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# Safe as houses

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# Farmhouse rules

*Julie Butler* offers an overview of the new permitted development criteria for agricultural properties

Agricultural property relief (APR) for inheritance tax (IHT) is restricted to agricultural value (AV). Any element of market above AV needs to be protected by business property relief (BPR). With the current changes to planning rules for agricultural buildings, it can be argued that all agricultural buildings now have potential development value and this could come with an increased IHT bill for farmers who cannot secure BPR.

The tax considerations arise from publication of the government's long-awaited changes to the Town and Country Planning (General Permitted Development) Order in 2014, which allows the conversion of up to three dwellings with a maximum combined floor area of 450sq m. These new 'PD' rules open lots of property development opportunities for landowning farmers with redundant buildings.

However, there are a number of qualifying criteria in the new order and one of the most important is that buildings proposed for conversion to dwellings should have been in agricultural use on 20 March 2013. An essential criterion for farmers wishing to take advantage of the relaxed planning permission rules will be ensuring the local planning authority (LPA) does not have an opportunity to say that the building is not in agricultural use and therefore deny qualification.

Such guidance may sound over simplistic, but any buildings that are in, for example, equestrian use or let out for storage or other non-agricultural uses on 20 March 2013, will not qualify for the new PD rules. In addition, the rules do not apply to buildings in areas of outstanding natural beauty (AONB) or in national parks.

## Family matters

Farming families who do not intend to develop buildings could possibly be caught for extra IHT payable as a result of these changes, i.e. there could be extra IHT where the barn only qualifies for APR not BPR.

For farmers wanting to take advantage of the new planning rules, there will be a need to ascertain exactly how the property is owned. As most farming families trade as a partnership, the task is determining whether the property is owned inside or outside the partnership. For non-farming advisers, this may sound obvious but there can be huge confusion in the farming community. Often if capital gains tax (CGT) entrepreneurs' relief (ER) is required on disposals, there will be a need to consider the associated disposal rule for properties outside the partnership.

Planning permission for development potential is an area that advisers will not be able to ignore now and in the years ahead. The positives are that in reviewing the consideration for potential development, there could be solutions to other farming tax problems, e.g. ensuring there is an up-to-date partnership agreement, and that farming family wills have been reviewed.

One obvious benefit to the farming family will be the increase in the opportunity for dwellings resulting from the PD rules. Such potential development could lead to selling the main farmhouse and achieving a 'tax free' gain on disposal using the principal private residence (PPR) relief.

Other advantages are that the older generation will be able to 'downsize' to a property that will suit their needs in the 'twilight years'. PPR relief will undoubtedly prove to be a useful tax planning tool for the farming community as advantage is taken of increased residential development opportunities.

Where there are concerns over the large farmhouse and the eligibility thereof for APR, e.g. queries over the farmhouse size not being of a character appropriate to the land, the ability of moving to a smaller more functional farmhouse could have IHT benefits. There is no doubt that PPR relief could help release funds to the family in a tax-efficient manner.

## Joined-up approach

Clearly, with all the potential for increased development opportunity, the 'property portfolio' of any farm must be reviewed. This is not restricted to what currently counts as a dwelling but what could count as one in the future.

There is a need for a review of farmhouse eligibility for APR and this should be expanded to a total review of properties for ownership/occupation criteria to meet the demands of potential APR and PPR. Such review is of particular importance post-*Hanson* (*Revenue & Customs Commissioners v Joseph Nicholas Hanson (Trustee of William Hanson 1957 Settlement)* [2013] UKUT 0224 (TCC), when the nexus for character appropriate was decided to common occupation not common ownership.

There is much scope and need for the farming community to review all planning permission and tax planning opportunities around the new PD rules.

Of course, not all redundant barns will be turned into residential property; many will be repaired and improved. The recent cases on repairs of *Pratt*, *Hopegear* and *Cairnsmill* have made repairing parts of the farm very attractive in terms of income tax relief and overall tax efficiency for the elderly farmer.

Should farmers own assets beyond the farm that exceed the nil rate band for inheritance tax (IHT) or, for example, cash in the farming balance sheet, they could look to repairing and improving the farm for IHT efficiency while taking full advantage of these recent repair income tax cases.

This also focuses on the latest Budget and the increase of annual investment allowances (AIA) to £500,000. The window for the AIA claim finishes on 31 December 2015.

## Complex wills

A lot of farmers will exceed the nil rate band for IHT purposes with outside investments, excepted assets, the agricultural value of the farmhouse not allowed by the difference between market value and agricultural value as highlighted by *Antrobus 2,* etc. In practice, many frugal farmers are building up cash reserves while not enjoying the farm in such a good state of repair.

> **"There can obviously be manipulation by some members of the family to ensure that tax efficiency is used as a 'smokescreen'"**

Obviously all sorts of other issues have to be taken into consideration such as the benefit of cash reserves and planning for the cost of care in the twilight years, etc. It is very complex.

Many farmers have complex wills. They often leave the farm to members of the family who stay in the farming business and they leave the outside investments to the other family members. There can obviously be manipulation by some members of the family to ensure that tax efficiency is used as a 'smokescreen'. Complex indeed.

However, there is no doubt that repair and improvement planning to incorporate capital allowances is very beneficial now.

Any money spent on repairs and new buildings, and generally improving the farm, will fall into one of the following categories of expenditure:

- repairs (see *Pratt*, *Cairnsmill* and *Hopegear*)
- capital allowances (see Budget 2014 changes to increase AIA to £500,000); or
- improvements.

There is quite a grey area as to what is repair, what is improvement and what qualifies as capital allowances, so it is very important to plan the nature of expenditure in advance.

If any farm project is approached on the basis that all expenditure has to fall into the category of repair, capital allowances or improvement, particularly since agricultural buildings allowance was abolished from 6 April 2012, this is the only way to consider the appropriate costs.

## Agricultural buildings

Many would argue that the abolishment of agricultural buildings has been very positive for the farming community because instead of looking towards a lazy 4 per cent on the agricultural buildings allowance, there has been a move towards looking towards 100 per cent repair or 100 per cent AIA.

Money spent on improvements can also be very tax-efficient because it could well be that the farmer has need to roll over a gain, for example they have sold part of the farm for a development, a small development or perhaps there will be disposals under the new permitted development rights (PDR) of residential property where barns are converted to residential property subject to conditions.

So, there is scope to roll over capital gains into farm improvements bringing further into the spotlight the whole review of development opportunities and then tax-efficiently repairing and improving the farm. ■

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