

AGRICULTURAL

Whitley Stimpson
CHARTERED ACCOUNTANTS AND BUSINESS ADVISORS

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AUTUMN STATEMENT 2017

AGRICULTURAL SECTOR CHANGES

PLUS: TIPS ON TAX PLANNING FOR DEVELOPMENT LAND

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WELCOME

Welcome to the Spring/Summer 2018 edition of the Agricultural Spotlight. We hope that you have survived these harsh winter months, with the worst weather seen for many years, and can start to look forward to brighter days ahead.

In this issue we will, of course, be reviewing the Autumn Statement and the impact that this will have on the Agricultural Sector but we also feel that Spring is a time for change and so with 2018 promising to be a year of change for all of us we will be looking forward to what it may have in store.





AUTUMN STATEMENT 2017

AGRICULTURAL SECTOR CHANGES

The Chancellor last year announced his decision to move the Budget speech to the Autumn so that the resulting Finance Act can then be enacted before the start of the tax year. The 2017 Budget speech took place on 22nd November and as such we have now had some time to reflect on the announcements and can draw your attention to the changes which are most likely to impact the agricultural sector.

Income Tax and National Insurance

- The personal allowance for individuals will rise to £11,850 from 6th April 2018. This means that you will not pay tax on the first £11,850 of your income. It is worth noting that the rules regarding those with income levels above £100,000 remain unchanged and as such the personal allowance will gradually reduce for those with income above this threshold.
- The higher rate threshold will increase to £46,350 from 6th April 2018. This is the amount of income that you can earn before paying tax at the higher rates.
- This is another step towards the Conservative manifesto pledge of a £50,000 threshold before paying higher rate tax and a personal allowance of £12,500.

- Confirmation that the dividend allowance will drop to £2,000 which means that only the first £2,000 of dividend income received will be tax free. Dividends received in excess of £2,000 will be taxed at the existing dividend tax rates of 7.5%, 32.5% or 38.1% depending on whether you are a basic rate, higher rate or additional rate tax payer.

Savings and Pensions

- From 6th April 2018 the annual amount that you will be able to contribute to an ISA will remain frozen at £20,000. This allowance can be utilised in any combination of a Cash ISA, a stocks and shares ISA, a lifetime ISA and/or an innovative finance ISA, which has been recently launched to incorporate peer-to-peer lending into the ISA system.
- The lifetime ISA continues for adults under the age of 40. Individuals can contribute up to £4,000 per annum and receive a 25% bonus from the Government. The account can then be used to either buy a first home or as a pension from age 60 completely tax free.

Capital Gains Tax and Inheritance Tax

- The current rates of Capital Gains Tax will continue to be 10%, to the extent that any income tax basic rate band is available, and 20% thereafter.
- Higher rates of 18% and 28%, again depending on utilisation of basic rate band, apply for certain gains of which the most common are any gains on residential properties which do not qualify for private residence relief.

- The Inheritance tax nil rate band has been frozen at £325,000 until April 2021.
- The Residential nil rate band is now in its second year and can increase the nil rate band of an individual by £125,000 where an interest in a main residence passes to direct descendants. However as was covered in more detail in the previous edition of Spotlight, special care does need to be taken when considering this additional relief and Agricultural properties.

Stamp Duty Land Tax

- This was the Chancellor's headline announcement as he confirmed that there would be no stamp duty payable for first time buyers on homes up to £300,000 in value. Whilst this will only have limited relevance to the agricultural community it may help with farm re-organisations and succession planning.

Insurance premium tax

- The Chancellor announced that Insurance premium tax will be frozen at the current rates for 2018/2019. This is a particular relief for many farm businesses as costs have risen significantly in recent years.

Fuel Duty

- Fuel duty has again been frozen at the current rates until April 2019.

Should you want to discuss how these recent changes could affect you or your business please contact any of the Agricultural team at Whitley Stimpson.

Rollover relief and interaction with compulsory purchase or other development land

With the shadow of HS2 continuing to loom over many members of the local agricultural community and the Government commitment to further infrastructure projects over the coming years we thought it may be useful to look at one of the more common reliefs from

Capital Gains Tax where land (or other capital assets) are sold and in particular the interaction with a compulsory purchase order ("CPO").

Most people are now familiar with Capital Gains Tax (CGT) and the way that it is charged on the



disposal of capital assets. However, many people are not aware of rollover relief which can be a very valuable relief where the proceeds from the disposal of one capital asset are re-invested in the purchase of another.

In order to qualify for the relief, there are time deadlines which apply such that you must either purchase the new business assets either in the three years following or within one year before the capital disposal. Where, these conditions are met, the gain on the disposal of the asset can be 'Rolled over' into the cost of the new asset to the extent that the proceeds were re-invested. Therefore if you re-invest all of the disposal proceeds in a new asset then the entire gain can be 'rolled over' which will defer the CGT payable until a subsequent disposal which may not be for many years' time.

