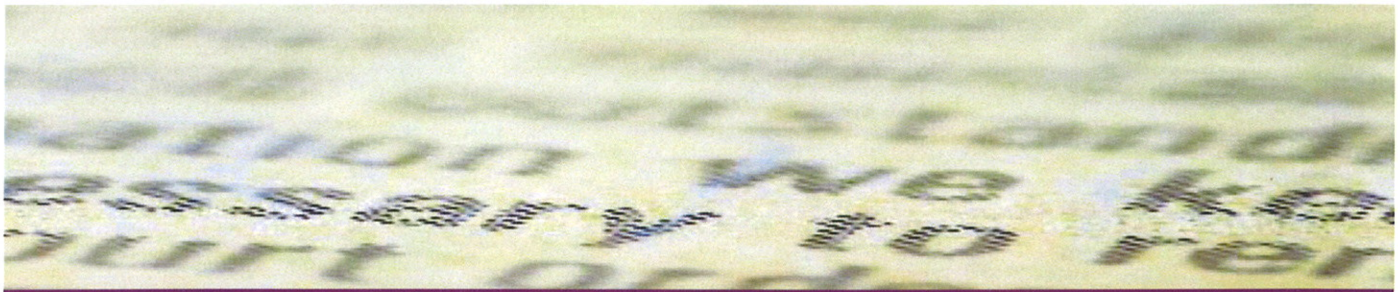
b) An earlier time may be specified in the claim if:

(i) the claimant owned the asset at the earlier time; and

(ii) the asset had become of negligible value at the earlier time; and either

(iii) for capital gains tax purposes the earlier time is not more than two years before the beginning of the year of assessment in which the claim is made; or

(iv) for corporation tax purposes the earlier time is on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.



c) *Section 93 of Schedule 12 to the Finance Act 1994 (indexation losses and transitional relief) shall have effect in relation to an asset to which this section applies as if the sale and reacquisition occurred at the time of the claim and not at any earlier time.*

Practical advantages for farmers and landowners
Despite the current economic climate, farmers are still disposing of farmland at a taxable gain. For example, disposals of small parcels of land, barns for development, farmland with low base cost and general restructuring are resulting in potential capital gains which can be reduced by the loss.

Farmland has maintained its value; indeed its potential sales price is considered double to that of, say, three years ago, achieving prices of approximately £5,500 and £6,000 per acre.

Entrepreneurs' Relief does not apply to the sale of 'mere assets' but only to a 'material disposal of business assets' and so with a possible 18% rate of capital gains tax looming, help can be sought through negligible value loss claims to offset against the gain.

Summary
With so many asset values in turmoil, now is clearly the time for a review of all farming assets, especially property, with regard to values and possible tax planning. The potential utilisation of the loss claim on milk quota must not be overlooked when realising capital gains.

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The Tax Faculty's Vice Chairman: David Heaton

We should like to welcome David Heaton as the Tax Faculty's Vice Chairman, appointed towards the end of 2008.

For those who do not know him, David Heaton is a tax partner in Baker Tilly's Employer Consulting Group, based in the firm's West Yorkshire offices in Leeds and Bradford. His specialist areas are PAYE and National Insurance, and he is Chairman of the Faculty's Employment Taxes and National Insurance Committee.

David is a regular contributor to the Tolley's Tax Planning annual (on NIC and directors' remuneration). He writes a monthly column in Accountancy and edits CCH's British NIC Guide. He lectures widely on employment taxes and related matters for the professional bodies and commercial training providers. His clients range from global businesses with expatriate employee issues, through OMB companies with share schemes, to small consultancies with status and IR35 problems. In addition to employment taxes, David advises colleagues and their clients on complex tax investigations and on share and option valuations.

David Heaton

There is life outside work, and as a Lancastrian, David enjoys good cricket (although living in Yorkshire is something of a handicap there). Having studied modern languages at university and worked in Germany and Switzerland in the past, he enjoys travelling (especially to areas with vineyards). He is married with two adult children, and his son (clearly a chip off the old block) has recently passed the last of his ACA exams.