



→ Agricultural Newsletter

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Industrial output rises, recovery remains slow - no room for complacency

It comes as no surprise that the impact of the current global recession is beginning to have a significant effect on certain areas within British farming. Recent reports suggest that many in this sector, particularly tenant farmers, have underestimated the impact of the credit crunch and may suffer as a result of high-risk credit.

The evidence is that whilst the major banks are continuing to support the farming industry through lending, others are lending less. With interest rates predicted to rise a greater number of those questioned in a recent NFU survey are concerned that "they are at significant risk and likely to be affected by the current economic climate" than in 2008.

Thankfully there are signs that the economy is improving. For the third month running housing prices have stabilised and mortgage approvals have risen, indicating that at least the housing market is showing real signs of recovery. Although monthly figures are often erratic, viewed in the context of the first rise in industrial output for over a year during April and May, some economic experts consider that the worst is over.

Experts remain cautious and continue to stress how difficult the global financial situation is and that businesses must avoid complacency. Planning ahead where possible makes financial sense. Making financial decisions about wills and inheritance tax is something many put off. Not only is it difficult to think about but it is also a complicated area.

Think carefully about your business and the total value of your assets. You may be worth more than you think. Many earning their living from farming have done so from generation to generation, passing their land and buildings down and in many cases have been seriously damaged by capital based taxation.

There are two principal capital reliefs available that can mitigate the





impact, Agricultural Property Relief and Business Property Relief. Both are subject to certain ownership conditions and operate by reducing the value of the qualifying assets. We examine the case of HMRC v the Trustees of the Nelson Dance Family Settlement and McCall & Another (personal representatives of McClean v CRC in detail which show how important it is to fully understand the rules which apply.

Make time to make a Will. Recent changes to the application of the tax-free threshold can make a real impact on what you leave your family. Furthermore, as long as Agricultural Property Relief and Business Property Relief still remain, your Will should be structured to take full advantage of the Reliefs in the context of your family business.

Given that in recent years the Common Agricultural Policies and reductions in EU support have affected farmer's bottom line, many have opted to diversify from their core business. The recent proposal to withdraw special tax treatment of furnished holiday lettings could also have a significant impact on businesses qualifying for Business Property Relief.

Finally, take a little time to look through the article on the recent case Mason v Boscawen which highlights a legal loophole concerning the recent reduction in VAT and its impact on the timing of subsequent rent reviews.



Ioan Owen,
Partner





→ Your Business May Be Worth More Than You Think

Save up to 40% inheritance tax

Facts Of The Case

The recent case of the Revenue & Customs v the Trustees of the Nelson Dance Family Settlement has brought into question the generally accepted view that only the gift of an entire business or an interest in a business would qualify for business property relief (BPR). As a result, the scope for tax planning opportunities has broadened with BPR becoming a valuable integral component.

The case concerned a farmer, Mr Dance, who transferred some his agricultural land and two cottages to family members as part of a discretionary trust. As the land and buildings had formed part of his agricultural business, the trustees were able to claim agricultural property relief for the agricultural value of the land.

Nub Of The Matter

A claim was made to HMRC for business property relief for the additional substantial value. HMRC rejected the claim as what “relevant property” had been transferred had only constituted part of the assets and could not be described the “entire” business or capable of operating as a business in its own right.

The High Court maintained that the that the “relevant

property” need not relate to the entire business owned by Mr Dance and the claim for BPR was upheld.

It is unlikely that HMRC will appeal the decision.

Implications

As values remain low, opportunities to look at restructuring and succession planning with minimum tax liability look positive. Should the individual die within 7 years of making the gift, assets which qualified as business assets at the time of transfer must be used as such for business property relief still to apply.

If you require any further information in respect of this or any other topic please contact:



Andrew Evans,
Partner





→ Grazing Land To Rent

Investment or business?

Facts Of The Case

In the case of McCall & Another (personal representatives of McClean (deceased)) v CRC (2009) the Court of Appeal upheld the original decision of the Special Commissioner that the letting of land did not constitute carrying on a business but merely holding an investment.

Prior to her death in 1999 Mrs McClean had owned 33 acres of farmland in County Antrim. She had inherited the land from her husband on his death in 1983. Although she did not farm the land herself she had agreements or agreements with local farmers who used the land for their livestock to graze.

Her son-in-law Mr Mitchell, who lived next door, gradually took over the management of the lettings as her own health began to decline. As she became more forgetful she moved in with her daughter who lived some distance away and Mr Mitchell continued to tend the fields and organise the lettings, using the services of an agent for the equivalent of 100 hours a year. Income received was paid directly to Mr Mitchell, who continued to look after Mrs McCall's house.

