Meticulous forward planning

Farmers can see obvious problems with the new rules effective after April 2026. Meticulous estate planning is needed, say Julie Butler and Fred Butler.

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A large number of farmers are elderly and they – and their advisers – can see immediate negatives to the problem of dying after April 2026 following the autumn Budget.

Gifting with holdover relief

With holdover relief for capital gains tax (CGT) having survived the Labour Budget of 30 October 2024, there has been a flurry of lifetime transfers, particularly of agricultural land. The problem is that the potential inheritance tax (IHT) saving that can be achieved with the transfer to the next generation could be outweighed by the potential future CGT liability. It is therefore essential to ensure there is a full understanding of the future plans for the farm and tax calculations as to what is the best choice. Against this background is the concern that the Budget on 30 October was only the 'starter pack' of tax changes and there is worse to follow.

Keeping the farm in the family

The main drive for gifting is to keep the farm in the family without IHT worries. However, part or all of the farm might have to be sold for one of the following reasons:

- Development or amenity value too difficult to turn down.
- To pay IHT liabilities.
- To fund other areas of the farm business.
- Family members not wanting to continue farming.

Key points

- Since the autumn Budget, there has been a flurry of lifetime transfers, particularly of agricultural land.
- The potential inheritance tax saving that can be achieved with the transfer to the next generation could be outweighed by the potential future CGT liability.
- What would the tax liability be if, say, rollover relief were to be taken away in a future Budget?
- Farm succession planning cannot be undertaken lightly. There must be full understanding of what the farm plans are and well completed spreadsheets of tax alternatives.

Some of these reasons should not be too 'CGT expensive'. For example, the development gain could be rolled into farm property and improvement. Likewise, the funding of other areas of the farm business could be solved with rollover relief. It will be important to consider how the rollover will be claimed and by whom.

However, what would the tax liability be if, say, rollover relief were to be taken away in a future Budget? Also, what if the CGT rate were to be increased to, say, income tax rates which was promoted in an Office of Tax Simplification report? Currently, the lower rate of CGT for non-residential property has risen from 10% to 18% and the higher rate from 20% to 24%. These new rates came into effect immediately on 30 October.

The rates for business asset disposal relief and investors' relief will rise gradually to 14% from 6 April 2025 and then again to match the main lower rate of 18% from 6 April 2026. This is only the second time in recent years that there has been a mid-year CGT rate rise, and both HMRC and accountants' tax software packages will have to move quickly to allow for the change.

Following the speculation in the run up to the Budget, the increase to the main CGT rate may feel relatively light in comparison. The chancellor may hope that this achieves the best of both worlds, generating an initial pre-Budget boost to exchequer receipts with some selling assets in anticipation of a steeper hike, while the eventual, more modest, four percentage point rise is tolerable enough to avoid many holding onto assets in the future as they wait for a drop in the rate.

It is also very surprising that the rise isn't shared across asset classes – with CGT on property sales unchanged. This will be welcome news for farmer landlords who were braced for an increase.

Dilemma of future liabilities

It is essential to calculate the potential future CGT and IHT liabilities based on an understanding of the future farm plans. With regard to future tax policy that does have an element of 'crystal ball' calculations. An essential understanding is the base cost for CGT. This can be very low if, for example, the farmland was purchased in the 90s when land values were far from what they are now. The problem is made worse if the land value is reduced by a rolled over gain from a previous transaction.

The tax advantage of resisting the lifetime transfer is the uplift in market value on death. The end result is that farm succession planning cannot be undertaken lightly. There must be full understanding of what the farm plans are and well completed spreadsheets of tax alternatives. If lifetime transfers are going to be made, ascertaining which assets are best given away is key. For example, arguably better assets given away are areas of the farm least likely to be sold whilst those retained should be areas/assets/property that could be sold to pay IHT or providing liquidity to ensure funds go to non-farming children.

If there is a second farmhouse occupied by a partner these can be advantageous to give away given the availability of holdover and no restriction on future PPR for the recipient. Securing the residential nil rate band (RNRB) has also got to be factored in.

An action plan has to be a forensic understanding of the farm operation past, present and future together with ascertaining accurate base costs for CGT. Another important detail will be current and potential values working closely with a reliable land agent. There are conflicting views on potential values. The impact of the IHT changes on land values will probably hinge on two factors. The first is whether buyers who previously prized 100% APR will find the low returns on investment unpalatable in the light of the reduced relief and start to exit the sector. The second is whether supply increases as the attraction of retaining land in retirement lessens. One significant plus for land values is that there appears to be no removal of holdover or rollover relief keeping those purchasers in the market.

Many consider that the farm still offers a lot of interest to the 'lifestyler' who can continue to roll over a gain into the purchase and still benefit from 50% IHT relief. The farm market will soon start to tell advisers what the general opinion is and where demand lies and calculation spreadsheets will need to be updated on a regular basis. One of the negatives could be how busy the farm advisers will be in the month ahead. The £1m allowance of 100% APR and BPR must be protected with the family as younger members could pre-decease older members of the farming family business, and sadly this is not uncommon on working farms.

The importance of trading to qualify for BPR whether at 100% or 50% is key. There is a lot to be learnt from the recent cases of the wedding barn (*Eva Mary Butler and others* (TC8949) and Kingsworthy Meadow Fisheries (*Demetriou and another* (TC9288)). Farm accounts that show a strong trading position are important for both CGT and IHT planning on all these 'stick or twist' decisions. They should also be useful to all areas of commercial understanding, forensic analysis and areas of commercial strength.

Matters are made more complex in that we are still awaiting for the 'working party' to release guidance on the tax treatment of 'farming for the environment', particularly in relation to BPR. At the moment tax advisers must work on existing guidance and therefore the environmental operation should be commercial in fact and strong farm accounts disclosure. ●

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