

103. SUNDRY AGRICULTURAL LAND

Many members of ICAEW will be considering registering to do probate work or taking the licensing route, which focuses thoughts on the maximisation of IHT reliefs.

One interesting area is sundry agricultural land held by the deceased, which can often be overlooked with regard to tax protection. The ownership of such small land holdings can come about for a mixed variety of reasons; for example, because the land is attached to the residence, or has been retained from a larger farming enterprise for emotional reasons, or, as often proves to be the case, held for the potential development value.

There can be confusion as to whether such land is eligible to claim agricultural property relief (APR). The deceased does not have to have been a farmer to claim APR for land which has no development value and is not attached to a farmhouse. The land just has to be used for agricultural purposes by a third party, for example, sheep grazing or haymaking carried out by the third party. In a letting situation the land must have been let for at least the last seven years in order to claim APR.

Such ability to claim agricultural reliefs contrasts with the claim for APR on the farmhouse, where the person occupying the land should be the farmer, as the property must be occupied for the purposes of agriculture (s117, IHTA 1984).

Many probate practitioners often

overlook the potential for genuine claims on small areas of land, especially if they are inexperienced in agricultural matters. Such small areas of land may be found when advisers are dealing with tax planning or IHT compliance on even the most urban of client bases.

Another complication is where the land owned by the deceased has potential development value. The APR is restricted to agricultural value (s115(3), IHTA 1984) and business property relief (BPR) is needed for the uplift to market value (s160, IHTA 1984).

There are obvious tax planning points here. For example, for successful APR claims members need to make sure that redundant land is put into use as a genuine farming activity. As mentioned, such activity can be a let to a third party for the requirement of seven years. However, to claim BPR the land must be 'farmed in hand' as a business for a minimum of two years.

My experience is that HMRC is very aggressive in its approach to redundant land and land used for 'pleasure' (eg, to keep horses in a personal capacity) and tries to deny potential APR and BPR claims. HMRC will seek evidence to support genuine agricultural or business use.

It is key to the IHT relief claim that the income from the land is correctly disclosed on the tax return prior to death and that all other evidence tallies to the IHT400 form. Common problems are non-disclosure of the sundry farming income due to absent-minded taxpayers who are not aware of the IHT advantages, or because the income exceeds the expenses and therefore the taxpayer thought no disclosure of the net income was required.

With the recent leaps in agricultural land values, and with development values returning, it is essential to assess IHT protection of all sundry land at an early stage to

try to ensure that the relevant reliefs are maximised.

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