Nub Of The Matter

The value of the land at her death was £165k, which qualified for agricultural property relief. However, the

local council zoned the land for redevelopment and the value was estimated to have risen to £5.8m. A claim for business property relief was made under terms of the Inheritance Tax Act 1984, stating that the land was "relevant business property".

The Revenue maintained that although Mr Mitchell had carried out maintenance work it was clear that main business activity involved making seasonal grazing arrangements which meant that the business consisted "wholly or mainly of making or holding investments".

The Court of Appeal upheld the Special Commissioner's decision rejecting the argument that where land is rented enabling the tenant to obtain a service (grass for cattle) the land is not merely an investment but also a business.

The Court maintained that;

"the activities did not involve the cutting of the grass and feeding it to the cattle but simply making the land available so that the cattle may live and eat there."

Implications

Had Mrs McClean and Mr Mitchell had more involvement in the provision of services to their tenants then the situation could have been assessed differently. The main activity of the business would no longer be derived from payments received from letting grazing land.

Clearly, grazing arrangements or agreements should take account of the requirements for both agricultural





and business property relief, particularly if the value of the land could rise due to development potential in the future.

If you require any further information in respect of this or any other topic please contact:



Andrew Evans,
Partner





→ Rent Reviews Under Threat As Clock Is Reset

Recent case highlights legal loophole

The recent decision in *Mason v Boscawen* has potentially far reaching effects for both landlords and tenants who have tenancies under the Agricultural Holdings Act 1986 and where VAT is charged.

Facts Of The Case

Mr Mason was a tenant of a farm at Great Trewirgie, Probus, Cornwall. In 2001 his landlord opted to tax and charge VAT on the lease of the land. Invoices were sent to Mr Mason for the rent including VAT.

Mr Mason did not pay the invoiced amount and the landlord's agent therefore served notice to pay upon Mr Mason. Under the terms of his agreement Mr Mason had two months from the date of the notice to make the payment in full.

Mr Mason failed to pay and the landlord served notice to quit under Case D of Schedule 3 of the 1986 Act for non-payment of rent. Within the statutory time limit of one month the tenant referred the matter to arbitration.

The key issue was whether the rent for the purposes of Case B included VAT. If it did not then the notice to quit would be invalid. If the court confirmed VAT was part of the rent, Mr Mason could face losing his farm and livelihood.

Those tenants in similar circumstances should take care

to:

- take advice promptly on receiving any form of notice to pay rent or remedy any breach of the terms of the tenancy;
- make any payment in full before the expiry of the two month deadline (reserving your position where necessary)
- If payment is not made before the two month deadline then on receipt of notice to quit serve notice within one month demanding arbitration as failure to do so will prevent a challenge to the reasons stated in the notice to quit in subsequent possession proceedings even if the preliminary notice was void.

Nub Of The Matter

Unfortunately for Mr Mason, the High Court ruled that the VAT element was indeed part of the rent for the holding and that the notice to pay did not therefore overstate the amount of rent due.

In his defence Mr Mason had argued that VAT should not be chargeable as it would have implications for the rent review cycle. Although the judge acknowledged this was a likely outcome and urged Parliament to legislate further, it did not affect his decision.

The Agricultural Holding Act 1986 clearly states that





there can be no further variation in the agreed rent until three years have elapsed since any such decrease or increase. As the reduction from 17.5% to 15% VAT can be classed as a “variation” then the rent review process would be interrupted.

Implications

The changes in rent brought about by the alteration to the rate of VAT could have had the effect of preventing the landlord (or for that matter the tenant) from reviewing the rent for three years following a VAT change. If the Chancellor increases VAT in 2010, as stated, the clock would again be reset. Effectively, rent reviews could be postponed until 2013 at the earliest.

Urgent representations were made to DEFRA calling for the Government to review the judgement.

These proposals have now been enacted in the Finance Act 2009 so that any VAT rate changes or exercise of an option to tax will have no effect on the parties ability to review rent. The legislation also has retrospective effect.

Clearly, this is a welcome relief for those landlords who charge VAT on rent and appropriate rent review notices can now be issued without delay.

If you require any further information in respect of this or any other topic please contact:



Ioan Owen,
Partner





→ Holiday May Be Over For Converted Agricultural Buildings

Maintaining an investment or running a business?

would be wise to maintain accurate and detailed records relating to your business to avoid any possible areas of contention.

BPR Rules Tighten

It was announced in this year's budget that certain tax reliefs will no longer apply from 6 April 2010 for those who own furnished holiday lets. Furthermore, the Revenue has recently announced there will be a "tightening up" of the rules which apply when assessing furnished lets for business property tax in the context of inheritance tax.

