

# Agricultural Focus

DRIVING LIFELONG PROSPERITY

Spring 2018

## SPOTLIGHT ON THE RESIDENCE NIL RATE BAND



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# Residence nil rate band

The new residence nil rate band (RNRB) is being phased in for deaths after 5 April 2017. This is a supplementary inheritance tax (IHT) nil rate band which is available where the deceased's estate includes a home (a qualifying residence) which is left to one or more direct descendants. Direct descendants will include children, grandchildren, step children, adopted children and foster children.

The additional relief will be £100,000 in 2017/18; it will then increase by £25,000 each year until it is worth £175,000 in 2020/21. Where a spouse died before 6 April 2017, the surviving spouse may be eligible for an additional deemed transferable allowance equivalent to the percentage of relief not used on first death.

The relief is only available in full if the deceased's net estate is valued under £2 million. Over £2 million, tapering reduces the relief by £1 for every £2 over, hence meaning that estates will only qualify if they do not exceed the limits:

Tax year of death	Value of estate that removes all relief	
	(Individual)	(Married couples/ civil partnership)
2017/18	£2.2 million	£2.4 million
2018/19	£2.25 million	£2.5 million
2019/20	£2.3 million	£2.6 million
2020/21	£2.35 million	£2.7 million

An individual's net estate is calculated as the value of their estate immediately before death i.e. total assets less liabilities (debts etc.). However, it is the value before any IHT reliefs and exemptions are claimed. This means that landowners who are comfortable that their farmland will qualify for agricultural property relief (APR) should bear in mind that they may not be entitled to the RNRB because their net estates could well be in excess of £2 million.

The net estate does not take into account lifetime gifts (even if these have been made within 7 years of death) and so, provided they have not reserved any benefit from those assets, making gifts before death will reduce the net estate. For this reason, agricultural land could be gifted before death, holdover relief claimed to defer the capital gains tax (CGT) and the net estate be brought down to below the £2 million ceiling. In this case the family would not obtain the CGT free uplift to market value on death.

RNRB is an asset specific relief and, unlike the claim for APR on the farm house, is not subjective. Therefore, the option of gifting relievable property prior to death to reduce the value of the net estate should be considered, especially where there is uncertainty about whether the farmhouse will qualify for APR.

In addition, where the deceased is still the owner of the farmhouse at their death and its value does not get fully relieved by APR then the supplemental RNRB may also offer the opportunity to relieve the non-agricultural value of the farmhouse. Again this will only be possible if the net estate does not exceed the tapered threshold.

The option to claim RNRB may offer some farmers an alternative to continuing to farm until death, since they could let out their land under a farm business tenancy and not worry about the need to be regarded as the farmer in the farmhouse.

Specific advice should be taken to ensure that the available relief is maximised. Please contact Shirley Roberts on 01242 680000 or email [shirley.roberts@hazlewoods.co.uk](mailto:shirley.roberts@hazlewoods.co.uk) if you have any questions regarding the RNRB.



# Farming arrangements

## WILL THIS AFFECT INHERITANCE TAX RELIEFS?

Farming can be a very tax efficient activity in relation to inheritance tax (IHT). It can mean that on death no IHT is suffered on the value of farming assets, including the value of a farmhouse, due to the availability of agricultural property relief (APR) and business property relief (BPR). This can be a significant tax benefit following the increase in the value of farmland in recent years.

If land and buildings have been owned for a period of at least seven years, then APR can be obtained if the land is let under a farm business tenancy, and it is occupied by another party for agricultural purposes. However, APR is only available up to the agricultural value. Therefore, if there is development potential, this part of the value will not be covered by APR. BPR covers the full market value but is only available if the land is farmed in hand or under a contract farming arrangement, share farming arrangement or grazing licence. Similarly, APR on a farmhouse is only available if the land is farmed in hand or under a contract farming arrangement, share farming arrangement or grazing licence.

### AGREEMENTS WITH THIRD PARTIES

For various reasons, a farmer may decide that part or all of their farm is farmed under a contract farming arrangement, share farming agreement or grazing licence, depending on the type of farming activities carried out. Contract farming arrangements are usually only seen where arable, or fruit and vegetable production is carried out, with grazing licences used in grass growing areas. Structured correctly, contract farming arrangements, share farming agreements and grazing licences can mean that the landowner is still eligible for valuable IHT reliefs. In all three cases, the landowner must remain in occupation of the land for agricultural purposes and continue to claim the basic payment. In addition all agreements should reflect what is actually happening in practice.

### CONTRACT FARMING

Under contract farming arrangements, although it is possible for the contractor to acquire the crops grown, this should not be a 'done deal' from the outset, as this will be interpreted by HM Revenue & Customs (HMRC) as effectively being a tenancy agreement. In addition, the landowner must be the one to decide what crops are grown. There must be an element of financial risk to the landowner.

