

subject matter covered. This book is a worthy addition to any library for those interested or involved in rural land diversification.

Adrian Baird – Chief Taxation Adviser to the Country Land & Business Association.

Mineral royalties

The traditional taxation of mineral royalties is still half income tax and half capital gains tax. Mineral royalties are not eligible for taper relief, which is significant from 6 April 2002 when full taper relief became available. The review of the taxation of mineral royalties has become even more relevant with the introduction of aggregates levy from 1 April 2002 and full BATR from the same date.

One of the most common commercial minerals is gravel, and there are a number of ways of trying to have the extraction taxed as efficiently as possible. Essentially capturing the monies as capital not income will be important.

Sale of the land containing the pit. It is to be hoped that this has the advantage of capital gains tax classification with all the business relief associated therewith, such as rollover relief, business asset taper relief and indexation up to 5 April 1998. This assumes that business status can be shown, i.e. farmed in hand. The disadvantage is that many landowners do not want to lose ownership, and this leads to the next point. There is also the problem of calculating the mineral benefit in the capital sum.

Sale of the land containing the pit with an option to buy back the land afterwards. The sale of a gravel pit with the option to buy it back after exhaustion means that the extracted proceeds will be liable to income tax (section 36 Taxes Act 1988). This forgoes any advantage of capital gains tax relief.

Capital tranches of gravel may be sold without selling the land itself. The problem is that the Inland Revenue claims that unless the surface is sold, the tranche of gravel will not be a business asset for taper relief purposes.

The treasury route is a well-tried method where the landowner sells a capital tranche of gravel with a licence for the aggregates company to enter the land for purposes of extraction. The key is to establish a capital gain in-house, for instance by putting the land into settlement or gifting it to a member of the family. This should result in ten per cent capital gains tax (assuming full taper relief is available) which is funded out

of the first tranche sale to the aggregates company. If the calculation is correct, there should be no further tax. It is a good idea to put a restrictive covenant on the number of cubic metres. The downside is that for the aggregates company under section 418, Capital Allowances Act 2001, capital tranches are subject to capital allowances at only ten per cent a year. However, when the tranche is exhausted, the company is entitled to claim a balancing allowance for the balance amount spent (section 428 of that Act), i.e. the aggregates company will not receive 100 per cent relief until the end of the tranche.

Alternatives:

1. Sale of land including gravel utilising a number of transactions – but beware of making it an adventure in the nature of trade.
2. Sale of land including gravel – a verbal arrangement to buy back the land is always risky because a contract for land must be evidenced in writing and therefore verbal arrangements will not be binding.
3. Sale of land including gravel – with right to lease back the land

Essentially a sale with the right to lease back will be caught in part as income and not capital under s.799 ICTA 1988 and therefore part will not be eligible for business asset taper relief.

4. Sale of land including gravel – right to further monies from more gravel

Where land is sold and there are rights to further monies depending on the amount of gravel then the uplift should be a capital disposal for capital gains tax. If the contract includes subsequent payments for uplift in value subject to gravel extraction then the uplift in value could be eligible for Business Asset Taper Relief (BATR). Provided that this is a genuine disposal and not a "trade in gravel" it will be subject to CGT. The wording of the contract will be important. (See part 1 for the badges of trade).

5. Mineral Royalties Income – royalty to extract gravel

Mineral royalties (including gravel) will be taxed to income tax and capital gains tax. Under s.122 mineral royalties are taxed half income tax and half capital gains tax with no business asset taper relief on the CGT element.

Julie Butler – Butler & Co

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Jonathan Tippett (Chairman) David Missen (Editor) Charmaine D'Souza (Secretary)

The Institute of Chartered Accountants
in England & Wales
Chartered Accountants' Hall
PO Box 433
Moorgate Place
London EC2P 2BJ
Tel: 020 7920 8504
Fax: 020 7628 1791
Email: charmaine.d'souza@icaew.co.uk

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