Executor steps up

Julie Butler and Fred Butler examine the role of the farm executor after Labour's autumn 2024 Budget.

The role of the farm executor has always been a difficult one for a multitude of reasons. Firstly, farmers like to 'die with their boots on' so there is normally a living business to deal with.

For a sole trader this could mean the executor has to 'stand in the shoes' of the deceased and run the farm until the terms of the will are actioned. For a share in a partnership there has to be careful inspection of the partnership agreement, understanding the implications thereof and the interaction with the will. For a share in a limited company the shareholders' agreement has to be understood.

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Next, we have to consider the valuation. It is the executor's responsibility to obtain valuations under IHTA 1984, s 160 (market value) and agricultural value for agricultural property relief as applicable.

Finally, farm wills have historically been the subject of family disputes and misunderstanding – see for example *Williams (Mundil-Williams v Williams* and others [2021] EWHC 586 (Ch)) and *Abraham* (*Ingram* [2023] EWHC 1982 (Ch)) – and the beneficiaries might well not have the same goals. The 'litigation habit' in the farming industry has caused problems time and again in cases such as *James v James* [2018] EWHC 43 (Ch) and many others.

Key points

- The farm executor's workload has always been heavy but has been amplified by the autumn Budget.
- Farm valuations will be more important and complicated in terms of bringing assets into the inheritance tax range.
- Assets may have to be sold to fund the liabilities.
- When updating wills, it will be important for those drafting the will to see the farm accounts to understand the trading operation.
- The choice of executor in commercial and decision making terms is very important.

For all these reasons, and more, the farm executor has always had their work cut out and the Budget announcements have only added to their workload.

Post-Budget – increased inheritance tax liabilities

With the drop in agricultural property relief and business property relief from 100% to 50% there is more likely to be an inheritance tax liability which could impact the terms of the will as shown by the case of *N Hall and another (as trustees of Carolina Raboni deceased)* (TC8691). The funding of inheritance tax liabilities will be critical.

Farm valuations will be more important in terms of bringing assets into the inheritance tax range and, in turn, farm valuations will be more complicated with the impact of the Budget changes. While it is predicted more farms will come onto the market, rollover relief for capital gains tax still exists so there could be willing buyers wanting to shelter gains. The inheritance tax relief of £1m at 100% and 50% thereafter could still be attractive to a buyer and help keep land values buoyant.

Given the Budget did not provide any further clarification on the so-called bright line between trading and investments, the IHTA 1984, s 105(3) problems will still remain for business property relief and the recent decisions in *Eva Mary Butler and others* (TC8949) and *Demetriou and another* (TC9288) must be fully considered in the context of 0% inheritance tax relief.

For farmers with 'pension pots' there will be the administrative burden of bringing these into the inheritance tax calculation. It could well be that some assets will have to be sold to fund the liabilities, such as cottages and outlying paddocks and fields. This in turn could result in capital gains tax compliance and calculation of liabilities. With residences, the online capital gains tax return will also have to be considered. The Budget did allow for the paying of liabilities by instalments.

One cynical answer could be that the executor will have to appoint excellent advisers, such as land agents to value and inheritance tax experts to explain the potential pitfalls, alternatives and the possible options available. However, the ultimate responsibility of decision making will belong to the executor.

Time for action

With a potential inheritance tax liability to fund along with potentially satisfying non-farming children/beneficiaries with their interest in the estate, harmony among beneficiaries and wider family members is going to be harder to achieve than ever.

Action must therefore be taken now. The message from the Budget has been to plan in advance and to consider lifetime transfers as a greater part of taxation (see Q&A 'Will business property relief come under attack in the October Budget?', *Taxation*, 12 September 2024). Such work should and must consider all decisions in the context of executor responsibilities.

The farm will

All farm wills will need reviewing in the context of the choice of executor and the provision for inheritance tax liabilities and increased lifetime planning. This will have to be as part of full succession planning.

When updating wills, it will become even more important for those drafting the will to see the farm accounts to fully understand the trading operation.

It will also be crucial for the will drafter to review the farm partnership agreement to see what will happen on the death of a partner. If it stays silent on the matter this results in a dissolution of the partnership which may not be the desired outcome, especially in farming. If they identify areas that will affect the administration and distribution of the estate, they must flag up the concerns. All farming partners and advisers will have to work together.

Post the budget the choice of farm executor can no longer be based on love, loyalty and nostalgia, but on the commercial understanding of the problems that lie ahead. Emphasis must be placed on business acumen and strong decision making skills as incompetence could end up costing more than the changes in inheritance tax reliefs.

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- Autumn 2024 Budget: inheritance tax changes: tinyurl.com/ykj6ju56
- Negotiating share valuations with HMRC: tinyurl.com/namhp37d
- Q&A Will business property relief come under attack in the October budget?: tinyurl.com/4haserva

Tax tip

UK employees who leave the UK and work overseas.

Do you have clients who send employees overseas on assignment? In particular, to countries with which the UK doesn't have a social security agreement (totalisation agreement), for example, Australia, the United Arab Emirates or Singapore?

When considering the NIC position for UK-based employees who have been posted overseas, it is important to realise that the NIC rules differ substantively from the PAYE/income tax obligations. Hence UK based individuals who are posted overseas to a non-agreement country can remain liable to UK NICs for the first 52 weeks abroad even though they have (presumably) become non-tax resident in the UK.

Moreover, the regulations come with practical challenges. For example, the issue of whether there is an ongoing NIC liability can depend on whether the contract stays with the UK company and whether the individual remains 'ordinary resident' in the UK. In addition, the definition of ordinary residence for NIC purposes is separate from the traditional tax definition of ordinary residence.

As such, someone who is posted, say to Australia, on a long-term basis – at least two years – and continues to be employed by the UK entity could remain liable to employee and employer NICs for 52 weeks if they are held to be ordinarily resident in the UK, while a colleague on exactly the same assignment abroad may cease to be liable from the start of the assignment, as they did not establish ordinary resident in the UK before being posted overseas.

So what is the test for ordinary residence for NIC purposes? Sadly, there isn't a simple test – rather it is based on assessing a wide range of 'factors', eg family and social ties, based on previous case law. As such, an employer potentially needs to make a case-by-case assessment of each individual assignment.

Tax tip provided by tax, accounting and business advisory firm Blick Rothenberg (www.blickrothenberg.com).