HS2

Information for Farmers and Growers

Capital Gains Tax and Inheritance Tax

1 Introduction

1.1 This note provides information for Farmers and Agricultural Businesses on

- Capital Gains Tax in respect of compulsorily acquired property, and
- Inheritance Tax for compensation proceeds which form part of a farmer's estate on death.

2 Capital gains tax

2.1 In respect of compulsorily acquired property, there are a range of assets into which a farmer can roll over any capital gain in respect of land disposal proceeds. In particular, two types of rollover relief are relevant:

- Sections 247-248 of the Taxation of Chargeable Gains Act 1992 ("TCGA") (compulsory acquisition roll over relief) apply widely to new land acquired (with the exception of a dwelling house used as the farmer`s main residence), whether or not used for a trade.

- Sections 152-157 of the TCGA (business asset rollover relief) apply to assets used by a trading business which includes inter alia land and buildings, fixed plant or machinery and - for sole traders or farming partnerships - goodwill, certain quotas and payment entitlements under the single payment or basic support scheme for farmers (section 155 TCGA). This roll over relief may also be available on capital expenditure on improvements made to existing assets or buildings. Reinvestment can also be made in non-farming trading businesses, furnished holiday lets or the commercial occupation of woodland if these trades are carried on by farmers, or their existing trade ceases.

2.2 The time limits for rollover reinvestment are that the new asset must be acquired in the period ending 12 months before or ending 3 years after the disposal of the land. HM Revenue & Customs (HMRC) do however have the discretion to permit a longer period (s152(3) TCGA). HMRC have confirmed they will extend this period where there is a real intention to acquire a replacement asset and there are acceptable reasons to extend up to 3 years before or six years after the land disposal.

2.3 HMRC has published guidance on what could amount to:

- reasonable steps to mitigate the threat of compulsory purchase,
- difficulty in disposing of the old asset,
- the acquisition of land with the intention of erecting a building, or
- the need to have new premises functioning before old premises are vacated.

2.4 In accordance with the general duty to mitigate, where the farmer shows a real intention to acquire a replacement asset, and reasonable steps are taken to acquire such replacement asset in accordance with HMRC’s published practice, if such investment is not possible despite such intention and the taking of such reasonable steps, the Capital Gains Tax may be included as a potential head of claim in the notice of claim following entry under Part 1 of the LCA. Farmers are recommended to seek appropriate professional advice: professional fees reasonably incurred may form part of that claim.

3 Inheritance tax

3.1 In respect of Inheritance Tax for compensation proceeds which form part of a farmer’s estate on death, it is recommended that appropriate professional advice is sought. The reasonable cost of such specific Inheritance Tax advice, if reinvestment is not possible, is capable of falling within the “Crawley principle”, such that farmers can include the reasonable cost of such specific Inheritance Tax advice as a potential head of claim in the notice of claim following entry under Part 1 of the LCA.