Hope value and death

Julie Butler explains how to avoid the traps in a collapsed market

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At the date of death, the 'hope value' of land has to be valued and subject to inheritance tax (IHT) like any other asset in the estate of the deceased.

Prior to the current credit crunch it was argued that all land had some 'hope value', but what now the crash of development land values?

Valuation of 'hope value'

How is hope value ascertained? It must be valued at market value under s.160 *Inheritance Tax Act (*IHTA) 1984. The land agent acting for the deceased has to apply the 'Red Book' in accordance with his or her Royal Institute of Chartered Surveyors qualification. Concerns and caveats must be documented and, if necessary, a range of values presented. The estate cannot be finalised until the value and the resulting IHT liability is agreed.

High hope value for future disposal

There are arguments to say that the beneficiary of the development land would like as high a value as possible as this will be the capital gains tax (CGT) base cost for any future disposal. Obviously the executors would only want to endure a high hope value if the land achieves IHT reliefs, e.g. business property relief (BPR) on farmland.

Attack on BPR on farmland

There have been some quite high profile attacks on BPR on farmland and grazing agreements through the McCall case – *McCall and Anor (Personal Representative of McClean Dec'd)* v *R & C Commissioners (2008) SpC 678* (7 April 2008).

The outcome of this case is still uncertain as the taxpayer has appealed. This raises a number of questions if the taxpayer died prior to the development land crash, or if after death, the planners move the 'planning goal posts' to another area of land, e.g. the next door farm or another part of the country, then what tax relief can the executors obtain?

The cruelty of 'hope'

There could be a situation where hope value exists at date of death, but collapses after death, e.g. the recent development land value crash or change of development plans.

There could be a lot of estates where the testator died in say 2005, 2006 or 2007 where neither the IHT relief nor the hope value have been agreed.

There could be agricultural land worth, say, GBP1 million in 2005 in agricultural value, which the District Valuer (DV) tries to attribute a further, say, GBP2.5 million of hope value. After death, the value collapses and the planning authorities remove the land from the new town planning proposals.

The land was subject to a grazing agreement which the Capital Taxes Office (CTO) are trying to deny BPR on. If the CTO and DV have their way there could be the ironic position of the then and current land value of GBP1 million equalling the IHT bill of GBP1 million (GBP2.5 million @ 40 per cent).

The cynics would argue that agricultural values doubled around 2007/08 and so there is scope to own an asset (the agricultural land) of GBP1 million, which equals the IHT bill of GBP1 million.

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Action plan to take

So what action can the farm tax advisor take to try and prevent these problems?

1. Where there is any hint of development value, look to ensure BPR via share farming or partnership rather than grazing agreement and ensure full warnings are given to living clients.
2. If there is a large drop in value post death, the executor should look at a third party or in-house sale so that the sale proceeds can be substituted within four years.
3. Fight the DV on the hope value figure. Hope value is very difficult to value and force the DV to disclose method and basis of valuation. The valuation is what the market value and planning conditions were at the date of death and not what happened to the market afterwards. The post death negatives can be used in a constructive and objective manner – hope value is 'HOPE'.

Summary

This is another clear example of planning ahead and where the land agent and tax advisor must always work together. The land agent must warn of hope value and must work with the tax advisor on robust tax-efficient trading structures.