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Addition

AGRICULTURAL

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SUCCESSION PLANNING

FARMING GRANTS

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WHEN IT'S GONE, IT'S GONE (IF IT GOES…)

The existing capital gains tax (CGT) holdover relief and inheritance tax (IHT) agricultural property relief (APR) and business property relief (BPR) rules have been in place for around 30 years. They often enable farmland and buildings to pass on tax-free at death; or to be gifted free of tax during lifetime to a successor, regardless of whether the donor lives for more than 7 years after the gift or not.

A lifetime gift generally leaves the donee with much more CGT to pay on selling the property subsequently, than if the donee had inherited on a death. For this reason, the usual advice is that the ownership of farm property should pass on death, rather than an earlier lifetime gift. This also maximises security and control for the older generation.

Over the years (and especially over the last 5 or so years), there have been various rounds of speculation about possible changes to the capital tax regime. Different organisations have suggested that the combination of 100% APR and 100% BPR reliefs with CGT rebasing to market value at death is too generous – because it can allow the whole capital value of a farm to be cashed in completely tax-free by a non-farming younger generation after their farming parents' deaths. The rates of APR and BPR reliefs which have been in place since 1995 (usually 100% but sometimes 50%) are also high by historical standards (the reliefs were 30% and 50% up to 1995).

Tax planning has to be based on the rules and circumstances that exist, and not on speculation about the future. Those who previously speculated about adverse changes to APR and BPR have been wrong up to now and, in situations where none of the children will take on the running of the farm after their parents' deaths, the customary advice to leave ownership of the farm with the older generation until death probably still holds good for most families.

However, in the event that the capital tax regime is tightened after the general election, it is possible that, not only might the tax burden at death on farmland and buildings increase, but the opportunity to make a tax-free transfer during lifetime might disappear too.

Therefore, in families where the younger generation have proven their commitment to keeping the farm going and there is no real prospect of the farm being sold after their parents' deaths, consideration should perhaps be given to passing on at least a share in the ownership of the farmland and buildings now. This will not be an easy decision and the right answer will vary from family to family (depending on factors that include divorce risk in the younger generation and just how small the possibility of a future farm sale is).

What we know for certain is that a general election must take place by 28 January 2025 and that both main parties have aired ideas for (quite different) changes in the IHT regime. The time for succession planning is now.

MONEY FOR THE ASKING

In tandem with the winding down of the Basic Payment Scheme, there have been some major improvements in other grant funding available to farmers recently.

While the opportunities vary, we are finding many clients able to secure standard cost based grants that cover most or all of the cost of major fencing projects; and others able to secure important contributions for some types of equipment or building/effluent control work.

We suspect that the improved funding might be a temporary boost to sweeten the abolition of BPS, in which case it is extra important to take advantage of relevant schemes while they are available.

The new grant schemes are focussed heavily on achieving environmental benefits and boosting productivity. They often have short application windows, quite prescriptive requirements, and they are sometimes competitive (ie RPA select successful applicants according to perceived environmental benefit). Some grants have multiple rounds.

Helpfully, DEFRA , the RPA and the Forestry Commission provide a joint summary of the currently available schemes at https://www.gov.uk/guidance/funding-for-farmers#full-publication-update-history and we strongly advise all farmers to monitor that regularly. Larger farms should also take individual advice from a farm consultant.

Grants available at the time of writing include:

- **Countryside Stewardship (CS)** – including capital grants for:
  - Fencing, hedging, stone walling, gateways
  - Covering of open yards and slurry and silage stores
  - Automatic scrapers
- **Sustainable Farming Initiative (SFI)** – 3 year agreements for income grants to help farmers manage their farms in a more environmentally friendly way (and document having done so). There are multiple identified management actions; each of which can trigger a prescribed level of annual payment (individually ranging from £10 to £732 per hectare)
- **England Wood Creation Grant (EWCG)** – this was discussed in our Autumn 2022 newsletter. The scheme includes 100% standard cost based grants for the establishment of new woodlands and 15 years of annual maintenance grants.
- **Farming Investment Fund (FIF)** – this offers highly targeted capital grants for new technology, equipment and infrastructure. At the time of writing, the only open scheme is Round 2 of Improving Farm Productivity, which offers capital grants of 25% for solar PV systems (including batteries) and 40% for various forms of robotic equipment, including milking systems. FIF schemes to date have had short application windows and been competitive.

