

**In the first installment on capital gains tax reform the overriding message was that farmers and landowners are going to be a lot worse off under the new regime if they are going to make capital gains, writes Nick Holmes, partner, Chavereys.**

In the example of Farmer Giles, a capital gain of £2million after 5 April 2008 meant an additional tax bill of £160,000. This assumes that the base rate of capital gains tax stays at 18%, my own opinion is that we will see an increase in this over the next few years. The general picture is therefore a rather depressing one. The question is what can be done about it and how can we get back to the magical tax rate of 10% achievable under taper relief.

The first thing to remember is that the 10% rate achievable under entrepreneurs' relief (ER) only applies to the first £1million of gains for each individual. In other words to achieve the 10% rate on any gains over £1million there needs to be more than one person involved i.e. joint ownership.

This is not an uncommon situation where family landholdings are concerned but the ability to achieve a tax saving may mean it is sensible to redistribute ownership of any assets that may be disposed of. One way of looking at this is each spouse or child is potentially worth £80,000!

The next thing to consider is that the conditions for ER must have been met for at least a year.

And the final but really difficult thing to achieve is that ER only applies on or in conjunction with the sale or cessation of a business.

So exactly how do we achieve this – well if you are retiring or ceasing farming this is automatic but what if you are not? for example just selling off a parcel of land.

The answer is simple – take the assets you are planning to dispose of and create

a business distinct from the existing business you will retain.

In the case of Farmer Giles he should have given half of the land to his wife or children and formed a separate entity to hold and farm the property he was planning to dispose of. Then, assuming the new structure had been in place for a year, on disposal of the land the farming trade ceases and ER will apply. A tax saving of £160,000 for relatively little hassle.

This is a theoretical example and I have made this look a lot simpler than it actually is. Any restructure requires specialist advice of course! and you need to consider the practicalities of this type of scheme.

Failing this there is of course rollover relief to defer any capital gain and there are some slightly more exotic routes involving transferring a business to a company. No

two situations are the same where land and property assets are concerned and all must be considered in isolation.

Last but not least how does ER affect shareholders in farming/landowning companies?

Only shareholders who are employees or officers (director, company secretary) of the company and own at least 5% of the share capital will qualify for ER. In addition to this the company in question must be a trading company. This means the company must be more than 80% trading when looked at in the round, something many diversified farming companies now find it difficult to achieve.

Unfortunately as with all recent tax legislation the new capital gains tax rules are complicated, badly draughted and mind-numbingly dull.

## Depressing picture



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