



Over the past few months, we have been hearing that house prices have been falling, yet agricultural land values have rocketed. Landowners naturally like to buy land rather than sell it, but with increased agricultural values, there is a great temptation to sell off those golden nuggets or even possibly sell everything.

However, one of the main problems with selling a field or a few acres, for instance, is that under the new capital gains tax (CGT) relief for entrepreneurs (which has replaced business asset taper relief), the business must be sold before any relief can be claimed. Previously, landowners could sell parts of the land and pay an effective top rate of capital gains tax at 10% if the land had been used in business – not just his own business but anyone's business. The new rules for CGT entrepreneurs' relief (ER) are rather strict – for example, it only applies to landowners who have actually used the land in their own trade for at least a year. There are in effect two rates of CGT now in existence: the actual rate of CGT is 18%; ER reduces this gain by 4/9ths, bringing the effective rate of tax down to 10%.

£1m lifetime allowance

The lifetime limit for ER is set at £1m, and once this has been used up, there is no more. Whether a new government would phase this relief out is an interesting question and one that begs the question as to why not use it up now before a new relief comes in? Entrepreneurs' relief is an individual relief, so joint landowners such as husbands and wives or siblings could benefit from multiple reliefs. However, I would again point out that the new relief is not like the old business asset taper relief as the qualification requirements for ER are far stricter.

Land transfers

It was not unusual in the past to transfer land into the joint ownership of spouses and then to sell the land and take advantage of full reliefs. Previously, transfers between spouses and any already earned time periods of qualification passed smoothly from one spouse to the other, enabling instantaneous maximum relief for the recipient spouse. However, ER does not work like this, since qualification for the relief is earned through involvement with the business for at least one year. This would mean that any transfer to a spouse would have to involve further the spouse with the business for at least one year, in order to qualify for the relief. With each £1m-worth of relief providing a tax saving of up to £80,000, some pre-sale tax planning using both spouses (and even children) could be advantageous.

£3m land sale

A typical example of such a saving could be a farm owned by Mr Farmer, who has farmed for many years and is thinking of selling up. The farm could sell at a capital gains profit of £3m. If he simply sells the farm as it stands in his own name, then the tax due could be as shown in Table 2.

The capital gains profit and tax when selling a farm in a sole name

Gain	3,000,000
Less 4/9ths ER on £1m	-444,444

	2,555,556
Less annual exemption	-9,600

Taxable gain	2,545,956

Tax @ 18%	£458,272

If Mr Farmer decided to bring in his wife and son, the capital gain could be as shown in Table 3.

In order for both Mrs Farmer and the son to qualify, however, they would have to not only be gifted a share in the farm but they would also have to become partners in the business and trade for at least a year before the sale. They would also have to be active partners, putting in at least 10 hours of work each week in order to qualify for this.

Other taxes

Whilst there may be a substantial CGT saving, one should also consider the inheritance tax implications of converting what was potentially an inheritance tax-free asset into cash that does not attract any relief. In the above example, the gift to the son would no doubt become a potentially exempt transfer (PET), and hopefully Mr Farmer would live past the seven years. Any changes in land ownership or business entity should be carefully considered, taking into account CGT, IHT and the dreaded SDLT.

Farm business tenancies (FBT)

Sadly, for those landowners who have let their land out under tenancies such as farm business tenancies (FBT),

The capital gains profit and tax when selling a farm with a spouse and children

	Mr Farmer	Mrs Farmer	Farmer's son
Gain	1,000,000	1,000,000	1,000,000
Less 4/9ths ER on £1m	-444,444	-444,444	-444,444
	555,556	555,556	555,556
Less annual exemption	-9,600	-9,600	-9,600
Taxable gain	545,956	545,956	545,956
Tax @ 18%	£98,272	£98,272	£98,272
Total tax			£294,816
Tax saving			£163,456

the qualification under business asset taper relief rules for a 10% rate of tax no longer applies because the landowner must be using the land in his own business. The best advice here is to bring the land back into personal ownership, use it in your own business for at least one year, and then sell it. The same exercise could include, as before, the introduction of the spouse and children.

Development land

When development land comes into play, tax planning needs to become far more robust and inventive if any tax is to be saved. With land development values reaching figures of up to £1m per acre, some clever tax planning measures are required if the intention is just to sell off the development land.

As previously mentioned, one of the main problems with ER, however, is that you have to cease the business. It may be possible to transfer the development land into a separate entity – such as a new partnership or even a trust – and then trade for at least one year in that business, but you would, however, need to make sure there was a true business and that all the new owners or beneficiaries were involved in the new trade. As mentioned above, with a tax saving of up to £80,000 per person it is something worth looking at in closer detail.

Small disposals – s 242 Taxation of Chargeable Gains Act 1992 (TCGA 1992)

One last tax golden nugget is the ability to sell off part off the land and not pay any capital gains tax at all. For some land disposals, a claim may be made to treat the sale as neither giving rise to a gain or a loss – but instead the proceeds of the sale are deducted from the base cost of the land for future disposals.

The three main conditions for a small part disposal claim are as follows:

The value of the land sold must be not more than one fifth of the value of the whole land interest prior to the part disposal.

The sale proceeds do not exceed £20,000.

The total sale proceeds for all land transfers (whether or not they fall within the small part

disposals of land provisions) made by that person in the tax year do not exceed £20,000.

For partnership disposals, the claim is made by each partner and the £20,000 limit is for disposal proceeds that are attributable to the partner.

A small disposal could be ideal for selling off small fields for pony paddocks or homeowners wishing to extend their garden. However, since the disposal will reduce the actual base cost, the possible capital gain on the overall sale of the land would actually increase as a result of the reduced base cost. In some cases it could actually be worth paying 18% tax!

No matter what is sold, careful consideration must be given – not just a few days before the sale but at least one year before to save some tax.

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