### GRAZING LICENCE

Where a grazing licence is in place, it is essential that the landowner is regarded as growing a crop of grass 'for sale'. Therefore, they need to be rolling and harrowing, reseeding the land and fertilising, and maintaining hedges and ditches. It is possible for the grazier to be carrying out certain work for the farmer, but this needs to be done in a contracting role, with invoices being issued to the farmer for the work carried out. Any licence should only be for a limited period each year, with the grazier removing their stock from the land outside of the licence period.

The amounts to be received by the farmer under the grazing licence should not be a fixed amount each year, but should vary depending on the quality and quantity of grass that is produced each year. If the agreement is for a fixed amount each year HMRC could argue that this is effectively a tenancy.

Structured and implemented correctly, contract farming arrangements, share farming agreements and grazing licences can ensure that farmers remain eligible for the valuable IHT reliefs available.

Please contact Nicholas Smail on 01242 680000 or email: [nicholas.smail@hazlewoods.co.uk](mailto:nicholas.smail@hazlewoods.co.uk) if you have any questions regarding IHT reliefs.



## YEAR END ACCRUALS. DO NOT FORGET THEM

When preparing the year end accounts for a farming business, whether this is a sole trader, partnership or limited company, an accrual should be included in the balance sheet and profit and loss account for any expenditure that relates to the year but has not yet been incurred or an invoice received at the year end. This ensures that income and expenditure is included in the correct period.

An example of such an accrual would be repair expenditure, where the damage occurred before the year end but the work had not yet been carried out to repair the damage. A business with a March year end may have a yard surface which has been damaged during the year. The weather in the closing months of the year means that this is not an ideal time to be carrying out the work. If the work is to be carried out in the following year and a fairly accurate estimate of the cost can be made, preferably supported by quote for the work, then the cost can be deducted in the profit and loss account and included in the balance sheet as a creditor.

# STAMP DUTY LAND TAX. BEWARE!

**STAMP DUTY LAND TAX (SDLT) IS PAYABLE BY THE PURCHASER WHEN ACQUIRING LAND OR BUILDINGS, WHEN THE CONSIDERATION EXCEEDS THE NIL RATE BAND. THIS IS CURRENTLY £125,000 FOR A RESIDENTIAL PROPERTY AND £150,000 FOR NON-RESIDENTIAL PROPERTY.**



The introduction of the additional residential property rate in 2016, has highlighted how SDLT can impact unexpectedly on a property purchase or transfer.

## **ADDITIONAL RESIDENTIAL PROPERTY RATE**

The 3% additional rate was introduced for transactions completed on or after 1 April 2016 on purchases of all residential property. When an individual purchases an interest in a residential property for an amount of more than £40,000, and they already own an interest in another residential property worth more than £40,000, the additional rate will apply to the whole consideration.

Therefore, on residential property costing £400,000 the SDLT liability will be £22,000, including £12,000 of additional rate SDLT. There will be no additional rate if the individual is replacing their main residence within 36 months of selling their previous main residence, or they sell their previous main residence within 36 months of acquiring a new main residence, when the rate will have to be paid on the original purchase but then reclaimed.

However, the additional rate can also apply in less obvious situations. For example, consider a farming partnership of father, mother and son with property on the partnership balance sheet including residential property worth £400,000 which is rented out. The property is included in a separate capital account which confirms that the son has no beneficial interest in the property and would receive no proceeds on sale. However, he has a 20% share in partnership profits which includes rent from this property. The son is looking to purchase his first residential property for £300,000. Even though he has no capital interest in the partnership residential property, HM Revenue & Customs will treat him as having a 20% interest in the property valued at £80,000 (£400,000 x 20%). Therefore, he will be charged additional rate SDLT of £9,000 on his property acquisition.

## **TRANSFERRING PROPERTY TO A COMPANY**

When transferring a trading partnership, or part of a trading partnership to a limited company, any land and buildings used in the trade and also transferred will not suffer SDLT under the partnership rules, if the individuals in partnership have the same interests in the partnership and company. However, there are no such reliefs when transferring property to a company on other occasions, even if this is by way of a gift with no consideration.

Therefore, if an individual who controls at least 75% of a trading company gifts a commercial property or land they personally own but is used in the company's trade to the company, SDLT will be due if the value exceeds £150,000.

## **TRANSFER OF PROPERTY INTO A PARTNERSHIP**

Certain family members are regarded as 'connected' for SDLT purposes; this means that 'deemed' transfers between them will not create an SDLT liability. This will include lineal descendants, siblings and spouses of siblings.

However, children of siblings are not regarded as connected. Therefore, if you have a farming partnership of two brothers and they each have a son who is also part of the partnership, if farmland and buildings are transferred into the partnership, not all of these individuals are regarded as connected and an SDLT charge could arise even though no consideration has passed.

## **GOING FORWARD**

There are good reasons why land and buildings should be included in a trading farming business. However, the above examples highlight that this could have SDLT implications which need to be considered before any transfer takes place. Please contact Peter Griffiths on 01242 680000 or email [peter.griffiths@hazlewoods.co.uk](mailto:peter.griffiths@hazlewoods.co.uk) if you have any questions regarding SDLT.