Recently closed schemes have included round 2 of the slurry infrastructure grant and a high welfare calf housing grant. There is speculation that a grant for housing older cattle may be available at some stage in 2024.

Please keep a close eye on https://www.gov.uk/guidance/funding-for-farmers#full-publication-update-history or stay in close contact with your grants advisor! When you are planning major works, please also contact us for advice on how to optimise any tax reliefs applicable.

DEVELOPMENT LAND SALES

All farmers know it is not easy to get planning permission to develop agricultural land. Considerable time and money can be spent on having land zoned for residential development. But, if the opportunity comes along, what should you consider?

Example scenario

Mr and Mrs Smith are elderly and in failing health. They farm in partnership with their adult sons. Around 3 years ago, they gifted 50 acres of agricultural land to their adult sons in equal shares, with a view to keeping the farm within the family. The land is held outside the partnership and holdover relief claims were signed to avoid having to pay capital gains tax on the gift.

A developer has now approached the sons to sell 10 acres of the land for a housing development. The developer is keen to purchase an option to buy the land for £5m on grant of planning permission. The developer is prepared to pay £20,000 for the option and anticipates that planning permission will be granted in about 2 years.

Tax (and other) considerations

Professional advice

The sons will need to take professional advice before making any commitment:

- Valuation advice from a chartered surveyor, to ensure the developer's offer is reasonable and/or to negotiate a better deal. The surveyor will also need to advise on implications for future potential development of the family's retained land and of the vendor's commitments in the proposed contract – the net receipt from a development sale is often much less than the headline sale price.
- Legal advice from a solicitor on the contract documentation.
- Tax advice – as illustrated by the points below. Early consideration should also be given to whether to 'opt to tax' the land for VAT if professional fees are likely to be substantial. And on structuring the deal in a way which avoids multiple layers of tax on the same proceeds.

Grant of the option – capital gains tax

The 'grant' of the option to the developer for £10,000 is a capital disposal by the sons. It will need to be reported in the capital gains tax (CGT) pages of their tax returns and some CGT is likely to be payable.

Sale of the land – capital gains tax

The 'exercise' of the option (to trigger the land sale) is a further disposal for CGT. If the option is exercised, the capital gain on the earlier 'grant' is annulled and instead the proceeds for the option and the land are taxed together when the option is 'exercised'.

Legal contracts for development land tend to be complex, and are often conditional. The sale date for CGT purposes is the first date on which an unconditional contract exists (ie when all necessary conditions for the sale have been met).

Because the boys had acquired the land by gift with holdover relief, their 'base cost' of the 50 acres is their parents' original cost for that land.

The boys are only selling 10 acres out of the 50 acre holding that was gifted to them. This is a part disposal. The proportion of the base cost of the 50 acres which is attributed to the 10 acres disposal is calculated as A / [A+B] where A represents the gross sale proceeds and B represents the current market value of the 40 acres retained land.

The land was not a partnership asset and was held outside the balance sheet. It is likely the partnership paid the sons a market rent for the use of the land so that the gift was effective for Mr and Mrs Smith's IHT purposes – in that case, business asset disposal relief (an effective 10% CGT rate) will be unavailable and the sons will incur CGT at the 20% rate on most of the gain. In other circumstances, there are sometimes planning measures which can be implemented to achieve business asset disposal relief.

Parents' inheritance tax positions

The gift of the 50 acres to their sons constituted 'potentially exempt transfers' (PETs) for inheritance tax (IHT).

Should a parent die within 7 years of the gift, their share of the gift will be brought into account for IHT purposes at death. There are provisions allowing 100% Agricultural Property Relief and 50% Business Property Relief, but those reliefs will fall away immediately the land is sold.

Use of the proceeds

There would be opportunity to avoid having to pay CGT on the land sale and to preserve APR/BPR shelter on the parents' gifts if the sons reinvest the whole of the net sale proceeds in a new acquisition of farmland.

Alternatively, if the sons use the proceeds to purchase financial investments (eg deposits, stocks and shares), then the value may create (or increase the) IHT exposure on their lives.