Ordinarily, when land is acquired under a CPO, this will lead to a chargeable gain on the land owner with CGT being due. This is therefore identical to the situation if the land owner had marketed the land for sale and sold it under normal conditions. However, for land disposed of under compulsory orders there is an extension to the usual rollover relief rules.

Therefore, rollover relief can apply where land used by a business is sold to 'an authority exercising or having compulsory purchase powers' and the proceeds received are then re-invested in connection with the replacement of the business assets that were compulsorily purchased.

One particular extension to the usual rollover rules relates to the fact that this relief is available to any landowner and not just one that is in business. Therefore if your land is purchased under a compulsory order it is not

a requirement that the land has been used for the purposes of trade as it would have had to have been under the ordinary rollover rules.

Another extension to the ordinary rules is that the legislation permits re-investment of the proceeds received to be in any form of land whether that be vacant or let (tenanted), commercial or residential. Although the legislation confirms that you can acquire buildings or an investment property, it does not extend to using the proceeds to construct a new property. Therefore, the use of the proceeds received is not limited to just business property but could equally be used to acquire an investment property.

However, there is one key exclusion when considering how to re-invest the proceeds received. You cannot claim this relief if you acquire a property that is then used as your own dwelling house which would qualify as your principal private residence within six years of acquisition. If you do acquire a property and then move in as your main residence within the six year period then the relief will be withdrawn.

Finally, it is worth noting that this does not apply to just land disposed of under a formal CPO but also to wider circumstances. Land disposed of as a result of either the exercise of compulsory purchase powers or to a body which has (or may acquire) those powers.

If you might be impacted by HS2 or other development and would like to discuss this further then please do contact us.

Tax planning and development land

With more and more land falling within development areas and development land values at such high levels it is vital that any landowner whose land has been earmarked for development takes proactive steps to mitigate any tax pitfalls on any eventual sale of the land.

There are two main taxes, Capital Gains Tax (CGT) and Inheritance Tax (IHT), which if not managed correctly, could cause the landowners to incur unnecessary tax charges.

When starting to think about tax planning in this area the first step is to determine who owns the land and who farms the land. This is particularly important where personally owned land is farmed by a limited company as you must ensure that the owner of the land has more than 50% of the share capital in order that they control the company.

There are four key steps that should be followed in order to check that you have the correct structure in place:



1. Check the paperwork

The first thing to check and discuss with your accountant is that the annual accounts clearly identify land capital accounts for all individuals concerned.

We would always recommend having a complete partnership agreement in place which clearly sets out the farming operation and the basis for which any development land will be sold. This should be done in conjunction with a review of each individuals' Will because in certain circumstances a Partnership Agreement can override a will.

2. Ensure the most efficient ownership structure

Once you have identified who currently owns the land the next step is to consider whether that is the most efficient ownership structure. It is important to avoid the risk of elderly individuals selling the land (subject to CGT) and then still holding the cash (which is subject to IHT) upon death.

Whilst not always possible or easy to transfer land it is worth considering whether it is eligible for gift holdover relief. This would mean that you could gift the land to a more appropriate family member without crystallising any tax charge but instead the recipient would have to adjust the base cost of the land acquired. If holdover relief is available then it is advisable to transfer the land as early as possible before the hope values of land increase as development becomes more certain.

It is also worth noting that inter-spouse transfers of land are CGT free and therefore can be worth considering in order to transfer land to a more efficient ownership structure.



3. Ensure the deal is correctly structured

Under the ordinary CGT rules, the trigger point for the disposal will be the unconditional exchange of contracts and therefore it is relatively straightforward to manage the disposal date.

However, it is becoming increasingly common for 'conditional' contracts to be put in place by developers where sales depend on them obtaining planning permission. As this is outside of the landowners control it can be very difficult to manage the actual disposal date and so can make tax planning tricky.

We would also recommend avoiding deals where the proceeds which you receive are linked to the underlying sales of the new development. HMRC have been able to prove that, in some cases, this constitutes a trade and have therefore taxed these receipts as income (at much higher tax rates).

4. Ensure that Entrepreneurs' Relief will be available

Entrepreneurs' Relief, when available, will reduce the rate of CGT payable on the sale of development land to 10%. This is therefore a significant saving compared to the usual 20% rate.

To ensure that Entrepreneurs Relief (ER) is available is very much a case of examining the facts of each individual case. The main condition for ER to be available is that the land needs to have been used in the owner's business for at least twelve months prior to disposal. This may therefore require restructuring the partnership or entering into contract/share farming arrangements to ensure that this has been achieved.

