



A developing trend

As farmers are increasingly looking to sell development land, solicitors seeking the most tax-efficient way of structuring the transfer must examine a number of complex factors. Julie Butler outlines the key issues

With far greater development opportunities returning to the UK, many farmers are looking to sell development land, achieve entrepreneurs' relief (ER) and yet stay farming – and protect their inheritance tax (IHT) relief. How can all these goals be achieved?

The basic principle is that ER will be due where a trader disposes of assets used for the purposes of a trade within three years of the cessation of that trade, if the trade has been carried on for at least 12 months prior to the date of cessation (Taxation of Chargeable Gains Act 1992, section 169I(2) (b)). The existing partnership could transfer potential development land to a new partnership with holdover relief on any change of beneficial owners, provided the proposed development land is agricultural property qualifying for holdover relief. As long as the farmland is partnership property, it should achieve business property relief (BPR) in the event that no sale takes place.

The new partnership has to be trading for a year, after which it will cease, sell the development land, and the partners will claim ER. They might seem quite simple. The land is used for a trade qualifying for ER. So what are the potential problems?

1 The land does not qualify for ER, that is, it is not a business asset or it does not qualify for agricultural property relief, and so cannot be handed down.

The solution is to ensure the land does qualify for the initial holdover and then the subsequent ER. In the new business, a trade, a partnership agreement, profit, an excellent business plan, strong accounts and, above all, the real facts tie into tax planning. The business structure really happens in practice.

2 The original landowners do not want to pass down the land (and profit) to other family members.

They do not want the development profits held by the next generation. They can be partners in the new business, but should not have control. Sale of one part of the farming operation could be the solution here. The *Capital Gains Manual* at CG64030 looks at whether a business or part of a business has been disposed of. In the context of retirement relief, it states that for relief to be due: "the whole of those activities must cease when the relevant asset or assets are disposed of. By contrast, if an asset or assets have been sold but no particular activity or set of activities disappeared with the asset of disposal, it cannot be said that any part of the business has been disposed of. Relief would not be due."

The section then discusses farming. "ITTOIA 2005, s 9 treats all farming in the UK as one trade. However, it is clear from the judgments in retirement relief cases that the courts were prepared to allow relief if the taxpayer disposes of one kind of farming business and then starts another. This approach should be followed for Entrepreneurs' Relief."

If the development land is all on one part of the land, for example the beef operation, then the beef operation could cease.

3 The new business will not have been owned for two years for BPR. For any of the new partners who are old, ill or not protected by the

surviving spouse exemption, there is a window of IHT worry. For example, if one of the new partners were to die in the two-year gap from transfer, there would be a loss of BPR. As this is potential development land, there would be potential development land value (hope value) which needs the protection of BPR, as APR is restricted to agricultural value.

The existing partnership would have to cease on disposal of the land to the developer. If the land is sold in tranches, then the sale might take longer than three years, so ER would not be achieved on part of the disposal.

To bring about cessation, a new company could be set up to farm the non-development land, and there could be a transfer of that land into the company. Stamp duty land tax issues will need attention. The old farmland can be let to the new company; there is no restriction on the use to which the asset can be put between the cessation of trade and the date of disposal of the asset.

There are IHT problems to flag up.

a) While the land is being sold in tranches and let to the new company, it is not a business asset for shareholders who lack control of the company, and so may not qualify for BPR – and even if it does, the rate of relief will be only 50%.

b) Any farmhouse cannot go into the limited company because of a variety of tax issues, including its use as a residence by the directors. However, a review of the business structures of 'occupied' and owned for agriculture following *Hanson v HMRC* [2013] UKUT 224 (TCC) may be useful in seeking to preserve APR.

With the amount of houses needed in the UK, these types of conundrum will become everyday problems. Some might say it is a nice problem to have.



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