FARM COMPLACENCY

Julie Butler considers active husbandry and the surviving spouse exemption in the UK

Farms are usually run as family farming partnerships involving a husband and wife and their children. Often the land is still held in the names of the parents and often, as is the way with farming, only in the name of the father.

A large amount of work is often carried out to make sure the farm operation will be efficient from an inheritance tax point of view: that there is active involvement, active husbandry, evidence of a farming operation etc. Simple wills are often produced whereby the husband leaves his wealth to his wife and vice versa. Statistics show that it is often the husband who dies first.

Surviving spouse as first protection

In the situations mentioned above, many farms originally inherited by the son have been passed to the wife without any tax problems due to the surviving spouse exemption. However, this exemption does not make use of agricultural property relief (APR) and business property relief (BPR). The deed of variation (DoV) is one tax-planning tool that should be used to protect APR and BPR claims. The problem then arises with regard to the farmer's wife. Over the past century farms have generally been left to sons, the husband has been most involved in the farming, and the husband has died first.

Today, UK farming is owned by an ageing population of farmers. Few have passed the farm down to the next generation and the fact that when they die the farm is passed to their wife 'free of tax', through the surviving spouse exemption, seems a simple and straightforward move. However, many advisors are now faced with the scenario that the farmer's wife has inherited, or will inherit, a farm that might then present IHT problems for her.

HMRC has continually attacked active involvement for BPR claims, and the review of the past two years has highlighted considerable problems. A lot of work has been put into making sure Farmer Giles achieves IHT relief on the farm and associated investment assets such as cottages. However, it might prove more difficult for Farmer Georgina to prove the active involvement that HMRC is so insistent on in BPR claims.

Review all farming wills

The practical tip is that all farming wills should be reviewed. Perhaps this will expose an even larger problem: potential intestacy where there is no will. Passing business assets to the next generation using BPR or APR on the first death should be given the utmost attention. Protection can be sought through the DoV so that assets that do achieve APR or BPR can be passed down and those assets that do not can be passed to the surviving spouse to take advantage of all reliefs.

> "Passing business assets to the next generation should be given the utmost attention"

Complacency

Complacency over the surviving spouse exemption is a real problem. Many farming wives who have inherited the farm may have difficulty arguing active involvement; their situations should be reviewed. If there are concerns as to whether active involvement can be proved for BPR and whether active husbandry can be proved for APR (for the farmhouse) and there is still time for a DoV, act now.

Many farming partnerships lack up-to-date legal agreements such as partnership agreements, contract farming agreements and grazing agreements. Now is the time for a full review of all important farm legal documentation and agreements. Farm values have increased substantially in the past decade, development values are returning and HMRC's appetite for collecting more IHT seems as large as ever. Persuading the Capital Taxes Office that a spouse who is not involved in active husbandry is entitled to BPR and APR on the farmhouse has become more difficult. Many advisors seem to be focusing on aspects of farm tax-planning, such as the main farming spouse, while overlooking the surviving spouse. It is essential to consider the basics, such as an up-to-date will, a review of the role of the spouse and farming included in the DoV, and protection through an up-to-date partnership agreement. Taking into consideration current farm values, if mistakes are made or opportunities overlooked, the quantum of the tax penalty could be significant. ■

JULIE BUTLER IS A PARTNER WITH BUTLER & CO