Readers' forum

Selling farmland

Is business property relief available?

My clients, three connected individuals, are in partnership farming land, the freehold of which is owned by the partnership. Most of the income relates to grants and grazing. It is likely that some of the property will fetch a large sum when it is sold for development.

The partnership agreement provides that on leaving the partnership, the outgoing partner shall be paid the amount of his capital account based on the balance sheet drawn up at the next accounting date. He is not entitled to any share or interest in the property of the partnership or net profits arising after his leaving date. One of the partners has died; his CGT base cost for the land is less than the balance sheet value (and less than market value).

HMRC's *Capital Gains Manual* states (CG30360) that interests in partnership assets are not included for the purposes of TCGA 1992, s 62(1) as assets of which a deceased person was competent to dispose and so there is no legislation to prevent such assets being deemed to be disposed of on death. HMRC says that that such interests should be dealt with in accordance with the part of the manual concerning partnerships (CG27000), resulting in SP D12 applying.

Does a chargeable capital gain arise to the deceased partner on his death? If so, would it be based on market value? Would that still be the case if the partners were not connected, and the property is not revalued in the accounts? Would the value for inheritance tax be based on market value or the balance sheet value that determines the capital account payable to the estate? Will business property relief be available?

If what transpires is double taxation, is there any other mechanism to prevent this?

Query 20,091 – *Backwoodsman.*

The partnership share going to the other partners has tax negatives.

The partnership share going to the other partners is something that historically was quite common but has significant tax negatives. It sounds like bad drafting of the partnership agreement or advice around it and/or lack of updating a historic partnership agreement. There can be a CGT charge where a partnership share automatically accrues on death.

Holdover relief under TCGA 1992, s 165 may apply if deemed to be a trading business which may not be the case here. Under SP D12, where partnership assets pass to the remaining partners, there is no consideration passing, and there has been no previous revaluation of the assets, the original base cost of the asset is reallocated to the remaining partners and there is no disposal for CGT purposes. The base cost that passes is a share of the original base cost. This would need to be considered carefully where the partnership chargeable assets are large given the low base cost passing.

Where there are chargeable assets in the partnership balance sheet, and assets used by the partnership but held personally by the deceased, the CGT position of each of the assets would need to be considered as the CGT treatment may be different for different assets depending on the terms of the partnership agreement. Given the grants and grazing licence, the chances of BPR are extremely slim; however the recent *Gill* case has given some hope for BPR and grazing but that was an 'exceptional' case. – *Butler & Co.*