"While the appellants valiantly attempted to argue that the deceased's business was akin to that of a grass disposal business, a hotel, a dog kennelling business or a pick your own fruit business such analogies were not apt. As found by the Special Commissioner on the evidence the land was not cultivated. The grass was not sown or grown in the manner of a crop. The activities of the deceased were considered by the Special Commissioners to be in the nature of maintenance work necessary to enable the deceased to successfully let the grazing in the growing season. This was a view that he was entitled to form in the light of the evidence. Before letting the lands the deceased did the necessary maintenance work of preparing and maintaining fences, watercourses and so forth. She could alternatively have employed a third party to do so (thereby effectively reducing her net return from the land) or indeed she could have attempted to let the grazing of the lands as they stood (in which case the grazier would be likely to have demanded a reduction in rent to take account of work that he would have to carry out to secure the grazing area). Whichever approach was adopted affected the return from the land. But the work done was aimed at maximising the return from the grazing which represented income of the deceased by way of a return from the land. The graziers rather than the deceased fertilised the land maximising the growth of the grass negativing the suggestion that in some way the landowner was effectively carrying out a grass growing business. The deceased provided the use of grassland to the grazier and the grazier took the necessary steps to maximise the value of the grazing by feeding the grass himself. The absence of a full and exclusive right of occupation of the land for the grazier and the existence of a right by the owner to enter the land during the period of the agistment does not prevent the business being regarded as an investment business. The Special Commissioner correctly concluded that the use by the graziers was sufficiently exclusive for the land to be shown to be used as an investment. The agisting farmer had exclusive rights of grazing; he was entitled to exclude other graziers including the deceased; the deceased could not use the land for any purpose that interfered with the grazing and the letting for grazing was the way in which the deceased decided that the grasslands could be used and exploited as uncultivated grassland short of the creation of a lease. The deceased's business consisted of earning a return from grassland whose real and effective value lay in its grazing potential. The activities which were regarded as just sufficient to lead to the lettings of the land being regarded as a business were all related to enabling that potential value to be released. The Special Commissioner was fully entitled to conclude that this was not to be viewed as a business of providing grass but rather as a business of holding an investment."

It will be noted that both the Court of Session in Scotland and the Court of Appeal in Northern Ireland attached particular importance to who was responsible for fertilising the land.

New permitted development rules – Tax overview

Agricultural Property Relief (APR) for inheritance tax (IHT) is restricted to Agricultural Value (AV). Any element of market above AV needs to be protected by Business Property Relief (BPR). With the current changes to planning rules for agricultural buildings it can be argued that all agricultural buildings now have potential development value and this could come with an increased IHT bill for farmers who cannot secure BPR.

The tax considerations arise from publication of the Government's long-awaited changes to the Town and Country Planning (General Permitted Development) Order in 2014, which allows the conversion of up to three dwellings with a maximum combined floor area of 450sq m. These new 'PD' rules open lots of property development opportunities for landowning farmers with redundant buildings. However, there are a number of qualifying criteria within the new order and one of the most important is that buildings that are proposed for conversion to dwellings should have been in agricultural use on 20 March 2013. An essential criterion for farmers wishing to take advantage of the relaxed planning permission rules will be ensuring the Local Planning Authority (LPA) do not have an opportunity to say that the building is not in agricultural use and therefore deny qualification. Such guidance may sound over simplistic, but any buildings which are in, for example, equestrian use or let out for storage or other non-agricultural uses on 20 March 2013 will not qualify for the new 'PD' rules. In addition, the rules do not apply to buildings in areas of outstanding natural beauty (AONB) or located in National Parks.

Tax implications

Farming families who have no intention to develop buildings could possibly be caught for extra IHT payable as a result of these changes, ie, there could be extra IHT where the barn only qualifies for APR not BPR. For farmers wanting to take advantage of the new planning rules, there will be a need to ascertain exactly how the property is owned. As most farming families trade as a partnership, the task will be ascertaining whether the property is owned inside or outside the partnership. For non-farming advisers this might sound obvious but there can be huge confusion in the farming community.

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Often if CGT Entrepreneurs Relief (ER) will be needed on disposals there will be need to consider the Associated Disposal rule for properties outside the partnership.

Planning permission for development potential is an area that advisers will not be able to ignore in 2014 and the years ahead. The positives are that in reviewing the consideration for potential development there could be solutions to other farming tax problems, eg, ensuring there is an up-to-date Partnership Agreement, and that farming family Wills have been reviewed.

Principal Private Residence Relief (PPR)

One obvious benefit to the farming family will be the increase in the opportunity for dwellings resulting from the PD rules. Such potential development could lead to the selling of the main farmhouse and achieving a 'tax free' gain on disposal using the principal private residence relief (PPR). Other advantages are that the older generation will be able to 'downsize' to a property that will suit their needs in the 'twilight years'. PPR will undoubtedly prove to be a useful tax planning tool for the farming community in the years ahead as advantage is taken of increased residential development opportunities.

Where there are concerns over the large farmhouse and the eligibility thereof for APR, eg, queries over the size of the farmhouse not being of a character appropriate to the land, the ability of moving to a smaller, more functional farmhouse could have IHT benefits. There is no doubt that PPR could help release funds to the family in a tax efficient manner.

The need to join up the fundamental tax planning with possible planning permission opportunities

Clearly with all the potential for increased development opportunity the 'property portfolio' of any farm needs to be reviewed. This is not restricted to what currently counts as a dwelling but what could count as a dwelling in the future. There is a need for a review of farmhouse eligibility for APR and this should be expanded to a total review of properties for ownership/occupation criteria to meet the demands of potential APR and PPR. Such review is of particular importance post *Hanson – Revenue & Customs Commissioners v Joseph Nicholas Hanson (Trustee of William Hanson 1957 Settlement)* [2013] UKUT 0224 (TCC) when the nexus for character appropriate was decided to common occupation not common ownership.

There is much scope and need for the farming community to review all planning permission and tax planning opportunities around the new PD rules.

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