Alternative planning

With hindsight, it might have been better for Mr and Mrs Smith to have gifted the 50 acres to a trust, instead of their sons personally. Mr and Mrs Smith would need to have been excluded from benefitting from the trust (otherwise, the value in the trust would be included in their estates at death), but their sons could still benefit.

The trust route would have had two advantages:

- Mr and Mrs Smith's gifts to the trust would have been chargeable lifetime transfers (CLTs) rather than PETs. This means that APR/BPR would not be lost on a death after the land sale but within 7 years of the gift.
- The capital in the trust (and income from it) would stay outside their sons' IHT estates and could be used tax-efficiently by or for grandchildren.

Everyone's circumstances are different and the optimal plan will vary from family to family.

Conclusion

The sale of development land is often the most complex, and highest value, transaction undertaken by those fortunate enough to have the opportunity. Small details can have a large financial impact and early professional advice is of paramount importance.

Please speak to us as soon as possible.

HAPPY FAMILIES

The tax system includes special provisions for couples who are married or in civil partnership. These include:

Advantages

- **Income tax:** Marriage allowance enables an individual to transfer one-tenth of their personal allowance to their spouse, provided neither spouse is liable to income tax at a rate exceeding the basic rate. This can be useful where one spouse is a non-taxpayer. Alternatively, where at least one spouse was born before 6 April 1935, married couple's allowance provides some extra personal allowance.
- **Capital gains tax:** Assets transferred between spouses are treated as passing from the transferor to the transferee at values which result in neither gains nor losses. This means that the capital gains/losses from the asset transfers are deferred until the assets are sold by the receiving spouse.
- **Inheritance tax:** A transfer of assets between spouses is exempt from inheritance tax, provided the transferee is UK domiciled. The exemption applies regardless of whether the transfer takes place during lifetime or on death.

Disadvantages

- **Income tax:** Income from jointly owned property must be taxed in 50:50 shares, unless a special election is made for it to be taxed in proportion to the capital ownership shares. This limits flexibility for income tax planning.
- **Capital gains tax:** A married couple (or civil partners) must have the same home for purposes of main residence relief. By contrast, individuals who are not married or in civil partnership can each have a separate home qualifying for main residence relief.
- **Stamp duty land tax:** A married couple (or civil partners) are effectively treated as one person in determining liability to the higher rates of SDLT.

NOT-SO-HAPPY FAMILIES

We explain above that one important tax advantage of marriage (or civil partnership) is the ability to transfer assets between spouses free of capital gains tax (CGT). It should be noted than 'permanent separation' (ie where at least one party decides the marriage is irreconcilable) – rather than necessarily divorce – triggers cessation of the treatment.

Up to 5 April 2023, the nil gain/nil loss treatment stopped at the end of the tax year of permanent separation.

A recent change allows separating couples extra time to transfer assets between each other.

For transfers from 6 April 2023, the nil gain/nil loss treatment continues to apply for three further tax years after the end of the tax year of permanent separation; or, if earlier, the date of the court order for divorce or dissolution.

Nil gain/nil loss treatment can also apply for an unlimited period where the transfer occurs as part of a formal divorce agreement.

This allows those with complicated shared farming assets more time to reach a formal divorce settlement.

Our specialist tax team would be glad to assist with CGT planning.

DOUBLE CAB PICKUPS – FASTEST U-TURN IN HISTORY

Double cab pickups (with payload over one tonne) might be thirsty, but their treatment as commercial vehicles means they are tremendously tax efficient – often qualifying for VAT reclaim on purchase, 100% annual investment allowance and (for company directors) eligibility for van (rather than car) benefit-in-kind charges. This regime compares extremely favourably with the harsh tax treatment of equivalent cars.

On 12 February, HMRC announced that they would treat newly acquired double cab pickups as cars for income tax purposes from July 2024. This seemed destined to destroy the market for double cab pickups at a stroke.

Exactly a week later, Government overruled HMRC with a statement that, following representations from the farming and motoring industries, legislation will be introduced to ensure that double cab pickups with payload over one tonne will continue to be treated as commercial vehicles for tax purposes.

This U-turn is great news for farmers but, when the legislation becomes available, we will need to check it carefully. Many double cab pickups are rated close to the critical one tonne payload threshold and a small change in definition or the treatment of accessories (such as canopy or towbar) could still be problematic.

If you are considering purchasing a vehicle, please contact us to discuss the tax consequences.

