

Business asset disposal**Clarke's farm**

Farmer Clarke has a sizeable farm, which he inherited as a whole on the death of his father some ten years ago. Historically it has been arable in nature, although in recent years the farming activity has reduced and most of the fields have been put to alternative use such as solar panels, adventure park and other diversification activities.

One field is currently used as a campsite with full facilities available, including a shower block, children's playground and barbecue area. Clarke has unexpectedly received an offer for it from a developer who has seen the opportunity to get planning permission for a housing estate on it. He has made an immediate offer to buy it, which Clarke is likely to accept.

He has been looking to have the benefit of business asset disposal relief for the field and one idea that has been suggested is that he should transfer the business to his wife, who is currently not involved in it, retaining the field for sale immediately after the transfer.

Do readers think this simple strategy would work, or is there a better way forward?
Query 20,638 - Clarke's Clerk.

Need a more comprehensive strategy

The strategy in mind here is the cessation of a business and then the disposal of one of the assets of the business shortly thereafter. In principle, that does enable business asset disposal relief (BADR) to apply for the disposal, and the question is whether the detailed conditions will be satisfied by the proposed steps.

The first issue is whether there has been a cessation of the business. In our experience, Mr Clarke's proposed method is not usually used for this type of tax planning. There is nothing technically that prevents it since the husband and wife are not combined in relation to the relief and are considered separately, but there is bound to be a question of whether the transfer is realistic or just a piece of window dressing – a sham that will be disregarded. Since the husband has apparently run the business on his own for many years, is it difficult to see how he will just stand aside all of a sudden and let his wife take over. HMRC may also take the view that the business has not in fact ceased but is effectively continuing for the husband's benefit.

The next issue is whether the disposal of the field will in fact qualify for relief. A camping site is not regarded as a trading activity, so at first sight it might be thought that it is excluded from relief as an investment activity. However, HMRC states at CG71800 that a single acquisition of land on inheritance should normally be regarded as one asset for capital gains tax purposes. Hence the

whole farm may be one asset, and part of the asset is used for a farming trade. For BADR, it is not required that the whole of the asset is used in the trade. However, it appears that most of the fields are not used in any trading activity, so it may be that, as a whole, the single asset is now to be treated as held as an investment. If this were not the case, the sale could be eligible for relief, depending on all the facts.

The normal way of structuring this planning is to transfer the business to a company, excluding the land to be sold. That in itself has significant tax consequences, and with recent changes in dividend and NIC rates it is quite possible for more than 50% of profits to go in tax if drawn out, this apparently being regarded as 'paying a fair share' in tax.

Alternatively, Mr Clarke could have considered bringing his wife into partnership and sharing ownership in some or all of the farm to give greater access to various reliefs. If it had been operated as a partnership, with the land held off balance sheet (with all the issues with business property relief that come with it), we could be considering an associated disposal by gifting an interest in the partnership to another family member (or trust) at the same time as the sale.

This case goes beyond BADR and into full succession planning, which must be undertaken to achieve the best overall tax advice, reviewing all taxes in the round.

- Butler & Co.

There are options, but not this one

Unfortunately, Mr Clarke's plan doesn't work. Business asset disposal relief (BADR) is available on:

- a disposal of the whole or part of a business; or
- a disposal of assets used in a business when the business has ceased, within three years of cessation.

It is not available merely because a business asset is sold while the business carries on broadly unchanged.

The 'associated disposal' route (where an individual sells personally owned business assets and a business interest at the same time) also doesn't help, because:

- it only applies where assets are used by a partnership or personal company;
- the individual must dispose of a business interest (partnership interest or shares) at the same time;
- Mr Clarke's wife will be a sole trader and Mr Clarke won't own any business interest in her trade.

Even if they created a partnership, BADR usually needs at least two years' qualifying period of ownership and business use. But there are some BADR options that could work instead.

Option 1 – Treat the campsite as a separate business and sell it as such. If the campsite (with facilities, customers, separate income) is a distinct trade from the rest of the farm, selling the field and ceasing the campsite activity could amount to a disposal of the whole of that business. If Mr Clarke has owned and run it for at least two years, BADR may apply.

Option 2 – Cease campsite trade, then sell the field within three years. This can qualify as a disposal of assets used in a business on cessation if the land was genuinely used in the trade up to cessation (ie not held for development/investment).

Option 3 – Long-term planning. If they want to use the wife's BADR capacity, they could form a genuine partnership and run it for at least two years, then both dispose of partnership interests and assets. That is future planning, not a quick fix.

Bottom line: Mr Clarke's strategy does not secure BADR. He should instead get professional advice on framing the sale as a disposal/cessation of the campsite business.

- Katherine Chan.