

Specialist needs

Julie Butler looks at the impact of Mehjoo v Harben Barker in relation to when it becomes necessary to obtain specialist advice for farming clients



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The interpretation of the Court of Appeal decision in the case of *Mehjoo v Harben Barker* [2014] EWCA Civ 358 emphasises that general advisers do have a duty of care to refer clients to specialists where the need arises. If a professional fails to refer to a specialist, then there are considerations around the concept as to whether they can be deemed to be negligent for not making the referral to a specialist. Advisers run the risk of straying into unfamiliar territory, and inadvertently providing inaccurate advice.

In order for a generalist firm to be obliged to refer to specialist advisers, there has to be good and apparent reason to do so. Where does that leave both the farm specialist adviser, and the generalist adviser with a number of farming clients?

ACTIONS FOR SPECIALIST ADVISERS

The announcement by HM Revenue & Customs (HMRC) that its attacks on claims for agricultural property relief (APR) and business property relief (BPR) are “official”, combined with increased farmland values and the decision of the *Mehjoo* case, mean that all farm tax advisers must check their position. At the very least, they should update engagement letters and ensure warnings are in place where appropriate. There is huge scope for land agents and accountants to refer to specialist lawyers, to ensure that all the correct legal documents – partnership agreements, leases, licences, tenancies and so on – are in place, and all with the benefit of appropriate tax advice.

ACTIONS FOR GENERALIST ADVISERS

The generalist adviser must highlight areas that need a specialist, where there is a good and apparent reason to do so. The farming client’s reluctance to pay fees should not deter the adviser from warning the client. You should review all terms of engagement to check what the firm provides in terms of professional services. Would you be able to see the potential tax problems in order to flag them up to the client?

Below is a case study which outlines some circumstances that could need to be referred to a specialist or might raise concern.

Case study: Farmer Black

Farmer Black is an elderly farming client looking to have an easier farming life for health reasons.

The land agent suggests that all land (some of which has development potential) around the farmhouse is let out under farm business tenancies (FBTs) combined with grazing agreements which do not require the landowner to “grow the crop of grass”. The land agent actions his advice.

The landowner dies. HMRC tries to deny APR on the farmhouse, and not being occupied for purpose of agriculture (see section 117 of the Inheritance Tax Act 1984 (ITA 1984)).

The district valuer claims “hope value” on the farm. HMRC tries to deny BPR, as the farm is now mainly an investment business (see section

105(3) of the ITA 1984).

The land agent had a duty of care to suggest that a tax specialist was appointed when changing the “in hand” farming operation to a let farm. The lawyer who drafted the FBT / grazing agreement should have also referred to a specialist. If the land agent drafted these agreements themselves, a lawyer may still have been appointed to update the will and review the inheritance tax position; in this case, the lawyer should have requested copies of the agreements and the accounts.

The accountant was absented from the arrangement, but produced trading accounts showing a majority of investment income profit. It can be argued that they had a duty of care to highlight the weakness to the client and recommend a specialist, unless it was set out in their terms of engagement that this was not the case.

In practical terms, it is likely that in such a scenario, the land agent, lawyer and accountant will all work together on the changes. In order to avoid issues after the client’s death, it is imperative that a memorandum of understanding is agreed between all the advisers as to who is responsible for what and who leads on different areas of specialist tax advice.

ACTION POINTS

- Review engagement letters, and ensure a new engagement letter is in place for advisory work as opposed to compliance.
- Refer to a specialist where you have a good and apparent reason to do so.
- Consider introducing a ‘specialist control’ to help all members of the team identify the problem.

Find out more about the *Mehjoo* case in our April Spotlight, now available from the Communities website.

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