



**A world leader of the
accountancy and finance profession**

Selling off part of the farm and achieving entrepreneurs' relief

 You have exclusive access to this article as a Farming and Rural Business Group subscriber.

For those tax advisers old enough to recall business retirement relief (withdrawn from 5 April 2003) they will understand the problems that existed concerning the disposal of part of a farm. There are current similarities in trying to achieve entrepreneurs' relief (ER) on the disposal of part of the farm.

A recent tax case *Gilbert v HMRC* (2011) UK FTT 346 has helped give guidance on the application of ER in practice.

Take a sneak peek

We have unlocked this article to give you a taster of the news and resources available through subscription to ICAEW's Farming and Rural Business Group.

Like what you see? Join the Farming and Rural Business Group and we will send regular updates and resources like these straight to your inbox. Subscriptions start from £65 + VAT.

[Find out more and join today](#)

The old retirement relief provisions

Many consider that ER legislation mirrors the old retirement relief provisions – without, of course, an age requirement. There were a number of tax cases disputing whether a taxpayer had made a disposal of part of a business for retirement relief purposes.

The equivalent to the retirement provision is now to be found in the Taxation of Chargeable Gains Act 1992, section 169I, namely that the taxpayer must be able to demonstrate that he has disposed of either 'all or part of a business' unless the disposal comprises shares or securities in a company or is a post-cessation disposal.

Farming enterprises as separate businesses

Historically, a farming business has contained a large number of different component enterprises. It is a reason why so many farms are dependent on good enterprise accounts to monitor how each part of the business is working.

Retirement relief case law can provide guidance where it is not clear that the disposal under examination amounts to the disposal of part of a business or whether there is simply a 'mere asset' disposal. A farming case under the old retirement relief rules was *McGregor v Adcock* [1977] STC 342, and the position is summarised in HMRC's Capital Gains Manual starting at paragraph CG64015.

Gilbert

A new case *Gilbert v HMRC* has helped give further guidance.

Mr M Gilbert provided sales representation on behalf of nine manufacturers. He sold one 'division', ie, one manufacturer paid the taxpayer to discontinue his sales representation work in relation to its customers. The contract provided that the taxpayer would pass over to the manufacturer the relevant customer database, goodwill, business information and records, and benefit and burden of contracts.

HMRC refused relief on the ground that the taxpayer had disposed of 'assets used for business' that is one of its contracts, rather than all or part of the business itself. The Tribunal held that what had been disposed of was part of the business itself, not just assets, because it could operate as a going concern. The Tribunal pointed out that farmers raise different issues when disposing of land.

Looking at the sale from vendor's viewpoint

If there is a sale of a farming business there has been some confusion whether that business must be continued by the purchaser as a farming business in order for the relief to apply. Case law supports the fact that the disposal must be looked at from the vendor's point of view.

The question to be addressed is whether part of the business has been disposed of, not whether any business has been acquired as a going concern by a purchaser, but it must be capable of operating as a going concern at the time of sale. It is essential that any legal agreements and documents must be structured as a business disposal rather than an asset sale.

An example is disposals of properties used as furnished holiday letting. A taxpayer with such a property who crystallises a gain on making a disposal should be able to enjoy ER provided it is sold as a going concern.

Many would argue that if the business is carried on as a business after it is sold it helps the argument. However, this is not the key criteria. The fact is the business must be capable of being sold as a going concern.

Thus if the separate operation is sold it must be sold as a going concern with the stock, the land, the buildings and shown in the enterprise accounts. If the purchaser sells off

livestock in a short space of time and develops the buildings this is the choice of the purchaser. There must of course be no artificiality.

Practical steps to achieve ER

Practical steps to take are to ensure that the sale particulars are for a business and that the contract for sale includes details of the business. It is imperative that the vendor's business accounts reflect the day-to-day running of the trade and show separate enterprise accounts for this particular part of the business rather than a 'mere asset'.

Likewise, the transaction in the vendor's accounts must reflect the sale of part; there must be a valuation of stock and even if that is just tillages, it must be included in the sales price.

With HMRC's current detailed review of all available information on capital transactions and their desire for evidence, the fact that the sale is a business should be reflected not just in the contract and in the accounts but in all information searches.

For example, if the farm has a website it should be clearly shown as a business disposal. It is important for the disposal not to be a reduction of the original farming business but a sale of part of the business.

Julie Butler FCA, Butler & Co

Julie Butler is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning, and Stanley: Taxation of Farmers and Landowners (LexisNexis)

Farming and Rural Business Group, June 2012

1 comment

Good read

Comment from Anonymous — 11:41 on Friday 14th September 2012

Please note:

The views expressed in this article are those of the contributors. ICAEW does not necessarily share their views and will not be liable for any reliance you place on the information in this article. You should seek independent advice.

BUSINESS WITH CONFIDENCE

Copyright 2012 © ICAEW

We use cookies on this website to give you the very best experience. You can change your cookie settings at any time using your browser settings. Find out more.