If you require any further information in respect of this or any other topic please contact:

Owners Must Play Active Role

Owners will need to show that they play an active part in managing the business and that they provide certain services, including cleaning, laundry, meeting and greeting guests and organising activities. This service can also be carried out through an agent.



Andrew Evans,
Partner

To qualify for BPR, the property must have been owned for at least two years prior to the transfer and should also have been managed as a business for at least one year.

Keep Detailed Records

As the Revenue is likely to be looking closely at this area it





→ Combined Inheritance Tax Allowances: Not Your Only Option

Agricultural Property Relief still matters

The surprise introduction of the Transferable Nil Rate Band in October 2007 has lulled many tax payers into thinking that they need now do nothing to save Inheritance Tax.

The new relief is intended to allow spouses and civil partners to transfer any part of the Inheritance Tax free sum (called the Nil Rate Band) that was not used when the first spouse or civil partner died, to the survivor.

It is available to all surviving spouses or civil partners who die on or after 9th October 2007, no matter when the first spouse or civil partner died/dies. Even someone who became a widow or widower 40 years ago could benefit.

How Does It Work?

Let's say Albert died in July 2007, when the Nil Rate Band was £300,000. Albert's Will left his entire estate to his wife, Bertha. There was no Inheritance Tax payable on Albert's death due to the surviving spouse exemption. The result is that the whole of Albert's Nil Rate Band is unused.

Bertha died in January 2009, when the Nil Rate Band had increased to £312,000. As the Nil Rate Band on Albert's death was unused, the new provisions allow Bertha's estate to take advantage not only of the Nil Rate Band available on her own death, but also the whole of Albert's Nil Rate Band at the rate applying on Bertha's death, making a total of £624,000. A greater saving for Albert

and Bertha's family.

If Albert had used some of his Nil Rate Band, for example by making gifts in his Will to his children, then the unused proportion of the Nil Rate Band, calculated as a percentage of the Nil Rate Band applicable on Bertha's death would be available to offset against Bertha's estate.

The Transferable Nil Rate Band is not applied automatically and must be claimed by the executors. Such a claim is unlikely to be accepted by the HMRC without satisfactory evidence of the amount of the unused Nil Rate Band, so comprehensive record keeping is essential.

The Conservative Party, which has announced its intention to raise the Nil Rate Band to £1m, has also stated that the Transferable Nil Rate Band can be applied to the increased Nil Rate Band of £1m in due course, thereby allowing a couple to leave £2m to their children tax free.

Given this, is there any point in doing anything more complex than a simple Will leaving everything to each other and then to the children? Well, yes, if you are a farmer or hold agricultural land that qualifies for Agricultural Property Relief (APR).

Despite rumours that APR would be abolished in the Budget in April 2009, it remains, now in an extended form. The relief will extend to qualifying property anywhere in the European Economic Area.

So now that APR is set to stay, it is worth taking advantage of.





Although the Transferable Nil Rate Band means that a tax payer can leave everything including his agricultural land to a spouse, tax free, and then allow the survivor's executors to claim two Nil Rate Bands on the second death, we recommend that the qualifying agricultural land is addressed in the Will of the first to die.

is sheltered from any increase in the value of the asset. This might be particularly relevant if there is the prospect of a significant increase in the value of the asset, for example, selling a portion of the land for development;

Why?

- Whilst APR is saved again by the Budget, no-one knows for how long. It would be tragic to ignore a qualifying relief on the first death, only to find that it has been abolished or reduced by the second death. 'Using' it in the first estate, by making a gift of the qualifying asset into a discretionary trust or to non exempt beneficiaries such as the children, makes sure that it is not inadvertently lost;
- The use of the APR is within your control, and is not dependant on the whims of yet another Budget or a change in government;
- The asset is protected from the survivor's creditors or a spendthrift spouse;
- The asset can be preserved for the children of the marriage, which is particularly attractive if the survivor remarries;
- The asset will not be taken into account in any means-tested long term care assessment if the survivor requires residential or nursing care;
- Whilst the assets are in trust, the survivor's estate

Doing Nothing Is Not An Option

If you hold agricultural property that qualifies for Agricultural Property Relief against Inheritance Tax, your Wills should be structured to take full advantage of APR, but should do so also in the context of your family business and the members of your own family.

Every family is different. Some work on the farm, others have pursued careers elsewhere, yet parents want to treat their children equally and fairly whilst also allowing the family business to continue.

This can only be achieved with careful planning. For a no obligation initial meeting, free of charge, please contact:



Sian Williams,
Partner

