Checklists for agri-businesses, woodlands, property and landownership

Julie Butler provides a checklist of practical points to consider

Agri-business (previously known as farming) is currently going through a lot of changes. Tax advisers need to keep abreast of the minefield of tax implications.

In order to reflect the emerging reality, farming has been referred to as agri-business. However, to keep it simple the word 'farmed' has been referred to throughout.

SDLT on leases from 1 December 2003 – move to contract farming
Will this make 'contract farming arrangements' more attractive? What is the definition of contract farming? Contract farming is an arrangement under which a landowner, who would not otherwise be carrying on a business, puts himself or herself into the position of doing so by virtue of a special agreement, conferring rights and obligations which he or she does so with an individual, who might have become a tenant. The SDLT calculation is based on NPV (Net Present Value). The calculation for which is enough to scare all landowners away from leases.

The main advantage of contract farming is that it is currently a trade taxable under Sched D Case I as opposed to Sched A rental income as in a Farm Business Tenancy.

What are the other advantages of the Sched D status of contract farming? Greater protection of the Agricultural Property Relief (APR) on the farmhouse? Leased farmland surrounding the farmhouse does not create ability to claim APR at 100 per cent on the farmhouse.

Farmhouse – the *Antrobus* case
Would the farmhouse achieve 100 per cent APR? In the case *Lloyds TSB* (as personal representative of *Antrobus v IRC* [2002] STC [SCD] 468), the house had to survive 5 tests:

1. Size and layout – appropriate to the area of land being farmed.
2. House proportionate to requirements of farming.
3. Elephant test – difficult to describe a farmhouse that is a character appropriate but you know one when you see one.
4. Rural Clapham Omnibus – would educated rural layman regard it as house with land or a farming unit.
5. There should be a history of association with farming.

Farmhouse – agricultural value – Inland Revenue attack
The Inland Revenue in attempting to counter the 'defeat' in *Antrobus* on the grounds of restricting the 100 per cent APR claim for IHT to 'agricultural value'. All APR claims would only be allowed against the agricultural value.

Let land – from 6 April 2004
Under s 160, FA 2003 let land qualifies for 100 per cent BATR (Business Asset Taper Relief) but there is still 'mixed use' from 6 April 1998 when BATR started and indexation ceased. This means that land subject to a lease (eg FBT) will not achieve the magical rate of capital gains tax of 10 per cent. Tax planning suggestions are to consider new ownership to achieve clean taper relief. Check eligibility to hold over relief and new trust tax legislation.

Pre-owned assets from 6 April 2005
Effective 6 April 2005 for all asset transfers after 18 March 1986. Many farms have transferred assets to the next generation. Will an income tax charge for the benefit arise? Would the assets otherwise be caught by the gifts with reservation (GROB) legislation? The legislation is still to be defined.

Partnership transfers – SDLT
Assets held outside of the partnership can only attract 50 per cent BPR (Business Property Relief) for IHT. It is understood that the Inland Revenue will change SDLT on land passing in and out of the partnership, except where there is no consideration as a pure gift. Adjustments to partnership land ownership to improve inheritance tax planning should possibly take place before the Finance Bill 2004 receives Royal Assent. Catch it while you can!

Indexation and the 'Red Book'
Any form of property tax planning requires an indication of values both current and at date of acquisition, or March 1982 for base cost – especially as indexation relief up to 5 April 1998 inflates that March 1982 value to almost 205 per cent of value. The importance of high March 1982 values is obvious. The Royal Institute of Chartered Surveyors (RICS) have told their members that they must use 'Red Book' valuations in these instances. Friendly 'guestimates' are no longer acceptable.

CAP reform – move to diversification
The way forward on the mid-term review of the CAP (Common Agricultural Policy) Reform was announced by Margaret Beckett on 12 February 2004 to heated response.

Full details of the tax treatment of the single farm payment entitlement are still to be agreed. What is certain is that the grants (entitlements) move away from production and towards diversification projects and that there is a lot of new vocabulary (as well as ideas) to embrace, eg:

- Modulation is the progressive siphoning of direct payment subsidies to fund agri-environmental schemes and rural development initiatives.
- De-coupling is taking the subsidies away from production while meeting certain agricultural and environmental conditions.

Woodlands – the BATR debate
Woodlands do not qualify for BATR – during the Standing Committee debates on the FA 2003 Taper Relief changes, the Paymaster General said that the lack of BATR on woodlands would 'receive serious consideration in due course'.

Woodlands – the IHT debate
There are strong arguments to totally rethink the taxation of woodlands. IHT 'Deferral' Relief is not as beneficial as 100 per cent APR/BPR if the correct conditions apply. Likewise the exemption from income tax for long term woodland projects is not as tax efficient as it at first appeared, eg the ability to offset the loss against total income (s 380, ICTA 1988) is lost. Commercial woodlands run as a commercial farm with the APR/BPR benefits together with five year profit rule in the overall context of tax efficiency, could be a superior choice to the tax allowances under woodland exemption arrangements.

Practical point
Review all tax arrangements for woodland.

Land Registration Act effective 13 October 2003
The above Act has revolutionised the privacy landowners previously enjoyed with regard to the legal titles to their land. Land Registry title certificates are replaced by electronic titles held on the Government's computer. The new electronic titles are live and reviewed on screen with open access to the public – including leases and charges.

Instead of clients moaning about the loss of privacy and confidentiality, what a wonderful opportunity to link the computer review to a total tax planning review of client land ownership.

Agri-business not farming – but remember life style farmer
Most accountancy practitioners and advisers 'glaze over' at the word farming, even thought most of the issues are entirely business related. It is for this reason that editors and journalists now use agri-business not farming. In addition, the traditional farmer is being joined by the lifestyle farmer, the reluctant farmer and the asset stripper.

Lifestyle farmers embrace those clients with smaller holdings who want to exploit 'niche' markets. It also includes those who with current high property prices and relatively low agricultural prices can buy a farm or estate purely for privacy, beautiful surroundings and 'lifestyle'. These are the clients of non-specialist firms and make up the majority of new entrants into agri-business. They will move towards 'reluctant farmer' as they can embrace all the income tax, CGT and IHT tax reliefs and grants and will need **lots** of advice provided they carry out a farming business, eg contract farming.

The term 'reluctant farmer' also includes those clients with land who can shelter future development profits in the farm tax reliefs. The asset stripper is the new entrant who can buy a whole farm unit and strip it into high value units possibly using farming tax reliefs, eg pony paddocks, barn development, village development etc. Watch s 776, ICTA 1988 and Inland Revenue questions over artificiality and trading in land.

Farm Woodland Premium Scheme (FWPS)
FWPS is taxable to income tax. The FWPS provides an additional grant for planting on agricultural land – the land must have been in agricultural use (growing crops or grazing livestock) for the last three years. So what is the agricultural status for APR of that land? Isn't the APR 100 per cent relief for IHT preferred to deferral relief? Review, planning and agreement with the Inland Revenue is in order for any area of land in receipt of this grant.

Tax action plan

- Produce total map/plan of all land holdings (link to fixed asset schedule in accounts/personal holding).
- Produce list of all leases and licences – written and unwritten. Check tax status.
- Review all IHT availability – APR and BPR and where APR suffers through agricultural value having to be used.
- List all BATR availability and check for mixed use/tainted taper and how 'clean taper' can be achieved as appropriate.
- Consider woodland ownership and the interaction of IHT deferral/compared to BPR/APR. Review interaction with farm activities, commerciality and tax status.
- Use new computerised Land Registration for ownership to help control the above.

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