Tax planning around negligible value of milk quota

It is considered that the value of milk quota is currently 'negligible'. This can result in a very effective CGT planning tool for the farming community.

It is certain that many farms will make a number of capital disposals which create a capital gain for which Entrepreneurs' relief does not apply. Examples of potential CGT sales are the sale of the residential cottages and pony paddocks (mere assets). The farmer/landowner is looking to minimise the CGT liability arising from these capital disposals and is looking at offsetting the loss from purchased milk quota and negligible value claims. A claim can only be on purchased quota.

As CGT capital losses cannot be carried back but can be carried forward, the need to claim a negligible value loss on purchased milk quota in a timely manner is important.

There are two views regarding milk quota and the claim. The first one is that as the milk quota still has some value, the value of the remaining quota cannot be considered negligible. The other view is that negligible value can be claimed. If the overriding approach is therefore caution and absolute certainty, perhaps the way forward with the current values of milk quota is to activate an actual sale, meaning no definition of negligible value is required as there has been a physical sale.

Guidance is given in s24(1A) TCGA 1992, which notes that a claim may be made where an asset 'has become of negligible value' while owned by the claimant. The term negligible value is not defined in s24, or elsewhere in the Act, and therefore the words must take on their ordinary meaning. In Helpsheet 286, HMRC note that 'an asset is of negligible value if it is worth next to nothing'. A holding of milk quota is considered by HMRC to be a fungible asset (CG77900 et seq.) which must be taken into consideration when part of the quota is sold.

As there is no legislative definition for 'negligible', HMRC takes it to mean 'worth next to nothing' (CG13124). It may be advisable to conduct an online price check first to ascertain where the values of the milk quotas stand at, to show they are 'worth next to nothing'. However, such a claim is subject to HMRC approval.

Sale and buy back of the quota

To realise a capital loss on milk quota, therefore, it would be necessary to sell quota on the open market and buy it back to be allowed to continue with milk production. Where the holder of the milk quota is an individual or partnership, the identification rules follow those for shares and all disposals after 6 April 2008 will be treated as though made from a single pool. The same-day rules, and the bed-and-breakfast rules, ss105(1) and 105(6) TCGA 1992, will apply (Capital Gains Manual, Appendix 10). The 'share-matching' rules are not applicable to milk quotas.

Summary

The action plan is that all purchased milk quota has to be reviewed in the context of tax planning. For those who missed the action of buying and selling in the year to 5 April 2012 but need the capital loss in that year, the way forward appears to be to make that negligible value claim in that year and debate with HMRC whether the value was indeed 'worth next to nothing' (negligible). Such a route has obvious problems and the disclosure of the actual negligible value at the date of sale is important.

Those farmers with purchased quota who need the negligible value claim in the year to 5 April 2013 to offset against other capital gains should consider understanding exactly what is going to happen to the price of the quota in the year to 5 April 2013 and to show an abundance of caution to secure the capital loss by sale and buyback of the quota. All owners of purchased quota should review their position as a matter of 'good tax housekeeping'.

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