

### **068. The farmhouse and care provided by family members**

Farming is very 'intergenerational' and in the headlines with the Agriculture Act 2020 achieving Royal Assent on 11 November. Agricultural property relief (APR) on the farmhouse is a driver and possibly considered a 'bonus' for tax planning.

While the Office of Tax Simplification's review of IHT published in July 2019 suggests that the farmer should be allowed to retreat to a nursing home without negative impact on the IHT relief, this consultation has not become tax legislation. In addition, many farmers wish to die on the farm — not in a nursing home. In farming, the succession planning is that the overall farm operation is often left to the farming children. However, it is often the non-farming child (possibly the daughter with husband) that comes to live in the house to look after their parents, with the 'farming' child living elsewhere. Obviously, this has tax and legal implications for all the family to consider.

It may be possible to establish equitable rights over the farmhouse and a right of occupation, which would give the 'carer' a share of the economic value of the property that would be outside the parents' estate. Consideration of this approach would seem the best potential way forward and the precise facts should be investigated.

If the daughter's and husband's names are not on the property's deeds and they have no formal legal right to occupy the farmhouse, then they will have no legal interest in the property. However, it is likely that they have acquired a beneficial interest in the property by virtue of the money they have spent on the farmhouse; if so, this will reduce the valuation of the farmhouse for IHT purposes.

There is a possibility that the value can be reduced but as IHT relief is allowed at agricultural value (s115(3), Inheritance Act 1984 (IHTA 1984)) this can be less of an issue than with a normal property, as there will be APR on the agricultural value. Again, case by case, would occupation of the farmer and daughter in the role of carer have an impact on occupation and s117, IHTA 1984? The answer is that this would depend on the parents' involvement in the

farm operation together with the daughter's involvement.

It could be that there is a lasting power of attorney in favour of the daughter to help run the farm in her parents' absence and she is therefore occupying the farmhouse for APR purposes. Children occupying the parents' home is a developing area as children (often in their fifties and sixties) are coming to look after one or both of the parents. It is often that the farmhouse can be left to the daughter/carer in the will as the farming child inherits the farm and cottages.

This is a complex area. If an IHT liability potentially arises after taking account of any unused allowances from the surviving spouse and APR, it needs to be considered as part of full succession planning. It is essential that specialist legal and tax advice be taken prior to death. Any time that any children take up occupation of a house to look after parents, full advice should be taken with regard to the valuation impact, ownership and IHT impact. Contributed by Julie Butler FCA, Joint Managing Partner, Butler & Co

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