

## Farming partnership

## Is agricultural property relief available on future disposal?

My client is a farming partnership consisting of two brothers, one of whom lives in the farmhouse associated with the farm, together with a relative. The relative is not involved in the farming business. The other brother does not live in the farmhouse.

The farm was, until recently, a working farm for the growing of crops. Due to the ill health of both brothers, the partnership has ceased farming and they are letting out the farmland to a nearby farmer who is renting the land from them and the tenant is now growing crops on it. The retired farmer continues to live in the farmhouse.

My question arises with regard to agricultural property relief and the seven-year rule where the agricultural land is farmed by somebody else on an agricultural tenancy which has only just started in the past 12 months.

Does the seven-year rule take into account the previous occupation by my own client for the purpose of farming themselves, or does the seven-year rule stand alone which means that the agricultural tenancy must subsist for seven years before APR is available to them on a future disposal of the farmland?

Query 20,172

- Farmer Giles.

### There will be a loss of potential business property relief.

With all the changes facing the brothers this is a classic example of the need for tax planning from the 'get go' – see 'Starting well', *Taxation*, 16 March 2023.

The ill health, the retirement, the cessation of the partnership, the letting out of the land contain a lot of triggers for in-depth tax planning.

As long as there is continued agricultural use on the land, then the seven-year clock is not restarted by a

change from 'in-hand' farming to being let out.

The previous occupation and use of the land is therefore taken into account for agricultural property relief (APR) purposes.

In reality the agricultural use between the cessation of the partnership and the start of the tenancy has to be seamless. There cannot be any form of gap (not even for one day) between the two and this will have to be able to be evidenced and proven to HMRC who like to look for areas of weakness.

At a glance, the move to an agricultural tenancy will mean the loss of APR on the farmhouse. It would therefore be interesting to see if some form of 'involved contract farming arrangement' (CFA) was considered.

Furthermore there will be a loss of potential business property relief (BPR) from moving from 'in-hand' farming to a tenancy arrangement so any 'amenity' or 'hope' value on land or farm buildings will not get relief as it will be restricted to the agricultural value.

Capital gains tax advantages that come from trading in hand would also be lost.

There are some missing details here. For example, what is the age of the partners and their life expectancy? What is the exact nature of the tenancy, ie farm business tenancy (FBT) or Agricultural Holdings Act tenancy?

Also, the farm values would help to see the position 'in the round'.

Detail of ownership has also not been set out, eg is it a partnership or a non-partnership property? Is there a partnership agreement in existence?

When looking at the farmhouse, are there any surviving spouse relief advantages? This might appear to complicate a relatively simple question but they are all things that must be considered.

- Butler & Co.

### Contact us

If readers have a question or have encountered an interesting tax problem and subsequently found the answer, contact us at [taxation@lexisnexis.co.uk](mailto:taxation@lexisnexis.co.uk).