



Reap what you sow

Julie Butler highlights a common problem in farming families that have not looked at opportunities to claim all potential inheritance tax reliefs, and explains how this may be storing up future trouble for the surviving spouse when the main farming spouse dies

Farms are usually run as family farming partnerships – often a husband and wife and their children. In a large number of cases, the land is still held in the names of the parents, and often – as is the way with farming – just in the name of the father. No sexism is intended in this article – it merely presents what generally happens in the farming world.

A large amount of work is often carried out by advisers to make sure that the farm operation will be efficient in terms of inheritance tax (IHT), and that there is active involvement, active husbandry, evidence of a farming operation and so forth. Very simple wills are often produced, whereby the husband leaves his wealth to his wife, and vice versa. Statistics show that it is often the husband who dies first.

SURVIVING SPOUSE AS FIRST PROTECTION

In the situations mentioned above, a large number of farms inherited originally by the son have been passed to the wife without any tax problems, due to the surviving spouse exemption. This means that the couple have not taken advantage of agricultural property relief (APR) and business property relief (BPR), but deployed the surviving spouse exemption instead. A problem then arises with regard to the farmer's wife. Such a scenario might sound sexist, but in the history of farming over the last century, it has almost invariably been the case that farms are left to sons, that it is the husband who is the most involved in the farming, and that it is the husband who dies first.

Currently, UK farming is owned by an ageing population of farmers; very few have passed the farm down to the next generation. It may therefore seem very simple and straightforward to them that when they die, the farm is passed to their wife 'free of tax' through the surviving spouse exemption. But a large number of advisers are now faced with the position that the wife has inherited or will inherit a farm that might then present IHT problems for her.

HM Revenue & Customs (HMRC) has taken a strong line on the need for 'active involvement' in order for BPR to be obtained, and so a review of the wife's level of involvement over the last two years could be problematic. A lot of work has been put into making sure that 'Farmer Giles' does achieve IHT relief on the farm and associated investment assets, such as the cottages. But it might prove more difficult for 'Farmer Georgina' to prove the active involvement which HMRC is so insistent upon in BPR claims.

REVIEW OF ALL FARMING WILLS

The practical tip is that all farming wills should be reviewed. Perhaps that will expose an even larger problem – potential intestacy where there is no will. Passing business assets to the next generation using BPR or APR on the first death should be given key consideration. Protection can be sought through a deed of

variation, so that those assets that do achieve APR or BPR can be passed down, and those assets that do not can be passed to the surviving spouse, to take advantage of all the available reliefs.

THE DANGER OF COMPLACENCY

This is not just a potential problem; it is an actual problem. There are farming wives who have inherited the farm who would have difficulty in arguing active involvement, and this situation should be reviewed. If there is still time for a deed of variation, then act now if there are concerns over whether active involvement can be proved for BPR, and active husbandry for the APR needed for the farmhouse.

So many farming partnerships lack up-to-date legal agreements such as partnership agreements, contract farming agreements and grazing agreements. Now is the time for a total review of all the important farm legal documentation and agreements. Farm values have increased substantially in the last decade, development values are returning, HMRC's appetite for collecting more IHT seems as keen as ever, and convincing the Capital Taxes Office that a spouse who is not involved in active husbandry is entitled to BPR and APR on the farmhouse will be very difficult.

Many advisers seem to focus on aspects of farm tax planning such as the main farming spouse, while overlooking the surviving spouse. It is essential to consider the basics of up-to-date wills, with a look at the role of the spouse and farming, to include timely use of the deed of variation and protection through the partnership agreement and so forth. If mistakes are made or opportunities overlooked, the quantum of the tax penalty could be very significant, given current high farm values.



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