

FarmTaxBrief

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

Entrepreneurs' relief

ER – emergency for the farming community on 'non-material' disposals and greater focus on succession planning

The introduction of entrepreneurs' relief (ER) for capital gains tax (CGT) does send out alarm signals to the farming community and action that must be taken with regard to both succession planning and the disposal of parcels of farmland for development.

A cynical person might argue that the current heading for development land projects is 'agricultural land prices soar and the tax relief's plummet'.

The material disposal

ER is available where there has been a 'qualifying business disposal', which occurs where there is a material disposal of business assets.

The material disposal, ie the disposal of the whole or part of a business reintroduces a subject matter frequently litigated upon under the old retirement relief rules. HM Revenue & Customs (HMRC) have indicated that they will apply the same retirement relief principles to ER with regard to material disposals. Consideration of the old retirement relief case law will be required and many of these cases were concerned with sales of land from farms where the issue of what constitutes the disposal part of a business as opposed to

the disposal of assets used in a business were frequently targeted. The key here is assets used might not qualify (the mere asset) as opposed to part of a business which will qualify. HMRC have also indicated that their retirement relief guidance, which can be found in their CGT manual, will continue to be appropriate on this issue for ER (CGT63530 onwards).

Not a mere asset

The main retirement cases that can be referred to for the identification of the mere asset concept are *McGregor v Adcock* [1997] STC 206 – the sale of 4.8 acres out of 35 acres; *Mannion v Johnston* and *Atkinson v Dancer*, considered jointly at [1988] STC 758 – the first concerning a sale of 17 acres followed by 18 acres out of 78 acres, the second concerning sale of 22 acres plus 67 acres of leasehold land; *Jarman v Rawlings* [1994] STC 1005, where a dairy business was sold in stages, *Wasw v Bourke* [1996] STC 18 where a dairy herd and milk quota were sold separately; *Barret v Powell* [1998] STC 283 which concerned the surrender of a 132 acres tenancy; *Purves v Harrison* [2001] STC 267 which concerned the sale of premises which were used to carry on the original business under a new licence.

Clearly the tax point under consideration is: will the proposed disposal or transfer be properly described as a business or interest in a business, or merely of assets, eg land used in a business. Dymond's Capital Taxes at para 24.710 looks at the transfer of mere individual assets used in the business.

Increased utilisation of other CGT reliefs

It would appear that the potential and future gains on development land might push taxpayers and tax planning towards increased use of roll-over relief and hold-over relief.

Using the farming family's ER – a driver for succession planning

The question of succession planning is always a subject of debate in farming families – or to be correct, the subject is often discussed at length by some members of the family and totally ignored by others and everything is often sorted out at the probate stage.

If there is a disposal of a significant part of the farm (not mere asset rules) anticipated, the utilisation of future ER among family members would prove the driver to involve more members of the family already trading, but possibly not involved in the ownership of the business, ie ER is £1m relief on gains per person and there could be planning advantages of using multiples of the £1m

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relief. With land prices at an apparent all time high – consideration must be given to the tax planning in the round, ie the interaction of roll-over relief and hold-over relief with the various restrictions and conditions.

All gifts to family members are a transfer for inheritance tax (IHT) purposes. The IHT position must also be considered. Full focus must be considered as to the interspouse transfer, the hold-over election with utilisation of the ER now on such transfers. Who said the 2008 budget was dull? The choices are now more complex than under the business-asset taper relief scheme.

Let commercial property does not qualify for ER

Let commercial property does not qualify for ER which includes FBTs with the exception of furnished holiday lets which do qualify as an effective 'trade'.

Roll-over relief

It is likely that roll-over relief and the punishing conditions as to total proceeds reinvested to achieve maximum relief and the disadvantages if less than the full amount is reinvested will be a greater consideration post 6 April 2008. The tax advisor can look forward to

complex compliance and planning calculations concerning the interaction of roll-over relief, ER and other CGT reliefs.

CGT reform 'revolution'

There has been quite a 'revolution' among the farming community about the CGT reform with many arguing that if the 'tainted taper' calculation is carried out correctly the differential between 10% and 18% CGT rate is not so great. However, others are furious because the effective 10% is lost with the loss of business-asset taper relief (BATR). Perhaps the fury should be directed towards reform of the roll-over relief rules to be more lenient on the issue of proceeds reinvested thus encouraging greater reinvestment in the business community?

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