UHY Hacker Young
Chartered Accountants

Entrepreneurs' Relief

Rural and agriculture sector

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Achieving Entrepreneurs' Relief requires more than just the disposal of businesses assets and farmers are no exception.

GENERAL PRINCIPLES

Introduced by the Finance Act 2008, Entrepreneurs' Relief remains comparatively new legislation and there have so far been only a few cases heard by the tribunal or court system. The wording of the legislation was largely drawn from Retirement Relief, a predecessor relief phased out from 1998 onward, and taxpayers and advisers have had to refer to Retirement Relief cases to draw conclusions as to how HM Revenue and Customs (HMRC) might seek to apply the Entrepreneurs' Relief rules in practice.

MCGREGOR V ADCOCK. [1977] STC 206

One of the keynote cases relating to Retirement Relief was McGregor vs Adcock, heard in the High Court (Chancery Division) in 1977. The case was concerned with a farmer who sold off five acres of his 35 acre farm for development, continuing to work the remaining 30 acres. The argument centred on whether Mr Adcock had disposed of a part of his business or had simply disposed of an asset. In making his argument, the taxpayer sought to argue that farming was different to any other business in that it consisted of occupying land, and so a disposal of land was necessarily a disposal of part of the business.

Mr Adcock lost the case, failing to convince the courts either that farming was peculiar to any other business or that a part disposal of a business had taken place, and relief on the sale was denied.

RUSSELL [2012] TC 02299

In 2012 a Mr Russell took an almost identical case to Tribunal, relating to the sale of 16 acres of a 53 acre farm reported on the partners' 2008/09 tax returns.

With a High Court precedent to follow and such similar facts in question, it was little surprise that Mr Russell lost his case. But the decision gives a firm indication that Retirement Relief cases remain a good indicator when considering the availability of Entrepreneurs' Relief.

GILBERT (T/A UNITED FOODS) [2011] TC 01542

A year earlier in 2011, HMRC also quoted McGregor vs Adcock in seeking to deny Mr Gilbert his claim to Entrepreneurs' Relief in respect of a sale of a part of a business. Mr Gilbert was not involved in agriculture and the facts of the case were very different to Mr Russell's, but it is noteworthy that Mr Gilbert was successful in securing relief.

WHAT LESSONS CAN BE TAKEN FROM THESE CASES?

- Entrepreneurs' Relief is less generous than its predecessor, Business Asset Taper Relief. A disposal of mere assets is no longer enough to secure a reduced rate of capital gains tax;
- Farmers will not succeed in convincing HMRC or the courts that the rules apply to them in some peculiar and special fashion. They need to meet the same criteria as other businesses;
- Retirement Relief cases remain the best indicator on the availability of relief when there is a grey area over qualification; and
- Just because HMRC challenge relief, does not mean they are correct or that a tribunal or court will agree with them.

With the main rate of Capital Gains Tax being nearly three times the Entrepreneurs' Relief rate (28% / 10%), qualifying for relief will make a huge difference to the tax bill on the sale of businesses. Entering into a dispute with HMRC, and particularly taking a case to tribunal or beyond, can quickly become expensive, sometimes outweighing the tax at stake.

The importance of planning business disposals in conjunction with your professional advisors should not be underestimated if you plan to enjoy the attractive 10% tax rate up for grabs.

THE NEXT STEP

If you would like to discuss Entrepreneurs' Relief, or any other aspect of business planning for your farming business, and to find out more about how we could help your business, please contact one of our specialists:

Tim Maris, partner
Royston and Cambridge
t: +44 1763 247 321
e: t.maris@uhy-uk.com

Andrew Redman, portfolio holder
Royston
t: +44 1763 247 321
e: a.redman@uhy-uk.com

Alternatively, read more about us on our website at www.uhy-uk.com.

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