We have found that it is very difficult to secure ER when the land is held under a land pooling arrangement but it can be done by making sure that all of the land is correctly utilised and the final deal structured correctly.

5. Managing the VAT

One area which can be easily overlooked is VAT and the decision to opt the potential development land for tax. By opting to tax the land to be sold, it should enable you to reclaim VAT on the associated costs of preparing the land development including promotion or option agreements.

In practice, opting to tax the land very rarely causes any implications when it is eventually sold as most larger developers are VAT registered and so can recover the VAT you will charge them. The only downside for the developer is an increase to the Stamp Duty payable as this is calculated on a VAT inclusive value.

Clearly planning for development land is a complex process but if you would like to discuss in more detail then please do not hesitate to contact one of the team at Whitley Stimpson.

Tax case round up

HMRC vs Vigne – BPR available for Livery Businesses

In the Estate of Maureen W. Vigne (deceased) v HMRC, it was concluded that a livery business qualified for business property relief. This was determined because the court (rather unexpectedly) ruled that as the business looked like a trading business to a lay person then that is how it should be treated.

As background, Business Property Relief (BPR) provides relief from Inheritance Tax (IHT) on the transfer of relevant business assets at a rate of 50% or 100%. There is no BPR if the business or company is one of "wholly or mainly" dealing in securities, stocks or shares, land or buildings or in the making or holding of investments as these are not relevant business property.

Mrs M Vigne was the sole owner of 30 acres of land, a Livery stable, but lived elsewhere. From 2008 she operated a livery business which was similar to DIY/grass only livery.

She also offered services such as:

- The provision of worming products, including administering them where and when necessary;
- Providing winter hay feed when the grass might not provide a sufficient food source; a hay crop was grown on part of the land;
- Removing manure from the fields in which the horses spent most of their time; and
- Undertaking a daily check of the general health of each horse.



A self employed yard manager was in place on a part-time basis. Profits were made but they were very modest. In 2009 planning was requested to expand the business which included on-site yard manager's accommodation. At this point the planning permission was refused.

On her death in 2012 Mrs Vigne's personal representative claimed BPR when completing the IHT forms. This was claimed on the basis that the asset constituted relevant business property and/or Agricultural Property.

HMRC's position was that if a livery business was being operated, which necessitates land being available for it to be viable, that was

the holding of an investment and the entire business should be characterised as a business of holding investments.

The personal representative appealed the case and it was taken to a First Tier Tribunal (FTT). The FTT allowed BPR, citing *George* as the leading case in this area, as it held that, to anyone unaware of the distinction between property and other businesses for IHT purposes, the activities being carried out looked and felt like a business, and not an investment, and therefore they were.

There was a recognisable livery business offering significantly more than the mere right to occupy a particular parcel of land.

On the secondary question of agricultural property the appeal failed, whilst part of the land had been used for hay crops it had not been used for this in the two years leading up to the deceased's death and therefore the claim was denied.

The tribunal gave a succinct analysis of the facts as presented to them without spending too long on the finer details and a common sense approach prevailed. We are now waiting to see if this sets a precedent for future BPR cases.

Our view of the decision for this is case it that whilst it could prove to very helpful to those impacted, we only expect it to be used in very limited circumstances. The steps and actions needed to make a successful claim are arduous and complicated. As such, each individual case needs to be considered on the facts.

We would also highlight that HMRC have appealed the decision on this case and so we will issue further updates as to the final result in due course.

HS2 UPDATE

The issues continue for property and business owners impacted by HS2 with the Government recently backtracking on a previous commitment whereby they had confirmed that they would penalise companies taking land and failing to pay compensation on time.

Originally, a rate of interest at 8% above the Bank of England base rate had been set for late compensation and a rate of 2% above base rate on any balance still outstanding after the date of entry. However, the Government has now confirmed that it is reviewing these plans and may withdraw or change these rates.

One possible positive regarding HS2 is the introduction of new woodland grant funding for landowners with land or woodland within 25 miles of the HS2 route. This is designed to fund the establishment of new plantations or the management of existing plantations.

This is a £1m fund and is available to cover a range of capital items, paying 100 percent of the cost, with a 10 year maintenance payment also being available for woodland creation at £200/ha. This is currently only available for the section of HS2 line between London and the West Midlands.

TALK TO SOMEONE WHO UNDERSTANDS THE REAL ISSUES

Accounting for agriculture, farming and rural business is a specialist area that requires expertise and an understanding of the industry. Our dedicated team come from farming backgrounds and offer a clear understanding of the issues facing farmers.

We provide professional knowledge and hands-on experience in the agricultural sector. We have worked with agricultural businesses for over 80 years, providing the expert advice that is required to help you enhance the potential of your farming business.

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