

# EXTRA PROTECTION?

Julie Butler on passing farmland and potential development land down to the next generation and protection with pre-nuptial agreements

Where development land is tainted with problems that would make it difficult to claim entrepreneurs' relief and rollover relief, there are distinct considerations in using holdover relief to pass to the next generation. An example is where potential development land forms part of a farming enterprise, but any disposal would be essentially a 'mere asset'. Passing land in this way provides a 'clean' product that can then be sold, being able to use rollover relief and entrepreneurs' relief (ER) and the advantage of having the gain taxed at the lower 10 per cent rate without the problems of non-qualifying past use or a mere asset.

Agricultural property relief (APR) is at number 679 on the Office of Tax Simplification's (OTS) list of tax reliefs to consider. It is considered that APR might fail as it meets some of the terms of reference OTS want to achieve and the benefits of this relief in future are in question.

APR primarily aids:

- (1) residential owner-occupied property, and
- (2) let land.

The first represents a way of life that may be regarded as a historic advantage. The second is under attack. The Tenant Farmers Association Vision for Agriculture 2020 calls for the abolition of APR on 'short-term' lettings and contract/share farming arrangements. The latter can

'IT IS CONSIDERED THAT AGRICULTURAL PROPERTY RELIEF MIGHT FAIL AS THE BENEFITS OF THIS RELIEF IN FUTURE ARE IN QUESTION'

sometimes qualify under business property relief (BPR) and this may be a more appropriate way to police the relief. APR can be expensive to administer for both HMRC and the taxpayer, because of the subjective judgments on when residential owner-occupied property meets the character test and what the agricultural value is without any comparable evidence.

BPR is at number 685 on the OTS list, but it is a more widespread relief and is less likely

'ENSURE THAT AGRICULTURAL LAND IS PASSED DOWN TO THE NEXT GENERATION BEFORE AGRICULTURAL PROPERTY RELIEF DISAPPEARS'

to be lost altogether under proposed changes.

The above gives strong examples of why land should be passed to the next generation, e.g. to protect land to qualify for ER and to ensure that agricultural land is passed down to the next generation before APR disappears. But what of the worry of divorce? Can a pre-nuptial agreement give the protection that is needed?

Once the land is in the hands of the next generation, being under new ownership, it is automatically wiped clean of those problems of non-qualifying use for the CGT reliefs, i.e. periods when the land was let or used for private use. Then, in the hands of the next generation, it is possible to ensure that it is used purely for qualifying purposes, until it has met the minimum required period – which is now only one year of business use. Once that point has been reached, the land

can be sold, and because it has been used purely for business purposes (while under its current owners), ER, with its attractive 10 per cent rate of CGT, can be available. Compared to the much more onerous 28 per cent full rate of CGT, this is very attractive.

Some may say the current environment does not encourage tax advisors to be proactive in advising their clients on succession planning, not least because of potential litigation claims. However, advisors still have to present clients with a full synopsis of what might and might not happen on passing down wealth to the next generation, through either lifetime or death transfers. Advisors will need a strong understanding of what the client needs, and their advice may have to include some crystal ball-gazing, as well as explanations of potential downsides and safeguards.

It can be argued that we must not let the tax tail wag the dog. The landowner has to want to pass down the land, but there can be tax planning advantages and protection with agreements, such as the pre-nuptial agreements that have featured so much in the press of late.

This whole area of planning is subject to uncertainty, but where parents or even grandparents are worried that the family farm or the family share of development land will be lost, then the pre-nuptial may present some protection.

Julie Butler is the author of *Tax Planning for Farm and Land Diversification* and *Equine Tax Planning*

