

IN THIS ISSUE:

- Agricultural Property Relief
- Three Months or Bust
- Entrepreneur's Relief
- Langleys Boosts Agri' Team
- Some dates for the diary

AGRICULTURAL PROPERTY RELIEF

The thorny issues relating to availability of Agricultural Property Relief from Inheritance Tax for residential property continue to occupy judicial minds. A year or so ago, the decision of the First Tier Tribunal in a case relating to Mr Atkinson's bungalow gave real hope to those members of the farming community who have had to move into residential care of one sort or another.

Mr Atkinson had farmed the same holding since 1957 but in 1966 he had moved from the farmhouse into a bungalow built on the holding. He had continued to farm in partnership with his son and, then, his grandson. The farming partnership took an Agricultural Holdings Act tenancy of the farm from Mr Atkinson.

Unfortunately in 2002 Mr Atkinson became ill and after a spell in hospital, moved into a care home where he died some four years later.

HMRC decided to disallow Agricultural Property Relief on the bungalow and this decision fell to be reviewed by the First Tier Tribunal. It was clear from the evidence that Mr Atkinson continued to be a partner until his death and took part in discussions relating to the farm at least once a week. His belongings and furniture remained in the bungalow and he occasionally visited although no one else resided there.

The First Tier Tribunal decided that HMRC had been wrong and allowed Agricultural Property Relief. It concluded that the partnership was in occupation of the bungalow up to the date of

Mr Atkinson's death and such occupation was for the purposes of agriculture. In making its decision, the Tribunal gave a good deal of comfort to many farmers who have found themselves in a similar position.

However, HMRC continued to hold a different view and decided to appeal the decision. This was heard recently by the Upper Tribunal but, unfortunately, Mr Atkinson's Executors declined to appear because of the cost of doing so. Notwithstanding this, all the evidence was reviewed and a different conclusion reached. The Upper Tribunal took the view that the First Tier Tribunal had erred in its interpretation of the law. It stated that the correct approach was to identify what does and does not amount to a sufficient connection between the use and occupation of the bungalow and the agricultural activities being carried out on the farm. Having applied this test, it concluded that the bungalow had not been occupied for the purposes of agriculture immediately before Mr Atkinson's death and, indeed, it had not been occupied for this purpose once it had been established that he would never be able to return to live there.

Moving to residential care is probably one of the more difficult decisions that any individual or their family has to take and, for the agricultural community, this is exacerbated by the potential loss of a valuable tax relief. Once the decision in the Atkinson case has been digested and the lessons learned, professional advisers will be well placed to help farmers with the practical implications of these difficult decisions.



THREE MONTHS OR BUST

Like many agricultural advisors, we are constantly banging the drum to clients about the importance of succession planning, particularly when it applies to tenancies governed by the Agricultural Holdings Act 1986 ("the Act").

In recent years we have all seen land values and commodity prices rocket largely on the back of a rapidly increasing world population whose diet has progressed from rice to meat. It is therefore unsurprising that landlords, whether they are individuals or institutions, are keen to challenge succession applications and bring the holding back in hand to farm themselves, to sell it or to let it under an FBT.

Unfortunately, when it comes to succession on death the Act is an unemotional beast! An applicant who wishes to succeed has only three months in which to submit their succession application to the Agricultural Land Tribunal ("the ALT") following the death of the tenant. This three month period cannot be extended and if the application is not submitted to the ALT in time then no application can be made. If the landlord has already served a Case G Notice to Quit during that time then the new farm machinery that you purchased will shortly be in a farm clearance sale rather than on the holding.

Three months may seem a reasonable period of time but it will pass extremely quickly. Whilst completing the application form itself is relatively straight forward, collating the supporting documentation that is required may not be.

Assuming succession rights apply to the tenancy, the applicant will need to prove to the ALT that they are both eligible and suitable to succeed to the tenancy.

To be eligible the applicant must firstly be a close relative of the deceased, namely their wife or husband, brother, sister, child or any person whom (in the case of any marriage) was treated by the deceased as a child of the family in relation to that marriage. This test can cause particular problems where a tenancy is held jointly by two brothers, as nephews and nieces are not eligible to succeed under the Act.

