

# IS IT TIME TO SELL THOSE NUGGETS IN YOUR FIELDS OF GOLD?

Ian Wright considers disposals of agricultural land

Over the past few months we have heard that the house prices have been falling yet agricultural land values have rocketed. Land owners naturally like to buy land rather than sell it but with agricultural values increasing, the temptation is mounting to sell off those golden nuggets or even possibly sell everything.

One of the main problems with selling say a field or a few acres is that under the new capital gains tax (CGT) entrepreneurs' relief (ER) which replaces business asset taper relief, you have to cease the business to get the relief. Previously landowners could sell pieces of land and pay an effective top rate of CGT of 10% if the land had been used in business - not just the seller's own business but anyone's business. The new rules for ER are rather strict and only apply to landowners who have actually used the land in their own trade for at least a year.

There are two effective rates of CGT now in existence. 18% is the actual rate of CGT with ER reducing the gain by 4/9ths, bringing the effective rate of tax down to 10%.

### £1m lifetime allowance

There is a lifetime limit for ER of £1m and once this has all been used it is gone. Entrepreneurs' relief is an individual relief so joint land owners such as husband and wives or siblings could benefit from multiple reliefs provided they each meet the qualification requirements.

### Land transfers

It was not unusual in the past to transfer land into the joint ownership of spouses and then sell it and take advantage of full reliefs. Previously, transfers between spouses carried with them the accumulated periods of qualification, enabling instantaneous maximum relief for the recipient spouse. Entrepreneurs' relief does not work like this at all and qualification for the relief is earned by being involved with the business for at least one year. This means that any transfer to a spouse would require the spouse to become involved with the business for at least one year to qualify for relief. With each £1m-worth of relief providing a tax saving of up

to £80,000, some pre-sale tax planning could be advantageous using both spouses and even children.

### Example – £3m land sale

The example opposite shows how a saving could be made by including family members.

### Other taxes

While there may be a substantial CGT saving, one also has to consider the inheritance tax (IHT) implications of converting what was potentially an IHT-free asset into cash which does not attract any reliefs. The gift to the son in the above example would no doubt become a potentially exempt transfer and hopefully Mr Farmer would live past the seven years. Any changes in land ownership or business entity should be carefully considered taking into account CGT, IHT and the dreaded SDLT.

### Farm business tenancies

Sadly, for those landowners who have let their land out, eg under farm business tenancies, the 10% rate of CGT available under the business asset taper relief rules does not apply now we have ER, simply because the landowner must be using the land in his own business. The best advice here may be to bring the land back into personal ownership and use it in your own business for at least one year and then sell it. The same exercise could include once again the introduction of the wife and children.

### Small disposals (s 242, TCGA 1992)

One last tax golden nugget is the ability to sell off part off the land and not pay any CGT at all. For some land disposals, you can claim to treat the sale as giving rise neither to a gain or a loss; instead the sale proceeds are deducted from the base cost of the land for future disposals.

The three main conditions for a small part disposal claim are as follows:

### Example – £3m land sale

A typical example of such a saving could be a farm owned by Mr Farmer who has farmed for many years and is thinking of selling up. The farm could sell at a capital gains profit of £3m. If he simply sells the farm as it stands in his own name then the tax due could be as follows:

	£
Gain	3,000,000
Less 4/9ths ER on £1m	<u>(444,444)</u>
	2,555,556
Less annual exemption	<u>(9,600)</u>
Taxable gain	<u>2,545,956</u>
Tax @ 18%	<u>£458,272</u>

If Mr Farmer decided to bring in his wife and son the capital gain could look like this:

	Mr Farmer £	Mrs Farmer £	Farmer's son £
Gain	1,000,000	1,000,000	1,000,000
Less 4/9ths ER on £1m	<u>(444,444)</u>	<u>(444,444)</u>	<u>(444,444)</u>
	555,556	555,556	555,556
Less annual exemption	<u>(9,600)</u>	<u>(9,600)</u>	<u>(9,600)</u>
Taxable gain	<u>545,956</u>	<u>545,956</u>	<u>545,956</u>
Tax @ 18%	<u>98,272</u>	<u>98,272</u>	<u>98,272</u>
Total tax	<u>£294,816</u>		
Tax saving	<u>£163,456</u>		

in order for both Mrs Farmer and the son to qualify, not only would they have to be gifted a share in the farm, but they would also have to become partners in the business and trade for at least a year before the sale.

1. The value of the land sold must be not more than one-fifth of the value of the whole land interest prior to the part disposal.
2. The sale proceeds do not exceed £20,000.
3. The total sale proceeds for all land transfers (whether or not falling within the small part disposals of land provisions) made by that person in the tax year do not exceed £20,000.

For partnership disposals the claim is made by each partner and the £20,000 limit is for disposal proceeds attributable to the partner.

A small disposal could be ideal for selling off small fields for pony paddocks or to neighbours wishing to extend their garden. However, since the disposal reduces the actual base cost then the possible capital gain on the overall sale of the land would actually be increased. In some cases it could actually be worth paying 18% tax!

No matter what is sold, careful tax planning is needed not just a few days before the sale but at least one year beforehand.

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