

Casual Lettings

JULIE BUTLER FCA considers the tax consequences of casual letting arrangements.

IN AN EFFORT to overcome the decline in farming incomes, many landowners are engaging in casual letting or grazing agreements. Likewise, farming units are trying to take on more land under management in order to take advantage of the economies of scale.

Many tenancy arrangements have arisen without the appropriate legal advice having been taken, and this can have unpleasant tax consequences. The introduction of the farm business tenancy from 1 September 1995 has placed the landowner in the apparently happy position of having 100 per cent agricultural property relief being available for inheritance tax purposes. However, it must be remembered that a farm business tenancy does not attract capital gains tax reliefs and can have restrictions for expenses, as essentially it should be taxed under Schedule A and not Schedule D, Case I.

Furthermore, the farmhouse will probably not qualify for expense claims under Schedule D, or claims for inheritance tax relief where the farm land has been let. This is currently very important with the increasing value of farmhouses in the United Kingdom.

It is often overlooked that the farm business tenancy (subject to previous tax status) will have to be in existence for seven years in order to qualify for inheritance tax agricultural property relief, whereas a contract farming arrangement which is properly constructed will give the landowner the ability to show that he is the main occupier and therefore bring him within section 117(a), Inheritance Tax Act 1984. The result is that the minimum period of occupation or ownership required to be eligible for agricultural property relief is two years rather than seven.

Grazing rights

Where a landlord grants a farm business tenancy in relation to the farmland, he is no longer a farmer but a landlord. This can apply with grazing rights, unless he carries out the following functions:



- He cultivates, sows and establishes the grass crop.
- He harrows and rolls the grass as necessary.
- He fertilises the grass crop in spring and through the season as necessary.
- It is important that the owner should cut or spray all weeds to prevent seeding and the owner must do any mowing that may be required for whatever reason.

The grazier must also covenant not to mow or cut the grass and the owner must do any hedging, fencing and ditching needed and any other work of a proprietorial nature.

If the landowner manages to achieve this, he should then be deemed to be a Schedule D taxpayer with paramount occupancy, and therefore eligible for not only the agricultural property relief available on the land, but also the agricultural property relief on the farmhouse. The period of occupancy could then also be reduced. There is also greater potential to claim business expenses and qualify for capital gains tax relief.

Historically, many written and unwritten tenancies have evolved within farming partnership and farming arrangements between members of the family, and these could jeopardise the tax shelter that the farmland should provide. Likewise, diversification could move towards the claim for business property relief and not agricultural property relief and, again, jeopardise the claim for agricultural property relief on the farmhouse.

Another problem facing the farming community arises where members of an arrangement with the advantage of a pre-1 September 1995 tenancy wish to change it. This could give rise to serious tax consequences and problems, such as the surrender of the tenancy.

Careful planning

The farming community is being forced to look more closely at contract and share farming arrangements, which will make available Schedule D, Case I tax reliefs, the associated agricultural and business property reliefs, and capital gains tax reliefs. It is essential that these contract farming arrangements are carefully drafted so as to protect the landlord. The Country Land and Business Association has a draft agreement for share farming, and all landowners and farmers should look to the current structure of the farming agreement in place and ensure that they are not jeopardising very valuable reliefs.

The number of farmers who die intestate is alarming and, while looking at all matters such as partnership agreements, tenancy arrangements and the tax consequences, ensuring that all major reliefs are protected, it is essential that this review is linked in with a good tax-efficient will. ■

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