

Solar farms: beware of the tax traps.



Land taken out of agricultural production could become exposed to inheritance tax (“IHT”) without proper planning. The position should be fully understood before agreeing to a development.

Agricultural Property Relief (“APR”) is lost once the land is leased to a solar power operator, even where it’s possible for sheep to graze under the solar panels.

Eligibility for APR depends on the land being primarily occupied for agricultural purposes, which will not be the case through the operator.

Taking land out of agriculture could also lead to a loss of APR on the farmhouse if it is no longer of ‘a character appropriate’ to the lower area of land farmed.

In any event, APR does not cover the non-agricultural value that will inevitably be significant. Business Property Relief (“BPR”) can mop up, but it is not a given. BPR is not available for stand alone letting businesses, but it can be enjoyed if the rental activities are part of a single business of letting and farming. It is therefore vitally important for the accounts and other documentation to support this.

BPR is possible but only if the farming or other trading activities represent the biggest part of a composite business. For example, If the solar panels only occupy a small area of a substantial working farm.

It is important to confirm who owns what as only 50% BPR is available on land owned by one or more individuals outside the business. The legal paperwork such as the Partnership Agreement,

Title Deeds, Land Registry documents, Deeds of Gift, Wills, etc. should be scrutinised, particularly if the position has yet to be audited. Transferring the land into the business could immediately secure 100% relief.

BPR is also useful to protect the non-agricultural value of farming assets such as land with development potential and barns with permitted development rights. It is an ‘all or nothing’ relief, so if the letting is expected to be the largest part of the overall business it might be appropriate to run two separate businesses to preserve relief on the farming assets.

For example, the land could be transferred to a family trust before it is leased whilst it qualifies from APR/BPR. This could have immediate IHT benefits with further IHT savings after surviving 7 years. This can also be done free of capital gains and stamp duty land tax. Alternatively, a limited company can be considered.

We are long overdue IHT relief for “going green” and there is currently no proposed solution for taking land out of agricultural production in favour of the Environmental Land Management Scheme (ELMS), which is expected to be implemented during 2024. With an ageing farming population this raises some big questions.

The impact on future capital gains gift holdover, rollover and business asset disposal relief should also be considered together any potential VAT, stamp duty land tax and business rates implications.

If you would like to discuss any of the points raised in this article, please get in touch with our team.



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