Meeting points

Tolley conference:
Tax planning for landed estates, 30 April 2008
Reported by Simon McKie.

Chairman:
- **Alexander Dickinson**

Speakers:
- **Rhodri Thomas**
- **William Begley**
- **Christopher Finlay**
- **Susan Johnson**
- **Christopher Page**
- **Fiona Graham**
- **Michael Thomas**

Tax and the commercial context

An adviser on landed estate taxation needs to understand its commercial context and the conference, ably chaired by Alexander Dickinson, opened with a fascinating review by **Rhodri Thomas** of recent market changes in agriculture. He pointed out that after long years of stagnation there has been steady growth in agricultural land prices since 2003. The average price of farmland was £3,000 per acre in 2006 but it is £6,000 per acre today. Development land in the southeast now has an average value of £4 million per acre. The main reason for the increase in the value of agricultural land is the increase in world commodity prices and particularly grain prices. This has brought back institutional investors and overseas farmers into the market who now see UK farmland as being relatively cheap. Three large institutional funds have recently been set up to purchase farmland.

Rhodri went on to say that economists now speculate that we are in the second year of a twenty year boom in the capital price of farmland. The average buyer profile has changed drastically in the last three years. In 2005 private investors made up only 12% of buyers and farmers 44% of buyers. In 2008 those percentages are expected to be 30% and 61% respectively.

With the increase in farm profitability, landlords will be seeking increases in rent under farm business tenancy rent reviews.

KEY POINTS

- The importance of understanding the commercial context of landed estates.
- The single farm payment scheme.
- The transferable nil rate IHT band.
- Planning points for agricultural estates.
- Agricultural and business property reliefs.

The market price of woodland, excluding the price of growing trees, has risen from £600 per acre three years ago to £3,000 per acre. This is partly due to the purchasing power of well-funded conservation bodies.

Commodity prices have in most cases doubled in the last year and Rhodri said that there was, what he called, a ‘corn-horn’ gap. Whereas arable farmers’ profitability has improved dramatically with the increase in world commodity prices, pastoral farmers have found their input prices for feed increasing dramatically. Average arable profits have increased over the last two years by over 200%, while pastoral profits have only increased by 12.6%; although after years of stagnation or decline, this year the milk price has increased dramatically.

The single farm payment scheme

Turning to the single farm payment (SFP) scheme, **Rhodri Thomas** explained that there are two elements which determined the payment.

First, there is an historic element which is farm holding specific and has reference to the particular years 2000, 2001 and 2002; secondly, the regional average payment. In 2007 the historic element formed 70% of the SFP, but this will reduce to 55% in 2008. The SFP is conditional on compliance with various environmental stewardship requirements. Agricultural property relief (APR) is available on the value of the rights to the SFP if the farming is conducted in hand. It is not available if the farmland concerned is let.

On a transfer of a right to a SFP there is some doubt as to the correct VAT treatment but Rhodri considered that it should be chargeable to VAT.

The transferable nil-rate band

William Begley made some interesting points on the practical implications of the introduction of the transferable nil-rate band.

Because the transferable nil-rate band must be claimed within two years of the second death, on the second death it is important that the relevant information in relation to the first death should be easily to hand. The following evidence in relation to the first death should be preserved.

(a) The death certificate.
(b) The deceased’s marriage certificate.
(c) The HMRC returns including IHT 200.
(d) The will.
(e) The grant of probate.

It would be sensible for clients to collect this information during the lifetime of the surviving spouse as the solicitors of the first spouse to die are likely to destroy their records after a period of time.

The following is a list of circumstances in which it is probably still preferable to set up a nil-rate band trust under the will of the first spouse to die rather than relying on transferring the nil-rate band on the death of the second spouse to die.

(a) Second marriages.
(b) Multiple successive marriages (so as to pick up all the previous nil-rate bands).
(c) To minimise the impact of the relevant property regime.
(d) Where there are assets with the prospect of high growth in their capital value.
(e) As a way of losing marriage of assets value.
(f) Leveraging – that is, placing assets subject to a charge in a trust so that the value of the charge is fixed and the value of the asset will grow over time.
(g) Where there is agricultural or business property.

