



All work and no play

The government's recent denials of agricultural property relief for farms where the owner had not been actively involved in the farming for the two years before death effectively mean farmers cannot retire. Julie Butler outlines the other options open to them

There are many elderly farmers in the UK, and most are relying on current legislation to enable them to pass their farm on to the next generation with as little inheritance tax (IHT) liability as possible, bar a few well-established tax 'hurdles' introduced by HM Revenue & Customs (HMRC) to deny IHT relief.

These hurdles include:

- the disallowance of part of the claim for the farmhouse (difference between market value and agricultural value);
- cash savings and investments not part of the farm working capital; and
- private assets included in the farming business.

These are well understood and it is hoped that most are usually covered by the nil-rate band, or can be covered by the cash savings.

However, in recent years, there have been changes to farming and the availability of IHT reliefs. First, farmland values have increased, roughly doubling since 2005. Second, the mode of farming has changed since 1984; there is increased capital intensity and basic farm machinery has increased in quality and cost. Third, there has been an increasing enthusiasm for HMRC to deny agricultural property relief (APR), including for families with a long history of farming (HMRC looks at two years before death, not further back at the potentially impressive history of farming in a family).

It is very difficult for a farmer to continue to work in the last two years of their life and maintain an active interest in managing the land, but they need to do so in order to protect both APR and business property relief (BPR). In recent years, APR claims where farmers have ceased to work in their last two years, often because of ill health, have been under attack, and the denial of APR has come as a shock for both the beneficiaries and their advisers.

All this means that farmers must not retire, nor delegate the activity to such a degree that IHT reliefs are put at risk due to lack of active involvement. All elderly farmers, especially those without interested family and beneficiaries, must continue to carry on active husbandry to be sure of protecting the current IHT reliefs available.

If the farmer cannot retire, what other options are there?

THE NEXT GENERATION

In an ideal scenario, family members will be brought into the farming partnership to help with all that modern farming can throw at the elderly farmer – grants, paperwork, high capital cost and working with contractors. This means that the farmer can maintain active involvement, although it is also essential to evidence the use of the farmhouse.

If the farmer has to go to a nursing home, the implications of this on reliefs should be considered.

CONTRACTORS

Given the increasing expense of farming machinery, sharing arrangements

and the use of contractors become inevitable. One farm will often carry out contracting work for another. Farming with contractors when the farmer makes all the decisions clearly shows control but, again, there must be evidence of use of the farmhouse.

CONTRACT FARMING

Many elderly farmers have found the organisation of separate contractors too complicated, and have instead chosen to move to contract farming arrangements. The farmer should make sure there is evidence of involvement in the farm (and the family can support this by mentioning it in the farmer's obituary), and there should also, again, be evidence of use of the farmhouse (see *Arnander (executors of) McKenna Deceased* [2006] SPC 565).

GRAZING AGREEMENTS

As emphasised by *McCall v HMRC* [2009] NICA12, for a grazing arrangement to qualify for APR, the farmer should ideally remain in occupation of the land, be involved in the land management and growing of the crop of grass, and have responsibility for the livestock.

If the land has any element of development value and would need BPR, then grazing agreements and contract farming agreements are very risky – it would be better in this case to make the arrangement through a partnership and use specific contractors, to maximise IHT relief and meet the criteria of involvement, occupation, control, activity and growing the crop of grass, including fertilising.

ACTION PLAN

The UK has a very elderly population, and it is only because many farmers are still alive that so few of these problems have come to light. Farming families and their advisers must act now to avoid losing out on potential reliefs.



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