



JONATHAN PAGE

Contract farming agreements must be drafted carefully and clearly understood to avoid inheritance tax pitfalls.

# Plan now to safeguard your farm

By Julie Butler  
Butler & Co



\* Farms and estates are increasingly coming under the spotlight of HM Revenue & Customs which is eager to collect any outstanding tax liabilities.

Farms are worth substantial sums of money and could potentially result in large amounts of future inheritance tax liabilities, formerly known as "death duties".

Understandably, many farmers and landowners want a way to protect the farm business against these attacks, but there are no certainties with death and taxes, as a number of recent cases have proved. There are, however, safeguards that can be put in place to protect against hungry tax inspectors.

It would be very easy, and predictable, to start with the tax assaults on the farmhouse, but first it is worth looking at the problems of contract farming and then tax attacks on diversity.

## FARMING WITH CONTRACTORS

First, there is a concept change that needs to take place to try achieve robust tax protection – the concept of "farming with contractors". It is essential to

ensure that the farming operation is conducted as "in-hand" farming but using contractors.

There are many farm advisers who argue that the way round the IHT risks and the whole contracting issue, ie, the ability to claim inheritance tax reliefs, is by a partnership between the farmer and contractor. It is possible for "tax gurus" to promote a farming partnership which gives clear proof of business risk because a partnership is just that – "a risk". However, for many farmers the concept of the partnership is considered too much exposure to risk and that contract farming can and must work to achieve business status for inheritance tax.

## WHAT MAKES A STRONG CONTRACT FARMING AGREEMENT FOR TAX PURPOSES?

First, the contract farming agreement must be well drafted by a lawyer, totally understood by the land agent and complied with by the farmer/landowner and the contractor. Second, the land agent, who understands the client, farm, the tax needs and how the agreement works, must ensure the arrangement works in practice from day one. Third, the farm contracting arrangement must ensure the landowner is exposed to risk and what he is undertaking is a farming trade.

Ideally the sole source of income from the farm is not just that carried out by the contractor but some integrated and genuine "in hand" farming, eg, a suckler herd.

## "EARL OF BALFOUR" – VERY INVOLVED IN THE FARM ACTIVITY

There is great strength to be taken from the recent Earl of Balfour case for the mixed estate, but it must be noted that this case is being appealed against by HMRC. The case suggests that Business Property Relief may be available if let properties are shown to be part only of a single composite business and such lettings are not the main activity carried on by that business.

The key point to take is the late Earl of Balfour's involvement – he made all the decisions, he held all the keys, he was very involved and integrated with all the activities. There is great emphasis on the "involved" farmer.

By comparison in the "Amander case" it was noted that in Mr McKenna's obituary there was no mention of the fact the deceased was a farmer. Likewise to protect IHT reliefs the death certificate must not say "retired" farmer.

## MCCLEAN AND THE GRAZING AGREEMENT

The Northern Ireland case has not been granted an appeal in the House of Lords which has caused

concern because the HMRC won. However, it can be overlooked that paragraph 19 sets out how a grazing agreement should be and can be used to escape "death duties." Again, the key to achieving IHT relief appears to be the involvement of the landowner. They must fertilise the land and ideally check the cattle and walk the farm. Every grazing agreement must be reviewed now to ensure McCall Compliance.

## FURNISHED HOLIDAY BUSINESS

The attack on Furnished Holiday Lets in the April Budget was negative for income tax and capital gains tax reliefs, but it is a timely wake up call for IHT protection.

There is a lot to be said for throwing away the old FHL rule book and deciding whether the property or properties are a business or a letting. Whatever the decision, it must be clear: A business must be that, a business.

Trying to protect IHT relief is not as easy as A, B, C – Agriculture, Business and Commerciality – but this must be the focus together with ensuring involvement of the landowner and their occupation.

Julie Butler is managing partner at Butler & Co 01962 735 544, [j.butler@butler-co.co.uk](mailto:j.butler@butler-co.co.uk)