# Entrepreneurs' Relief – will I qualify?

Entrepreneurs' Relief (ER) is a very valuable tax relief which can reduce the top rate of capital gains tax (CGT) from 20% to 10%. However, there have been recent changes in the legislation which need to be considered in any planning to ensure that the relief is available.

## AVAILABILITY OF ENTREPRENEURS' RELIEF

Each individual has a lifetime limit of capital gains eligible for ER of £10 million. Therefore, the relief is worth £1 million ( $£10 \text{ million} \times (20\% - 10\%)$ ) to an individual during his/her lifetime. Husbands and wives each have their own lifetime limit.

The relief is only available for what are known as 'qualifying business disposals'. An example of a qualifying business disposal would be where a farmer ceases farming and sells all of his business assets, including the land and buildings. To qualify for the relief, the farmer must have carried on the business for at least one year, and the assets must be sold within three years of the business ceasing. Assets on which ER is to be claimed should not be sold before the business ceases.

In the above example, the relief would be available to a sole trader or individuals in a partnership. The relief is also available to shareholders in a limited company and qualifying beneficiaries in a trust.

## ASSOCIATED DISPOSALS

Associated disposals can offer significant ER planning opportunities for partners in a partnership or shareholders in a company but also have many potential traps which can mean the relief is lost. They allow an opportunity to sell assets used in a farming business, claim ER and continue farming.

For a partner to qualify they must dispose of at least 5% of the partnership and then shortly after sell land used in the partnership that they own personally outside the partnership. The 5% disposal could be a transfer to a family member, therefore may be part of succession planning.

If, in the case of a partnership or company the land and buildings being sold are not business assets but are held off the balance sheet, and rent was paid to the individual owners for the use of the assets since April 2008, this will result in restriction of ER.

## CHANGES TO THE LEGISLATION

Prior to the 2016 Budget, the land being sold had to be held outside of the partnership and used in the farming business for a period of at least 12 months.

In the 2016 Budget, a clause was introduced which means that where a property has been acquired on or after 13 June 2016, it must be owned and used in the farming business for at least three years to qualify for ER as an associated disposal. Properties acquired before that date have a one year ownership and use requirement.

However, where an individual acquired an interest in a property before 13 June 2016, then increases their interest in the property after 12 June 2016, for example increasing their interest from 50% to 100%, the HMRC interpretation of the new legislation is that on a subsequent sale, the vendor will now fall under the new rules for the additional 50% acquired and need a three year ownership and use period from the date of the change in their interest in order to qualify for ER as an associated disposal on that additional 50%. This would also apply to transfers between spouses.

In addition, the three year ownership requirement will also be relevant where a partition of joint interests in land has occurred before a subsequent sale. This could occur relatively frequently where jointly owned assets were transferred between family members prior to a sale.

## GOING FORWARD

The rules relating to associated disposals have always been extremely involved, with various restrictions and potential elephant traps. The recent change in the legislation reinforces the need for advice to be taken well in advance of any property sales that will involve ER claims and associated disposals.

## PLANNING OPPORTUNITIES

If you would like to discuss possible ER planning opportunities, please contact Peter Griffiths.



## GDPR, ARE YOU PREPARED FOR THE CHANGES?

On 14 September 2017, the Government published its Data Protection Bill. This bill will take account of the EU's General Data Protection Regulation (GDPR), which comes into effect on 25 May 2018 and reaffirms that GDPR will apply post-Brexit. GDPR has been widely touted as the biggest overhaul of data protection legislation for 20 years.

### DOES IT APPLY TO ME?

This will affect all farming businesses. Whether you are a sole trader, company or partnership, if you handle personal data, you should already be thinking about and preparing for GDPR.

### WHAT DO I NEED TO DO?

You can find out how GDPR will affect your business from the Information Commissioner's Office (ICO) website, which provides: an overview of GDPR with a helpful 12-step checklist and other guidance. You will need to be able to demonstrate that you are meeting the GDPR principles you will need to consider:

- what kinds of personal data you collect and use;
- how and when you obtain and use this data;
- where the data is held (whether in paper or electronic form);
- who has access to the data and who you share it with outside your organisation; and
- how long you should keep the data for.

For example, for farming businesses, this will need to be considered in relation to the personal data held for seasonal labour. You may already have some of this information as part of your compliance with existing data protection legislation. Carrying out this assessment will also help you judge whether you can:

- demonstrate the relevant lawful basis for processing personal data;
- meet the rights of individuals under GDPR;
- check whether you have GDPR-compliant consent where you need it;
- put the right procedures in place around data breach identification, reporting and investigation;
- confirm that the contracts you have with others (not just IT providers) take GDPR compliance into account. (GDPR requires that personal data is kept secure to protect it from 'unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures').

### GOING FORWARD

GDPR will affect all farming businesses, how they hold data and how that data is used. As a result, all farming businesses need to consider how they will be affected and that they are complying with the legislation.

## MEET THE TEAM



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