FarmTaxBrief

Practical guidance on effective tax planning and the law relating to agricultural land

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Avoiding the higher rate of CGT via loss claims

For 2010/11 and subsequent tax years there is a specific new provision: where gains made by a taxpayer are subject to capital gains tax (CGT) at different rates, allowable capital losses and the CGT annual exemption may be deducted from those gains in a manner most beneficial for the taxpayer (FA (No 2) A 2010 para 3, Sched 1 inserting 4B Taxation of Chargeable Gains Act 1992 (TCGA 1992).

For those not prepared to pay the potentially massive 28% as opposed to 18% rate there is scope for using 'allowable capital losses' via the routes of selling assets to realise losses and/or making negligible value claims. There could be a lot of activity with regard to CGT loss realisation in the months ahead.

The complication is that the specific transfer provisions under FA (No 2) 2010 para 18, Sched 1 means that for 2010/11 when determining whether there is any unused basic rate band it is essential to ignore gains accruing *prior* to 23 June 2010. For the farmer/landowner this is of particular concern as they can own large assets of which there are often disposals and there are fluctuating income profits/losses which can be averaged.

Examples

The Taxpayer is assumed to have taxable income of £35,000. The Basic Rate Band is assumed to be £37,400

<u>If capital loss of £16,000 not used.</u>

Income	£35,000
Chargeable Gain(after annual exemption £10,100)	£25,000
	£60,000

Salary £35,000
£6,475 (PA) Taxed @ 0%
£28,525 Taxed @ 20% Income Tax = £5,705

Gain £25,000			
Unused Balance Basic Rate Band £8,875	Taxed @18%	Tax =	£1,598
Balance of Gain £16,125	Taxed @28%	Tax =	£4,515
Total Tax Income tax + CGT			£11,818

<u>If capital loss of £16,000 used</u>

Income	£35,000
Chargeable gain (after annual exemptions 10,100)	£25,000
	£60,000

Salary £35,000
£6,475 (PA) @ 0%
£28,525 @ 20% Income Tax £5,705

Gain	£25,000
Less loss	(£16,000)
Taxable Gain	£9,000

Unused Balance Basic Rate Band £8,875	Taxed @ 18%	Tax =	£1,598
Balance of gain £ 25	Taxed @ 28%	Tax =	£5
Total income tax + CGT			£7,308

ALLOCATING ANNUAL EXEMPTION – 2 GAINS OF £35,100 PRE- AND POST-23 JUNE 2010

OPTION 1 – Allocate Annual exemption to pre-23/06/2010 gains

Gain pre 23/06/2010	£35,100
Chargeable Gain (after annual exemption £10,100)	£25,000
£25,000 Taxed @ 18% CGT Tax =	£4,500

Gain post-23/06/2010

Income	£35,000
Chargeable Gain	£35,100
	£ 70,100

Gain £35,100

Unused Nil Rate Band £8,875 Taxed @ 18%	Tax = £1,598
£26,225 Taxed @ 28%	Tax = £7,343
Total CGT on post 23/06/2010 gain =	£8,941

£4,500 + £8,941 = £13,441 total CGT payable

OPTION 2 – Allocate Annual exemption to post-23/06/2010 gain

Gain pre-23/06/2010

Chargeable Gain	£35,100
CGT on £35,100 @ 18% =	£6,318

Gain post 23/06/2010

Income	£ 35,000
Chargeable Gain	£ 25,000
	£60,000

Gain £35,100 less annual exemption of £10,100 =	£25,000
Tax on unused basic rate band of £8875 taxed @ 18% =	£1,598
Tax on £16,125 Taxed @ 28% =	£4,515
	£6,113

£6,318 + £6,113 = £12,431 total CGT payable

Therefore by allocating annual exemption against the gain post 23/06/2010 a CGT saving of 1,010 is achieved. The same principle would apply to capital losses.

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