Planning for agricultural estates

Lecturing on planning for agricultural estates, **Christopher Finlay** made a series of useful points.

After the case of *PN McCall, BJA Keenan and Personal Representatives of Eileen McLean (Deceased) v CRC* SpC 678 one cannot simply assume that where land has been subject to a grazing agreement it will receive 100% business property relief (BPR). In this case, the deceased taxpayer's land was subject to a grazing agreement. In finding for HMRC, the court held that he had not had a business of providing grass to a grazier, but rather of the provision of the non-exclusive use of land. It was therefore a business which consisted of exploiting the ownership of an asset and was therefore a business of holding investments.

Christopher then considered the situation where surplus farm buildings are let to third parties in circumstances that do not allow a claim to fall under the principles of *IRC v Farmer* because letting income vastly outweighs the farming income. In such cases he suggested that consideration might be given to the restructuring of the occupation of buildings by the use of a limited liability partnership rather than traditional lettings.

In suitable cases, an LLP for a fixed term with the owner of the land permitting the partners to use his building in return for a fixed profit share, plus a bonus in certain circumstances, may give each party very similar end results to a traditional excluded 1954 Act letting. The benefit to the owner is two-fold:

(a) his income will be derived from a trade or business; and
(b) after two years occupation by that business, the value of the building should qualify for 100% BPR.

Christopher went on to say that it is common for landowners to make an agreement to share the proceeds of disposals of land after obtaining permission for development where the individual holdings are unlikely to receive permission on their own or it is uncertain over what areas of land the planning permission will finally be granted. Common terms are to the effect that each landowner will support and not jeopardise the development project and that, when any landowner receives the proceeds of a sale of land subject to the agreement, he will share the proceeds pro-rata to his respective acreage.

Typically, the landowners wish to avoid being treated as trading in land which would lead to the proceeds of the development being taxed as income and they do not want to tie up their land holding with their neighbours irrevocably in case the land is never developed. The decision in *Burca v Parkinson* [2001] STC 1298 presents a problem. In that case it was held that the landowner whose land was actually sold to the developer had to account for the whole of the proceeds without any deduction for the payments of a share of the proceeds to the other landowners and that those other landowners had also made disposals of their choses in actions under the agreement which were assets separate from the land and which had no base cost. The result was a disastrous double assessment.

Alternatives to such co-operation agreements are pooling arrangements under which the landowners become joint owners/trustees of the pooled land and limited liability partnerships. When an LLP is used, the landowners will transfer their respective farming business and land into it so that each can benefit from capital gains tax business asset reliefs and from inheritance tax BPR on the whole value if they should die prematurely.

Agricultural/business property reliefs

Christopher Page then presented a lecture on agricultural and business property reliefs. It was a thorough review of the basics with which readers of *Taxation* are likely to be familiar. He opened, however, with an interesting review of the contraction of commercial farming in the UK in the last decade. This decline in supply is partly responsible for the increase in farming profitability.

In 1996, 68.6% of all food consumed in the UK was produced here. By 2006, that had fallen to 59.5%. In 1996 there were 3.4 million hectares dedicated to cereal production, but only 2.08 million hectares in 2006. There were 11.7 million head of cattle in the UK in 1996, but this had fallen to 10.2 million in 2006. There were 7.9 million pigs in 1996 which had fallen to 4.9 million by 2006. In the year after the introduction of the new common agricultural policy, which introduced payments for set-aside and for maintaining land in agricultural condition, the number of 'farmers' in Britain rose from 80,000 to 120,000. It is thought that this rise was created by the number of people buying land with minimal farming activities on them who benefited from the new allowances.

In his talk, Christopher usefully summarised the present state of the case law on agricultural property relief on farmhouses deriving the following propositions. A farmhouse is a dwelling for the farmer from which the farm is managed (*Rosser v IRC* [2003] STC SCD 311) and it is the house of the person who lives in it in order to farm the land comprised in the farm and who farms the land on a day to day basis (*Antrobus (2)*). Unless farming operational management is conducted from the property, it cannot be a farmhouse (*Higginson v CIR* [2002] STC SCD 483). ■

The second part of these meeting points will appear in a future issue of *Taxation*.