

Corporation tax

66. Tax relief for loan guarantees

Prior to the FA 1996, corporate debt regime, groups generally found that it was easier to structure their borrowing arrangements with a view to securing capital loss relief by giving loan guarantees. For example, where a holding company guaranteed a loan to a fellow group member which then became irrecoverable, any payment made under the guarantee was treated as an allowable loss under section 253(4), TCGA 1992. Irrecoverable intra-group loans did not qualify for capital loss relief under section 253(1), TCGA 1992.

However, under the loan relationship rules set out in FA 1996, a loan guarantee would normally become a loan relationship after it has been called in. The guarantor becomes entitled to the rights of the original lender or is entitled to an indemnity from the borrower. However, the holding company 'guarantor' will not obtain any relief under the loan relationship regime. The debt is deemed to be fully repayable as it is between members of the same group (see paragraph 5 of Schedule 9 to the FA 1996). A parent company can still claim capital loss relief under section 253(4), TCGA 1992, as no relief is available within the loan relationship rules. Guarantee arrangements thus remain an effective way of obtaining some tax relief, albeit as a capital loss.

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Capital Gains Tax

67. Principal private residence relief

Working from home, either as an employee or as a self-employed worker, is on the increase. Employed workers have little scope for any expenses claim, due to the stringent provisions of section 198, TA 1988 and the 'wholly, exclusively and necessarily' rule.

Self-employed workers are able to claim for use of home as an office, and the basis and scope of such a claim is beyond the scope of this note. However, an obstacle put forward to such a claim has often been that the exemption from capital gains tax on a subsequent sale of the property may be lost in respect of the room used as an office.

Workers in this situation need to preserve the complete CGT exemption of the home by making sure that no one room is used exclusively for business purposes. The presence of a television, video, music centre and/or library of leisure books, videos and CDs in the office is one good method of 'insurance'. Another is to store sports equipment in the office. Readers will no doubt think of other solutions.

68. Farming and business asset relief

A reader's question submitted to Taxation Magazine on 22 November 2001 by a taxpayer entitled *Reluctant Farmer* raised the important question of how farmland should be held and the importance of business status.

The difference between a grazing agreement which is effectively rental income and therefore does not attract business status and the correct grazing agreement which meets the criteria for Schedule D income was established at some length in the answer submitted. This raised some important tax planning points setting out the advantages of business status with regard to the eligibility to capital gains tax business asset taper relief and the ability to roll over the gain.

The size of the land in question was only 20 acres. What the article shows is that with farm accounts generally being considered a specialist area carried out by dedicated farming and agricultural departments within accountancy firms, there are, however, many 'reluctant farmers' within the general client base of most firms of accountants. Historically land has been passed down from generation to generation and not necessarily to those interested in farming. Often when farms are disposed of, any element of farmland that was close to a village was often retained where any potential development was recognised and retained with an element of hope value.

There are, therefore, many little parcels of agricultural land held in trusts, non-farming companies and by individuals which might only really come to light with a small amount of rental income being shown on a Tax Return. With the current beneficial position concerning business asset taper relief and the continued shortage of houses for development it is a good planning opportunity for practitioners to ensure that the tax status of all reluctant farmers is dealt with correctly.

It is not just the capital gains tax reliefs that are beneficial under the current legislation but also the inheritance tax position must also not be overlooked with regard to the agricultural and business property relief.

The establishment of business status can be achieved through well-constructed contract farming agreements or correct grazing agreements. It is, however, essential that while reviewing the eligibility for relief, consideration is given to non-business use of the asset for taper relief.

In the same way that many landowners can fall into the group aptly named as reluctant farmer so could many tax practitioners fall into the category of reluctant farming practitioner! With the generous but complicated reliefs available to agricultural businesses and accounting and tax rules associated with this such as herd basis elections, averaging rules, hobby farming and extra statutory concessions on rent of farm buildings this can be quite a minefield even for a small reluctant farmer.

With many practitioners carrying out complete reviews of the eligibility or otherwise for business asset taper relief of all their clients' assets this reluctant farmer angle could be an extremely important consideration for future and current planning purposes.

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