Going, going gone ... retirement relief

Julie Butler looks at how to make the most of retirement relief before it disapears on 5 April 2003.

With the benefits of business asset taper relief being given high importance and the relatively small amounts of retirement relief left to claim before it disappears after 5 April 2003, the tax planning angle of taking retirement relief has somewhat been put to the back of everyone's mind. However, this is a relief that must not be overlooked by the tax planner.

Catch it while you can – deadline of 5 April 2003

Retirement relief ceases to be available for disposals from 5 April 2003. This will therefore be the final opportunity to use the relief, which as the advantage over taper relief in that the first £50,000 of gains are exempt from CGT. This has attractions for many businesses, particularly those in the farming industry. With a lot of farming activities ceasing totally or in part changing in structure, there are still opportunities to use retirement relief, particularly with regard to land sales. Now is the time for ardent tax planners to look at what can be achieved by 5 April 2003. This article looks primarily at the opportunities for farmers but the principles apply equally to the wider business community.

Change of activity

Retirement relief is available on the disposal of assets after the cessation of farming activities even if those assets are retained for use in the new activity. However, it is more difficult to achieve relief in cases where farming continues alongside the new activity. Mere scaling down in farming activities does not constitute disposal of part of the farming business and this was set out in the cases of *McGregor v Adcock* [1977] STC 206 and *Atkinson v Dancer* and *Mannion v Johnson* [1988] STC 758. It could well be that one part of the activity is due to change and a land/property sale will arise. Retirement relief in these circumstances cannot be overlooked.

However, there is a case which works in favour of the taxpayer and this is *Jarmin v Rawlings* [1994] STC 1005 where it is demonstrated that a particular farming activity, in this case dairy farming, was ceased even where another kind of farming such as beef rearing had been taken up. In this case, the Commissioners found that dairy farming was a separate part of the taxpayer's farming business. It therefore differed from the activities of rearing and finishing store cattle. This case does suggest a useful approach for farmers who are, for example, giving up dairy farming and make a gain from the disposal of land, buildings and milk quotas.

Another case involving a farmer was *Barret v Powell* [1998] STC 283. In this case retirement relief was denied because it was pointed out that the disposal of the agricultural tenancy was effectively the disposal of an asset used for the purpose of the business and not the disposal of whole or part of a business of farming which clearly continued until a much later date.

It should be noted that under section 163(2)(b), TCGA 1992, it is easier to secure upon complete cessation of farming and that it would not apply where activities have merely been scaled down. However, it may be available where a particular activity has ceased (as referred to above) and with changes to the farming activities and diversification, there are arguments to say that an active tax planner should look at the ability to claim retirement relief before it disappears into the distance.

Tax planning requirements

This is not the place to consider at length the requirements that need to be met to obtain retirement relief. It is, however, worth taking a brief look at this so that it can be seen in principle whether it is worthwhile. In order to obtain retirement relief an individual must have attained 50 years of age, although relief can be claimed where the taxpayer had to retire early on ill-health grounds. Although retirement relief is being phased out between 1999 and 2003, it is important to remember that it is only the amount of available relief which is changing (ie reducing), the main retirement relief conditions set out in section 163, TCGA 1992 have not changed.

The underlying principle of these cases is that ideally, for retirement relief 'claims' (Note: while it is convenient to talk of a claim, if you meet the conditions then the relief is automatic – a claim is only required if the taxpayer retires under the age of 50 due to ill-health) to be successful there should be sale of the whole business. As mentioned, scaling down should be looked at carefully. Likewise, it can be argued that where the farmer is over 50 and there is still an opportunity to claim before 5 April 2003 and various assets might be sold with the move to diversification, there are considerable tax planning opportunities.

There are different rules for retirement relief, within sections 163 and 164, TCGA 1992, for individuals and for partnerships, different rules for assets owned by an individual and used by a partnership of which he or she is a member and different rules for assets owned by an individual and used by a company of which he or she is an office holder, employee or shareholder. The disposal need not be a sale. A gift to the next generation of a family farming partnership, forming part of a planned succession strategy, may be an ideal opportunity to trigger the relief.

