

Rice, Rice maybe?

JULIE BUTLER looks at the opportunities for tax planning when farmers are considering land development opportunities.

With so many development opportunities presenting themselves to landowners, the ability to claim efficient tax reliefs is being looked at closely by all concerned. While the most obvious tax saving strategy might be rollover relief, not all landowners who farm want to roll over the gain. Although the recent case of *Elisabeth Moyne Ramsay v HMRC* [2013] UKUT 226 (TCC) gives hope for landowners with less trading activity to be treated as running a business, property letting is still not a trade for rollover relief and many therefore turn to entrepreneurs' relief.

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Jeremy Rice

In a recent First-tier Tribunal decision, *Jeremy Rice v HMRC* [2014] UKFTT 0133 (TC), it was held that a significant change in a business was a cessation of one trade and the start of a second business. The taxpayer was therefore able to claim entrepreneurs' relief under TCGA 1992, s 169I against chargeable capital gains

KEY POINTS

- Entrepreneurs' relief may be more useful than rollover relief for many farmers looking to sell development land.
- The case of *Rice* shows how a significant change in the way a business is operated may be sufficient to create a cessation qualifying for entrepreneurs' relief.
- The reduction required in a partner's or shareholder's interest to qualify for an associated disposal is a debated topic; HMRC's example is from 60% to 20%.
- Other issues such as the full year of ownership must be carefully planned for.



arising on the disposal of a personally owned property that had been used in the original business. For an earlier report of this case, see “Rice paper”, *Taxation*, 3 July 2014, page 16, by Kevin Slevin.

This case provides helpful guidance on the way in which s169I will be interpreted, and the degree of change that is necessary to evidence the cessation of business. This decision will be of interest to farming landowners who are contemplating a shift of emphasis in their business, and the disposal of assets used within

TCGA 1992, S 169I

- (1) There is a material disposal of business assets where –
 - (a) An individual makes a disposal of business assets (see subsection (2)), and
 - (b) The disposal of business assets is a material disposal (see subsections (3) to (7)).
- (2) For the purposes of this Chapter a disposal of business assets is –
 - (a) A disposal of the whole or part of a business,
 - (b) A disposal of (or the interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or
 - (c) A disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.
- (3) A disposal within paragraph (a) of subsection (2) is a material disposal if the business is owned by the individual throughout the period of 1 year ending with the date of the disposal.
- (4) A disposal within paragraph (b) of that subsection is a material disposal if –
 - (a) The business is owned by the individual throughout the period of 1 year ending with the date on which the business ceases to be carried on, and
 - (b) That date is within the period of 3 years ending with the date of the disposal.

used or held within a business as part of that process.

The taxpayer, Mr Rice, was in business selling used sports cars. Mr Rice's premises were on Fletton Avenue, Peterborough, but because of vandalism and other matters he stopped trading from there in 2005 and sold the property in 2008. Mr Rice began selling cars from a site next to his home but had to change the way he operated. The changes included:

- no longer having cars on display because there was no passing trade;
- advertising on the internet; and
- selling four-wheel drive and family cars instead of sports vehicles.

Mr Rice claimed entrepreneurs' relief on the disposal of the premises on Fletton Avenue on the basis there had been a cessation of the business. HMRC refused the claim.

Material disposal

It was common ground that the disposal of Fletton Avenue qualified for entrepreneurs' relief if it satisfied the requirements of TCGA 1992, s 169I.

Mr Rice's representative relied on cessation of trading authorities such as *Fry v Burma Corporation* [1930] 1 KB 249; *J G Ingram & Son v Callaghan* (1968) 45 TC 151 and *Rolls Royce Motors Ltd v Bamford* [1976] STC 162. Emphasis was placed on the *Burma Corporation* case, which established the principle that the relocation of a local business could give rise to a permanent discontinuance of one business and the commencement of a different trade. It was submitted on behalf of Mr Rice that the changes in his mode of business were sufficient to fall within that principle.

Associated disposals

Disposals by a partner or a shareholder of a personally owned asset used in the partnership, or in the company, also benefit the farming landowner if the individual is withdrawing from the business and, as a result, disposes of the whole or part of his interest in the partnership, or disposes of all or some of his shares or securities in the company. But is just a small withdrawal enough to qualify for entrepreneurs' relief?

This emphasis on withdrawal from the business and the disposal of the whole or part of the interest in the partnership is currently occupying the mind of many tax advisers. Development land opportunities are increasing, and therefore the desire to get entrepreneurs' relief on sales is strong.

Under TCGA 1992, s 169K(2), the associated disposal needs to be made as "part of the process of withdrawal of the individual from participation in the business of the partnership or the trading company". CG63995 discusses what "withdrawal" means and includes an example of a father and son partnership, where the share of the father reduces from 60% to 20% and he continues to work in the business. The guidance confirms that this would be sufficient to constitute a disposal and withdrawal for entrepreneurs' relief.

Beyond that, commentators debate how small the withdrawal can be. Where the proceeds of the development land are very

substantial, many farmers and their advisers take a cautious approach and ensure that the withdrawal is a minimum of 40% (as shown in the example) to ensure that there is no debate with HMRC and avoid jeopardising the relief.

One year of ownership

A disposal by an individual of one or more assets in use for the purposes of the business at the time at which the business ceases to be carried on may qualify for entrepreneurs' relief, provided:

- the business has been owned by the individual throughout the period of one year ending on the date on which the business ceases to be carried on; and
- the date of the asset disposals is within three years after the date the business ceases.

Note that there are various provisions to scale back the relief on associated disposals, e.g. where rent has been paid, or where there has been non-business use. No pro-rating of entrepreneurs' relief applies if the business has been owned for less than the one year period.

Problem areas

Difficulties arise in identifying whether there has been a sale of a part of the business or just a sale of assets such as development land (the latter failing to qualify for relief).

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Two other issues which will lead to a denial of relief are:

- incorporation of a sole trader business in exchange for shares and the subsequent sale of the shares before the expiry of one year from incorporation; and
- allowing the trading company's activities to include non-trading activities to a substantial extent (substantial meaning more than 20%).

To avoid problems, it is important to plan in advance and carefully understand what counts as a cessation of a business. In the case of partnerships, identify if the development land is an asset used in the partnership or a partnership asset. Just because the asset is shown in the partnership accounts does not make it a partnership asset – check the legal documentation. ■

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