Photo by Bradley Dunn on Unsplash

Erratum notice – VAT on seeds

In the VAT table on page 3 of our Summer 2023 edition, seeds were inadvertently grouped with sprays and fertilisers. Sprays and fertilisers are subject to 20% VAT, but only some seeds are. Seeds for food or animal fodder crops are zero rated. **We apologise for any confusion.**

HOW TO MAKE TWO PLUS TWO EQUAL THREE

It is generally the case that higher profits translate into extra income tax payable, and the self-assessment payments on account regime makes January tax payments (or refunds) particularly sensitive to changes in profit – effectively, 1½ times the extra tax from a profit increase is payable the following January.

However, there are many steps in our work between establishing your accounting profit and the finalisation of your tax liabilities and some of these involve planning opportunities:

Tax adjustments

The accounting profit has to be adjusted to arrive at the taxable profit. These adjustments include:

- Private apportionments – to disallow the part private element of some costs charged in the accounts (eg farmhouse and motor expenses).
- Herd and flock – production animals that are subject to a tax herd basis election have different carrying values for accounts and tax purposes.
- Fixed assets – accounting depreciation and profit/loss on disposal of fixed assets are not tax deductible. Instead, the tax relief for fixed assets is governed by capital allowances rules.
- Activity – profits from different activities (eg property letting, furnished holiday accommodation, or separate trades) may need to be separated out for tax purposes.

Capital allowances

The capital allowances rules allow most farming businesses to claim 100% annual investment allowance on up to (currently) £1m of annual capital expenditure on plant and machinery.

It is usually advantageous to make a full capital allowances claim, but there is opportunity to restrict the claim, and this may be useful to avoid wasting personal allowances if profits are temporarily low or other reliefs (eg brought forward losses) are available. A brought forward loss can only be relieved against future income of the same trade so, where the activity tends to be loss-making, it may be better to preserve relief in the form of disclaimed capital allowances instead of trading losses.

The flexibility to disclaim capital allowances can be very useful in lower income situations to preserve relief for future benefit, but it must be noted that the 100% annual investment allowance is available in the year of acquisition only and, if disclaimed for that year, only writing down allowances (at 18% or 6% per annum) can be claimed.

Partnership profit shares

In a partnership, the way in which the profit is divided among the partners can have major financial impact:

- Dividing profits equally on profitable farms could result in older partners (with pension and investment income) incurring some income tax at 40%, while younger partners might have part-unused basic rate income tax bands.
- Partners under state pension age pay class 4 national insurance (charged mainly at 9% – 2023/24 rate) on trading profit, as well as income tax. Older partners are exempt from class 4 national insurance.
- Where a couple are claiming child benefit, the clawback provisions cause a disproportionately high marginal rate of income tax if the higher earner's total income is between £50,000 and £60,000.
- Individual partners may be affected by income criteria for tax credit, tax-free childcare, mortgage and other purposes.

Farmer averaging

5 year farmer averaging calculations can be complex, but often offer tremendous opportunity to manage taxable incomes so that personal allowances (and, where appropriate, basic rate bands) are fully utilised, with minimal exposure to higher rate tax.

When profits increase, farmer averaging (2 year or 5 year) also achieves the timing benefit of a reduction in payments on account for the following tax year.

Use of losses

Subject to the reliefs cap and 'hobby farmer' provisions, trading losses can be claimed for relief against all other income of the same and/or immediately previous tax year (in either order) and, after making such a claim, relief can be extended to capital gains (albeit this usually results in a very low rate of tax relief). Any remaining trading losses are carried forward for relief against future profits of the same trade only.

In conjunction with the possible disclaim of capital allowances, and farmer averaging (where at least one affected year is in profit), multiple permutations may have to be considered in arriving at the optimal outcome.

Pension contributions and gift aid payments

Making pension and gift aid payments reduces the self-assessment tax payable by individuals who are (or would otherwise be) higher rate taxpayers.

Non-taxpayers making gift aid payments become liable to pay for the income tax relief claimed by the charities.

Voluntary payment of class 2 national insurance

In relevant cases, paying class 2 national insurance voluntarily can have a crucial impact in maintaining a full history for your state retirement pension (and giving entitlement to some other benefits) at very low cost.

