Build, Build, Build – consider the redundant buildings

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In Tax

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With the proposed dramatic change to the planning rules since the Town and Country Planning Act of 1947, farmers and general owners of redundant buildings and offices etc, must consider both the opportunities and associated tax planning. The consideration must encompass rental as well as development opportunities.

Ironically, such significant changes to the planning rules ties into the new Agriculture Act 2020, which leads to the "Agricultural Transition Plan". The latter has made the front page of the national press with headlines such as "Ministers to divert subsidies to restore landscape". The advantages of the new permitted development rights (PDR) are something that will be considered by a large number of farmers, possibly to help replace the loss of direct subsidies that lies ahead. All farm property has to be considered in the context of the recent OTS (Office of Tax Simplification) review of CGT.

For farmers, the use of buildings is a prominent tax question. How can rents legitimately be assessable as trading income? This is of prime importance for tax-loss management and links closely to the hobby farming rules. The ability to reclassify rents as trading income can be the difference between making or not making a trading profit in a year and therefore not being caught under the hobby farming rules.

The importance of trading

The question is, therefore, when is rent trading income? First, when a trader's business premises are sub-let; and, secondly, where services provided by the landlord are of sufficient substance that the landlord is carrying on the trade of providing serviced accommodation. Such action would be a vital tax-planning tool to the diversifying farmer who is looking to maximise income from buildings.

To qualify as a sub-let of the farmer's business premises, the accommodation must be temporarily surplus to business requirements and the property must be used partly for the business and partly let. In addition, the rental income must be comparatively small, although the definition of this is not clear. A prime example would be the subletting of part of a barn or building to another trader. Most farmers currently have this type of income in their accounts and the tax planner should ensure that it is assessed as trading income.

Serviced accommodation

The next stage is to review the potential provision of serviced accommodation. The *Vigne* case is useful here. Generally, following the decisions in *Gittos v Barclay* [1982] STC 390 and *Griffiths v Jackson* [1983] STC 184 HMRC tried to move the status from trading income to other income. The VAT treatment of serviced accommodation cannot be overlooked, as rents from letting residential accommodation are normally exempt from VAT but serviced accommodation could be liable to VAT at the standard rate. Such need ties into a recent IHT furnished holiday accommodation case.

The OTS report on IHT published in 2019 suggested aligning the IHT treatment of FHA with income tax and capital gains tax, which would allow for BPR to apply to them. Given the recent *Cox* case, HMRC are evidently resisting such a suggestion! The tax position has to be considered on all spare farm buildings including the potential for development. For the elderly owners of such farm buildings an inheritance tax (IHT) worry is the desire of valuers to include 'hope value' following the *Foster* case. Where BPR can be achieved, e.g. overall BPR on the estate or used in the business but where IHT reliefs cannot be achieved, many would see the inclusion of 'hope value' as an efficient way to collect more taxes to help recover Covid-19 costs.

The conclusion is that with so many changes for farmers to consider on subsidies, planning laws and the proposed changes to CGT and IHT, all farm buildings must be reviewed for development opportunities, commercial viability, including overall farm profitability, together with the tax planning opportunities that are under change.

Agriculture, Farm, Tax

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