



### 090. TAX ADVANTAGES OF THE GARDEN FOR FARMERS

Many farming operations are multi-generational and the building of properties can be essential for survival. Private residence relief (PRR) can be very useful, as the traditional farmyard looks more like a hamlet. When considering development opportunities it is key to consider both the tax efficiency and the planning advantages of the large farm garden.

When looking at the advantages of PRR for farmers, it is important to remember that it can apply not only to the house but also to the garden. The overriding rule is that only land (including that occupied by the house) of up to half a hectare (1.2 acres) is automatically exempt from capital gains tax. Any larger area must be justified as being "required for the reasonable enjoyment of the dwelling house" (s222(3), Taxation of Chargeable Gains Act 1992). The High Court and tribunals have interpreted "required" as necessary rather than merely desirable. Many farm residences enjoy large gardens; the planning authorities are wishing to build more houses in the UK, which presents many opportunities.

For farmers, selling some land while retaining the house and the main part of the garden makes the argument for a larger permitted area particularly difficult, but not impossible. In the *Capital Gains Manual* at CG64832, HMRC gives two examples of when a claim for a larger garden qualifying for PRR may be acceptable:

- a disposal to a family member; and
- a disposal due to financial necessity.

It could well be that a farmer is selling to a family member, because (for example) including the next generation is part of the succession plans for the farm. Likewise, a disposal of the garden on the open market could be due to financial necessity, with the current low profits in farming and need for cashflow. The uncertainty around 'Green Brexit' and the need for more diversification within the farming operation may also point towards raising funds.

Another thing to consider in the tax planning review is that some farm residences will qualify for holdover relief, as they are occupied for the purposes of agriculture, and this can be used as part of succession planning. Examples where holdover will apply are cottages which qualify for agricultural property relief for inheritance tax purposes.

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