Secondly, they must pass the "Principal Source of Livelihood Test". Here the applicant needs to prove that in the seven years ending with the date of death of the tenant that the applicants only or principal source of livelihood throughout a continuous period of not less than five years has been derived from their agricultural work on the holding or on an agricultural unit which the holding forms part. Livelihood includes not only income and drawings but also benefits in kind. This test is often the "Becher's Brook" of many an application and the first point of challenge for the landlord.

The final eligibility test is that the applicant must not be the occupier of a commercial unit of agricultural land

The ALT will have regard to the suitability by examining the applicant's practical and academic farming experience, their health and financial standing as well as the landlord's opinion of the applicant's ability to farm.

So what next? We would advise that you go through a draft succession application form with your professional advisors to determine who you would like to succeed, whether they are eligible and suitable and, if not, what needs to be done to give you an improved chance of success.



ENTREPRENEURS' RELIEF



The Taxation of Capital Gains Act 1992 Part V Chapter 3 introduced capital gains tax entrepreneurs' relief for a disposal of a business or business assets on or after 6 April 2008. Entrepreneurs' relief replaced taper relief, which in turn had replaced retirement relief. Entrepreneurs' relief is largely based on the old retirement relief provisions and seem to be causing farmers some problems, as did the old retirement relief rules. What issues most commonly cause difficulties for farmers wanting to claim entrepreneurs' relief?

The first difficulty, as with other reliefs, is where a farmer gradually withdraws from active farming into retirement. The business may no longer be classed as a 'trade' as the farmer retires. For HMRC purposes, a business must be carried on as a commercial trade with a view to making a profit. Assets that are not used for trading purposes will not qualify for entrepreneurs' relief.

The statutory definition of farming is a twin test. To trade, the farmer must occupy the land that he farms and he must carry out acts of husbandry on that land. 'Husbandry' means the growing of crops or raising of livestock. A farmer will no longer carry on a trade if he grants exclusive occupation of the land to a third party e.g. a tenancy. In addition the granting of grazing rights or the letting of buildings in a formal way may also jeopardise a claim for entrepreneurs' relief.

Secondly, the timing of sales can cause difficulties for farmers. The legislation requires the disposal of business assets to be on, or following the cessation of a business. Gains on disposals of business assets realised before the business itself has ceased will not qualify for relief. Farmers disposing of their business therefore need to carefully structure the sale of the business assets to ensure entrepreneurs' relief will apply.

Where farming continues and there is a disposal of 'part of a business' relief may be available providing it is not merely a scaling down of operations. There is no statutory definition of what constitutes 'part of a business'. However, the approach taken is to look at the business before and after the disposal and ascertain whether the business following the disposal is a different type of farming enterprise to that prior to the disposal. If a different type of farming enterprise is carried on after the sale of part then entrepreneurs' relief may be claimed.

The entrepreneurs' relief legislation is inconsistent and difficult to interpret. Farmers considering retirement or the disposal of their business, or part of it, should obtain professional advice to ensure they have the best opportunity to work within the parameters of the legislation to claim entrepreneurs' relief.

LANGLEYS BOOSTS AGRI' TEAM

The Agricultural Unit here at Langleys has recently strengthened its team with the addition of specialist agricultural solicitor James Worthington.

James, who has specialised in agricultural property law for over nine years, is a member of the Agricultural Law Association (ALA). He will advise clients on all aspects of agricultural

property law, including acquisitions, tenancies and wind farm agreements.

One of the first people in the country to be awarded a Fellowship by the ALA, James has also helped to establish the Wolds Fresh Start Academy and the Lincolnshire Fresh Start Academy which assist young farmers.



SOME DATES FOR THE DIARY

We look forward to seeing as many of you as possible at the following events where Langleys will be in attendance:

LAMMA 2012

Newark Showground (stand 896)
18th and 19th January 2012

Middleton Point to Point

Whitwell-on-the-Hill, near Malton
1st April 2012

Newark and Nottinghamshire County Show

Newark Showground
12th and 13th May 2012

Cereals Show 2012

Boothby Graffoe, near Leadenham, Lincolnshire
13th and 14th June 2012

The Lincolnshire Show

The Lincolnshire Showground
20th and 21st June 2012

The Great Yorkshire Show

The Great Yorkshire Showground, Harrogate
(the CLA enclosure)
10th-12th July 2012

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