The role of the Executor with the new CGT return

By Julie Butler
Posted August 21, 2020
In Tax

Disclaimer: LawSkills provides training for the legal industry and does not provide legal advice to members of the public. For help or guidance please seek the services of a qualified practitioner.

Increasingly, executors are playing a role in the sale of farm property for a number of reasons. First, the demographic of a large amount of UK farm ownership is elderly. Second, the farm market has been strong. Land agents have been impressed with many buyers in the market for quality farms. Interest from local farmers has also been evidenced where a “once in a generation” opportunity comes up to purchase an adjoining farm to expand their holdings. Lifestyle buyers are also still active for those farms that have a strong residential element (large main house, cottages and tourism potential, etc). There is also the positive impact of the “rollover buyer”, for example, farmers with development land sales wanting to rollover into more farms.

Many farm beneficiaries cannot afford to buy each other out and, therefore, to fulfil the wishes of the testator all or part of the farm has to be sold which puts a large amount of pressure on the personal representative or executor. Premiums

are likely to be paid for top-quality properties, where demand is strong from forward-thinking farming businesses that are looking to expand existing operations and rollover investors seeking new opportunities (the “rollover buyer”).

As if the problems facing the farm executor were not complicated enough, through the need to ensure the beneficiaries and co-owner of the farm agree, there are Capital Gains Tax (CGT) considerations of where values differ from probate to sale proceeds. In addition, there are the new CGT returns which came into force from 6 April 2020, on farm residences, to consider. These new forms on farm residences mean that CGT must be reported to HMRC 30 days after the completion and tax paid thereon, which results in an acceleration of tax payments and the need to have the CGT calculations ready.

CGT implications can often be overlooked when dealing with the affairs of a deceased person even though its impact can be considerable when, for example, assets are sold for significantly more than probate value. Significant savings can be made on the estate’s overall tax bill if the executor reviews all tax circumstances of the farm estate and beneficiaries in the round.

The probate value under s160 of the Inheritance ax Act (IHTA) 1984 is the value of an asset agreed with HMRC at the date of the death of the testator. Such a valuation becomes the acquisition value or CGT base cost for the estate, essentially resulting in a tax-free “uplift” for CGT purposes. A capital gain would then arise where the asset increases in value during the course of the administration of the estate. Farms can increase in value during the probate period, and likewise the probate valuation can prove to be incorrect as the actual sale of the farm approaches and there are a number of interested buyers. Estates pay CGT at the rate of 20% or, in certain circumstances, at the upper rate of 28% for sales of residential property which do not benefit from principal private residence (PPR) relief. As such, CGT compliance and mitigation should always be considered by executors and administrators at an early stage and must be looked at now for estates wanting to sell residences.

An annual exempt amount for CGT will still apply to executors, just as with individuals, but only for the tax year in which the death occurred and the two tax years following that. This tax-free CGT allowance is the same as that which applies to individuals, being £12,000 for 2019/2020. There is even less opportunity to forget CGT with the new CGT rules which have been in place since 6 April 2020.

A suggestion is to ascertain whether the probate valuation was incorrect and put in a revised IHT calculation where there are, for example, IHT reliefs to spare and the incorrect valuation can be justified. It is difficult to value farms and even more difficult when the farm has not been on the open market for a large number of years, for example.

Farm estates are never simple for executors to manage and ideally they need agricultural experience or professional help with this experience. The "transfer" or appropriating of a jointly held asset can thus be complex. With more farms coming on to the market to raise money after the death of a farmer in order to pay out non-farming siblings, the variance between probate and market value can vary considerably and result in CGT payable, or at the very least CGT planning being needed.

The potential for objective, well thought through CGT planning should always be given its place in farm estate administration at an early stage. The executors should handle the estate assets to best effect and the necessary advice should always be sought accordingly whilst mindful of the IHT implications.

Julie Butler
Julie Butler F.C.A. - Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH - Tel: 01962-735544 Email: j.butler@butler-co.co.uk | Website: www.butler-co.co.uk Julie Butler F.C.A. qualified as a Chartered Accountant in 1980 and started Butler & Co in 1986. Julie is a farm and equine tax expert and is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning ISBN: 0406966540, and Stanley: Taxation of Farmers and Landowners (LexisNexis).