174. TAX PLANNING AROUND BROWNFIELD SITES

Under the Housing and Planning Act 2016 there is a very positive opportunity for the development of residential houses by owners of land or property, through the brownfield site route. A brownfield site is land which is or was occupied by a permanent structure, including the curtilage of the developed land. Such sites include equestrian, industrial and commercial areas of land. The definition of brownfield site does not include agricultural land. However, the planning needed around the use of the site is similar to that when considering whether agricultural property relief for IHT applies to an area. The eligibility for registration will rest with what is not agricultural use. For example, keeping horses, storage and other areas of farm diversification do not qualify as brownfield.

Such potential good news for residential development places more pressure on the tax adviser. Consideration of potential 'hope value' will be needed for any registered land and checking that business property relief (BPR) will be available if death takes place before development will be essential. Hope value is the difference between probate market value as defined in s160, Inheritance Tax Act 1984 (IHTA 1984) and the agricultural value as defined in s115(3), IHTA 1984.

Problems could arise if the land is redundant and therefore does not qualify for IHT relief; or if the site is used by a partnership but held outside the partnership, meaning that BPR is restricted to only 50%. Similar concerns will exist if the brownfield site is let out, as such activity might not qualify for BPR, although the decision in *Balfour (Brander (representative of Fourth Earl of Balfour) v HMRC* [2010] UKUT 300 (TC)) could help and should be researched.

There will be similar concerns over the eligibility of the site for CGT reliefs – rollover, holdover and entrepreneurs' reliefs – if the brownfield site is not used in an active trade.

Many conservationists will welcome this move as it does encourage the use of previously-developed land for residential development projects as opposed to using green fields. Surprisingly, brownfield sites located in National Parks and Areas of Outstanding Natural Beauty do qualify. Such inclusion will open up very interesting residential and tax planning opportunities for sites which might have been considered impossible to develop.

While a comprehensive review of the full tax implications should be considered with registration of the land as brownfield, the prime concern will be placing the property in a position where maximum advantage is made of the trading reliefs available for capital taxes. A full understanding of exactly what the site is used for and how it is owned will prove a good starting point.

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