
Agricultural tenancy makeover 2015

Many farmers are faced with moving their farming operation forward in the interests of commerciality against a background of farm tenancies. Such action can come with huge tax negatives. Examples would be tenancies over land where there would be potential development projects. It is also key to ensure that the farmhouse is protected for Inheritance Tax (IHT) and gains can be rolled into a new farm purchase.

Against the very negative tax background of tenancies, it would be considered that the agricultural tenancy is being faded out. Instead, tenancies are being subjected to a makeover in 2015 to make them easier to work with.

Agricultural tenancies currently suffer from a number of tax disadvantages:

- Land subject to agricultural tenancies in broad terms does not qualify as a business asset for Capital Gains Tax (CGT), Roll-over Relief and Entrepreneurs' Relief as the land is let.
- If all the farmland but not the farmhouse is let this prevents the claim for Agricultural Property Relief (APR) on the farmhouse that accompanies the farmland as it is not occupied under s117 IHTA1984 for the purposes of agriculture.
- Land subject to tenancies does not qualify for Business Property Relief (BPR) unless protected by a greater majority of farming as in *Balfour (Brander v HMRC (2009) UKFTT 101)*.
- Land subject to tenancies does not qualify for 100% APR if subjected to a tenancy granted

before September 1995 when the rate of APR is only 50%.

What tenancies are affected?

For most Agricultural Holdings Act (AHA) tenancies and Farm Business Tenancies (FBTs) whether the changes will affect existing arrangements will depend on the exact wording in the current written agreement. Many tenancies incorporate the model clauses by reference to the relevant legislation. This may well mean that the changes are automatically incorporated into the tenancy terms. If, however, the model clauses have been replicated in express provisions in the agreement, then the changes may well not apply.

Model repairing and insuring liabilities clauses

In 2014 the Government consulted on proposals to update the model repairing and insuring liabilities clauses. The Government has now announced that the current model clauses will be replaced by a completely new set. Not all liabilities will change under the proposals, for example, new items that are likely to be covered include responsibility for silage, slurry and effluent systems and renewables equipment. Some existing liabilities will remain unchanged; other model clauses will be clarified or changed altogether, eg repair of main and exterior walls and structure of buildings, etc. Monetary caps on expenditure are likely to be increased or removed. DEFRA is also considering the idea of using a table for allocating liability – a form often used in tenancy agreements.

Trying to achieve 100% APR not 50% APR

The question has to be asked, what action can the farm landlord try to take and improve both the tax situation and legal situation of the tenancy?

Against the background of remodelling and the negative tax position farmers can consider the following points:

- Abandon 'family tenancy' granted before 1995, especially pre-March 1981. 'Working Farmer' status hard to establish, and to secure vacant value as CGT acquisition cost for heirs.
- Encourage succession claim by pre-1995 tenant. The succession tenancy is a new tenancy, commencing after August 1995.
- Other arrangements with Agricultural Holdings Act Tenants. CAAV publication No 205 'Surrender and Re-Grant of Agricultural Tenancies' refers.

FBTs that move away from agriculture

There are also tax worries with FBT where the tenant has diversified away from agriculture because the APR claim will fail by reason of the land not being occupied for the purpose of agriculture. Depending on the degree to which the landlord could be shown to have known about and consented to the non-agricultural uses, this farm business tenancy may in fact have become a business tenancy under the Landlord and Tenant Act 1954 with potential automatic security of tenure for tenants. If the use of the land is not primarily or wholly agricultural at the outset then the tenancy can never be a FBT (eg a livery business).

The legal action point is considered by many to be, if in doubt, to consider adding clauses excluding 1954 Act security of tenure and following the statutory notice procedure, which is not arduous.

Farming in hand

From a tax viewpoint the action to be taken with a large number of FBTs has to be to try to move the FBT back to farming in hand or contract farming, share farming, etc. The economic reality of such a decision has to be considered – possibly reduced income has to be weighed up against tax security. Often it is the 'livery' type of land that has the most potential for development. If the livery

operation is close to the road, and has good access, the neighbours might want to remove the livery for housing.

Referral to an expert in the case of disputes

It has long been suggested that many disputes arising under the Agricultural Holdings Act 1986 (AHA) would be quicker and cheaper to resolve if referred to an independent expert, rather than arbitration, which is far less flexible. The Government has now been persuaded to put this into effect by introducing an amendment to the Cabinet Office Deregulation Bill, which is currently at report stage in the House of Lords. The new provisions amend the AHA to allow referral to expert determination for disputes over most issues currently referred to arbitration, including rent review, agreeing written terms, compensation for fixed equipment, removal of tenant's fixtures, the model clauses, terms of a succession tenancy and compensation on termination.

Special cases notice to quit

However, as yet, amendments have not been sought in relation to the 'special cases' notices to quit, which will still remain referable only to arbitration and 'unqualified' notices to quit, which are still determined by the First Tier Tribunal Property Chamber in England. Whilst this new flexibility is welcomed, its restricted application will not mean an end to the lengthy disputes that can arise on attempted termination of AHA tenancies. Whilst expert determination is quicker and cheaper than arbitration, it is considered very difficult to appeal the decision of an expert, if a party disagrees with his findings. Critical to its success is therefore the choice of a suitably qualified expert.

Against this background is the fact that development land is so often subject to a tenancy and changes need to be made.

Supplied by Julie Butler F.C.A. Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH. Tel: 01962 735544. Email: j.butler@butler-co.co.uk, Website: www.butler-co.co.uk

Julie Butler F.C.A. is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning ISBN: 0406966540, and Stanley: Taxation of Farmers and Landowners (LexisNexis).

Editor: GR Williams, Solicitor

Editorial consultants: Julie Butler, Chartered Accountant, FCA Butler & Co, J Neil Porter, Solicitor, Frank Nash, Taxation partner, Burgis & Bullock, Chartered Accountants, Oliver Stanley, Barrister, Director of Rathbone Brothers plc, Angela Sydenham, Solicitor, Birketts Solicitors

Sales: Rhodri Taylor • 020 7017 7787 • rhodri.taylor@informa.com

Subscriptions orders and back issues: Please contact us on 020 7017 5540 or email subscriptions@informa.com. For further information on other finance titles produced by Informa please call 020 7017 5540. ISSN 0268-9863 © Informa UK Ltd 2015

Published 10 times a year by: Informa Law, Christchurch Court, 10-15 Newgate Street, London, EC1A 7AZ • www.informa.com

Typeset by: Deanta Global Publishing Services

Printed by: Halstan Printing Group

Copyright: While we want you to make the

best use of *Farm Tax Brief*, we also need to protect our copyright. We would remind you that copying is illegal. However, please contact us directly should you have any special requirements. While all reasonable care has been taken in the preparation of this publication, no liability is accepted by the publishers nor by any of the authors of the contents of the publication, for any loss or damage caused

to any person relying on any statement or omission in the publication. All rights reserved; no part of this publication

may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electrical, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.

Registered Office: 5 Howick Place, London, SW1P 1WG. Registered in England and Wales No 1072954.

This newsletter has been printed on paper sourced from sustainable forests.

informa
law
an informa business