

PROTECTING FARMS POST A FLURRY (OR SLURRY!) OF IHT CASES - ARNANDER, MCCALL, EARL OF BALFOUR

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Farms and Estates are worth substantial sums of money which could result in large amounts of future inheritance tax liabilities (formerly known as "death duties"). The Tax Office is trying to collect a large amount of tax through attacks on farms and diversified farm activities.

There are those who ask if there is a "fire proof" container that the farm can be placed in to protect these attacks on the potential inheritance tax (IHT) due. The answer is that there are no certainties with death and taxes but there are safeguards and fire extinguishers that can be placed around the farm to protect it against hungry tax inspectors.

It would be very easy (and predictable) to start with the tax attacks on the farmhouse but let us start instead with the problems of "contract farming" and then tax attacks on diversity.

"Farming with Contractors"

Firstly there is a concept change that needs to take place to try and achieve robust tax protection – the concept of "farming with contractors". It is essential to ensure that the farming operation is conducted as "in-hand" farming but using contractors.

There are many farm advisers who argue that the way round the IHT risks and the whole contracting issue, i.e. the ability to claim inheritance tax reliefs is by a partnership between the farmer and contractor. It is possible for "tax gurus" to promote a farming partnership which gives clear proof of business risk because a partnership is just that – "a risk". However for many farmers the concept of the partnership is considered too much exposure to risk. Contract farming can and must work to achieve business status for inheritance tax.

What makes a strong Contract Farming Agreement for tax purposes?

1. The contract farming agreement must be well drafted by a lawyer, totally understood by the land agent and complied with by the farmer/landowners and the contractor.
2. The land agent who understands the client, farming, tax needs and how the agreement works must ensure the arrangement works in practice – and that is from day one, not day fifty one!
3. The farm contracting arrangement must ensure the landowner is exposed to risk and what he is undertaking is a farming trade.

Ideally, the sole source of income from the farm is not just that carried out by the contractor but some integrated and genuine "in hand" farming, e.g. a suckler herd etc.

"Earl of Balfour" – very involved in the farm activity

There is great strength to be taken from the recent *Earl of Balfour* case for the mixed estate but it must be noted that this case is being appealed by HMRC. The key point was the late Earl's involvement – he made all the decisions, he held all the keys, he was very involved and integrated with all the activities.

The emphasis in the Special Commissioner cases has been the great emphasis on the "involved" farmer. By comparison in the *Arnander* case it was noted that in Mr McKenna's obituary there was no mention of the fact the deceased was a farmer. Likewise to protect IHT reliefs the death certificate must not say retired farmer.

McCall and the Grazing Agreement

The Northern Ireland case has not been granted an appeal to the House of Lords which has caused concern because the Tax Office won. However, it can be overlooked that paragraph 19 sets out how a grazing agreement should be and can be to escape "death duties." Again, the key to achieving IHT relief appears to be the involvement of the landowner – they must fertilise the land, ideally check the cattle, walk the farm etc. Key tax tip - EVERY grazing agreement must be reviewed now to ensure McCall Compliance.

Furnished Holiday Business

The attack on Furnished Holiday Lets in the April Budget was negative for income tax and capital gains tax reliefs but it is a timely wake up call for IHT protection.

There is a lot to be said for throwing away the old rule book and simply deciding is the property or properties a business or a let? To gain IHT relief it must be clear -- a business must be that, a business.

Summary

Trying to protect IHT relief is not as easy as A B C -- Agriculture, Business and Commerciality, but this must be the focus together with ensuring involvement of the landowner and of course occupation.



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