Scaling down of activity

The retirement relief route may be of particular interest to those leaving the rigours and early mornings of dairy farming, for say, the comparative ease of raising a few pedigree heifers while others contract farm or take

grazing from the majority of the acres that were grazed by the dairy herd.

At the time of disposal, the individual must have reached the age of 50 or retired on ill health as mentioned previously. There are a large number of cases, as mentioned previously, which help with the finding of disposal of a partial interest for the claim of retirement relief. In addition to those mentioned, there are a number of other cases which need to be examined. *Pepper v Daffurn* [1993] STC 466 is worth mentioning as it was disposal of part of a business undertaken by a farmer. In this case retirement relief was rejected on the conclusion that *to categorise a third of land in those circumstances as a third of part of his business seems to me ... to be the anethesis of the true position.* In this case, the farmer had prior to 1986 farmed a holding of some 113 acres. The holding comprised a farmhouse and a number of outbuildings including a covered yard. For many years the taxpayer had kept these cattle sheds.

The cattle side of the business consisted of buying and rearing of calves which were over wintered in the covered yard. In September 1986, the taxpayer sold 83 acres of the farm together with the farmhouse and claimed retirement relief for gains arising on the disposal. He retained the remaining 30 acres including the covered yard. It was considered that the yard retained had development potential, although an application for planning permission to develop had been refused.

From the end of 1985 to early 1986 the cattle herd was reduced in anticipation of receiving planning permission. Planning permission was due to be granted in September 1987 and no calves were purchased after 1985 and all had been sold by 5 April 1989. The covered yard was sold for a substantial consideration in September 1988.

On appeal Jonathan Parker J observed that with a view to the eventual sale of the covered yard, the taxpayer changed the nature of his business with the result that the yard was no longer required for the purpose of his business. He rejected the entitlement to retirement relief. This case emphasises again that great care needs to be taken in structuring disposals correctly, especially where only part of a farming business is sold.

Change of trade prior to disposal

For this purpose it is not necessary that the business carried on throughout the ten-year period should be the same business as that carried on when the capital gains tax disposal takes place. Thus a change of business from farming to, say, a caravan site (where that activity is treated as a Schedule D Case I trade and not a Schedule A business) ending in a disposal of the caravan site business on retirement would not affect the retirement relief due.

However, there would be a reduction of relief if there were a time gap between the two business periods. If that time gap were greater than two years, the earlier period in business would cease to qualify for relief, even though it fell within the ten-year period.

If the time gap between the two businesses were less than two years, the earlier business period would continue to qualify, but the intervening period would not qualify for relief and a proportionate reduction in the maximum relief would fall to be made, as set out in Schedule 6, TCGA 1992.

On a change of land use, therefore, preservation of retirement relief requires that the interval of time between the two activities be reduced to a minimum. As noted earlier, where farming ceases and all the other conditions for retirement relief are satisfied, there is nothing to prevent a claim for retirement relief merely because it is intended to use those assets not sold, but retained, in some alternative activity.

Life interest trust

Where no succession is planned but the client wants to trigger retirement relief before it disappears, a disposal into a life interest trust may provide the answer and may be worth considering, eg client and wife both over 50 wish to sell part of the farm yard and buildings for housing. The proceeds will be used to refurbish other farm buildings and then let them as office buildings. The gains on the sale of the farmyard and buildings cannot be rolled over into the refurbishment of the office buildings as the letting of the offices will not be a trade. Retirement relief cannot be claimed in the ordinary way as the farming trade is continuing. A solution may be to dispose of the whole of the farmland and buildings into a life interest trust, claiming retirement relief and for the trustees to dispose of the office buildings.

Maximum retirement relief is due where the client has carried on a qualifying business for a period of ten years. Where the business has been carried on for less than ten years, a proportion of the full amount of relief is due, computed on a time apportionment basis. However, such tax planning should not be undertaken without specialist advice. The setting up of a trust cannot be looked at in isolation.

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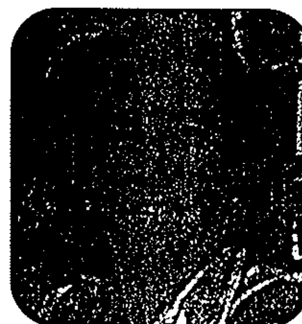

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