When you review your next tax return, you will understand that its preparation may have involved considerably more than simply transferring the profit figure from the accounts.

CAPITAL GAINS TAX (CGT) ON LIFETIME GIFTS AND TRANSFERS AT DEATH

1. Lifetime gifts

It is a common misconception that a donor cannot be taxed on making a gift because no money is received. That is incorrect:

- The effect of the gift on reducing the total value of the donor's (and any spouse's or civil partner's) estate is counted as a 'transfer' for inheritance tax (IHT) purposes. In many situations (eg the donee is an individual, the donor lives for more than 7 years after the gift, and the donor gets no benefit following the gift), there will be no resulting IHT liability, but that is not always the case (eg large gift into trust).
- For capital gains tax (CGT), a gift is treated as if it were a disposal for proceeds equal to the market value of the asset at the time of the gift, and CGT will be payable accordingly unless a relief such as holdover relief is available.

Holdover relief

On a gift to an individual, holdover relief is only available for certain types of asset. The eligible types include any property qualifying for IHT agricultural property relief (APR) and/or used for the donor's trade. Thus, most farmland and farm buildings are eligible for holdover relief, whereas let property usually does not (unless it qualifies for APR).

Holdover relief requires a formal claim to be signed jointly by donor and donee and sent to HMRC. In recent years, we have found HMRC increasingly picky about having very clear identification of the precise property gifted on the holdover relief claim.

Holdover relief can also be claimed on the lifetime gift of any asset into trust.

The effect of a holdover relief claim is that the donor avoids having to pay CGT on the gift, but the gain taxable on a later disposal by the donee increases accordingly. In most cases, the donee is effectively treated as having acquired the asset for CGT purposes at the donor's base cost instead of current market value.

In some circumstances, holdover relief may be available for only part of the capital gain (eg where the disposal is a sale at an undervalue instead of outright gift, or where the donor used the asset for both qualifying and non-qualifying uses).

Example

Farmer Giles decides to gift his son, John, 100 acres of farmland, currently valued at £800,000. Farmer Giles has owned the land since March 1982 when it was worth £120,000. Both Farmer Giles and Farmer John are higher rate income tax payers and their CGT annual exemptions are already fully utilised with stock market gains.

(a) How much CGT is payable by Farmer Giles on the gift?

Without holdover relief claim		**With holdover relief claim**	
Market value	£800,000	Market value	£800,000
Less: Cost	£120,000	Less: Cost	£120,000
Chargeable gain	£680,000	Chargeable gain	£680,000
Less: Holdover relief	£nil	Less: Holdover relief	£680,000
Taxable gain	£680,000	Taxable gain	£nil
CGT payable at 20%	**£136,000**	**CGT payable at 20%**	**£nil**

(b) 5 years later, Farmer John sells the land for £1,300,000. How much CGT is payable by Farmer John on the sale?

Without holdover relief claim		**With holdover relief claim**	
Sales proceeds	£1,300,000	Sales proceeds	£1,300,000
Less: Cost	£800,000	Less: Cost	£120,000
Chargeable gain	£500,000	Chargeable gain	£1,180,000
CGT payable at 20%	**£100,000**	**CGT payable at 20%**	**£236,000**

In this example, the extra tax payable by John is exactly equal to his father's CGT saving from the holdover relief claim (but the delayed payment and Giles's avoidance of having to find money to pay a 'dry' CGT charge are still important advantages). In practice, the extra cost for John will often be different from the saving for Giles because of different personal circumstances and tax rates and possible eligibility for reliefs such as business asset disposal relief.

2. Transfers at death

The CGT position on a disposal shortly after death is altogether simpler. The 'cost' of the assets for CGT purposes is rebased to current market value at death, without any CGT having to be paid.

So the deceased's CGT position is similar to a lifetime gift with holdover relief, whereas the beneficiary's CGT position is similar to a lifetime gift without holdover relief.

This article is purely about CGT principles and holdover relief. IHT implications, and other reliefs (for both taxes) must also be considered. Please contact us if you would like to discuss your circumstances.

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AGRICULTURAL SHOWS 2024

We will be attending the following agricultural shows. Please come along and see us there.

1st August
HONITON

7th August
NORTH DEVON

8th August
OKEHAMPTON

15th August
CHAGFORD

22nd August
HOLSWORTHY

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