Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly*'s experts can help

Would a 25-year solar lease affect IHT reliefs?

Changing the main source of income from farming to solar lease rents can make the land ineligible for certain tax reliefs

TIM SCRIVENER

Q We have been invited to consider leasing some land for a solar farm. The block of land is about 30 acres (about half of our farm) and is poor-quality, steep and permanent grass.

My wife and I are in our seventies and our son will inherit, so we are interested in whether a 25-year lease will affect liability to inheritance tax.

The solar panels will enable sheep to graze underneath.

Clare Hulme
Associate director
Duncan & Toplis

A In your situation several issues need to be taken into account. These include the tax implications, but any decision should not be led by the tax implications alone.

You and your wife are in your seventies and your son will inherit your farm. Is your son involved in farming currently and does he wish to continue to actively work the farm once he inherits it? What are his thoughts about the potential solar farm? These are all questions that should be considered.

If you move forward with the solar farm you will be committing the land to this venture for a minimum of 25 years, which will most likely see a change in ownership during the lease period.

Therefore a discussion with your son about his future plans and thoughts would be beneficial. When it comes to succession planning, open communication between family members is key to ensuring everyone involved is happy with what is planned and will happen.

Once planning for solar panels has been granted, the value of the land will increase considerably, and should the agricultural use be considered to have ceased, inheritance tax (IHT) and capital gains tax (CGT) reliefs may be lost.

As you state, it may be possible to retain the right to graze sheep around the solar panels and to claim direct payments (and possibly whatever replaces it in terms of support), but this may result in a lower rent being offered by the solar farm. The acreage will become less productive for grazing.

While you are actively farming all of your land (about 60 acres), the following IHT reliefs would be available to you:

Agricultural property relief (APR) – 100% relief on the agricultural value of the land

Business property relief (BPR) – 100% relief on the value of the land

If the land subject to the lease is no longer farmed and is let with exclusive access to a solar farm, then APR will be lost. If you maintain the right to graze sheep, APR may be available on some of the land at its agricultural value.

When considering whether BPR would be available, you would have to look at the business as a whole. BPR could be available on the full value of all the land if it is run as part of a larger trading business and the rental income formed a small part of the total income.

Looking at your scenario, I would be worried that BPR would not be available as you are changing the use of half of your land from agriculture to solar, and I would expect that the rental (non-trading) income from the solar farm would be the greater element of your total income.

Even if this were not the case, there is a risk that APR could be lost on the farmhouse, depending on its size in relation to the continuing agricultural operation.

If yourself and your wife are in good health, and do not need the rental income, it may be worth considering gifting the land to your son before planning for solar is obtained (before any uplift in value) as a Potentially Exempt Transfer (PET). This would take the land out of your estate for IHT purposes, should you survive for seven years following the gift.

By gifting the land at this point it will usually qualify for holdover relief from CGT, and can be transferred to the next generation without crystallising a CGT charge.

If you gift the land once it is being used as a solar farm, it will not qualify for holdover relief and will create a CGT charge, which would be based on a higher market value, now that it has planning for solar. Two valuable CGT reliefs – entrepreneurs relief (ER) and rollover relief – are likely to be lost due to the rental income being predominant.

In summary, if you do move forward with a lease for a solar farm and do not make any changes to the ownership, the IHT liability on yours and your wife's estate will increase because valuable reliefs may be lost. This will also add complexity to the administration of your estate. I would strongly recommend speaking to a specialist agricultural tax adviser before proceeding, so that they can quantify the position for you.

DO YOU HAVE A QUESTION FOR FW'S EXPERTS?

Outline the issue in no more than 350 words. Please give as much information as possible.

Send your enquiry to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number.

You can also email your question to fwbusinessclinic@rbi.co.uk

Our expert partners

THRINGS SOLICITORS

DUNCAN & TOPLIS CHARTERED ACCOUNTANTS AND BUSINESS ADVISERS

How can the start date of a tenancy be established?

Q The tenant farming my deceased aunt's farm claims that his unwritten tenancy began in 1986. I thought it was probably later. The solicitor asked me if I had evidence to substantiate or refute the tenant's claim, stating that he would have to take his word for it. I suggested to the solicitor that the claimant himself – the tenant – could more easily provide evidence, as he was a party to the transaction and I was not. What do you suggest could be done?

Duncan Sigournay
Partner and head of agriculture **Thrings**

A Ultimately the commencement date will come down to a question of evidence that will need to be considered by a court, an arbitrator, or a tribunal, depending on how the matter comes to a head.

Supporting evidence such as diary entries, contractor's invoices, subsidy claims, accounts, photos and the like can be crucial. The fact your aunt is no longer alive will inevitably have an effect on the quality of the direct evidence that can be produced.

The available evidence will be weighed up and the credibility of the witnesses established. That will result in findings of fact, having regard to the civil burden of proof being judged on the balance of probabilities.

As well as looking at the commencement date, one needs to consider whether the arrangement can fairly be said to be a tenancy. Generally an occupier needs to be able to show they have had exclusive possession of the land. Again that will be determined on the available evidence.

It is also necessary to establish whether it is an agricultural tenancy rather than a non-agricultural business tenancy or even a common law tenancy. The use and intended use of the land at its commencement and in the intervening period will be relevant in that regard.

Similarly there must be a business element to the use of the land to gain and retain the protection of certain statutes. It is possible for tenancies to change their status during their lifetime due to changes in use.

Other than that you do not think it was as early as 1986, you do not mention when you thought the tenancy may have started. I highlight this as there are some key dates in relation to agricultural tenancies. One of these is 1 September 1995.

Tenancies granted on or after that date are typically farm business tenancies (FBTs) governed by the Agricultural Tenancies Act 1995 (the 1995 Act) whereas tenancies before that date will be protected by the generally more "tenant-friendly" Agricultural Holdings Act (the 1986 Act). As such, unless you believe the tenancy started on or after 1 September 1995, there is little to be gained by focusing on the actual commencement date.

Another key date is 12 July 1984, since tenancies granted before then also have the benefit of succession rights, which opens up the possibility of two successions to close family members.

If the tenancy is governed by the 1986 Act, you should be aware that there are statutory restrictions on a landlord's ability to serve notices to quit to recover possession of the land.

One issue I always highlight to landlords where there is no written tenancy is that technically the tenant could assign (transfer) the tenancy to another party without the landlord's consent.

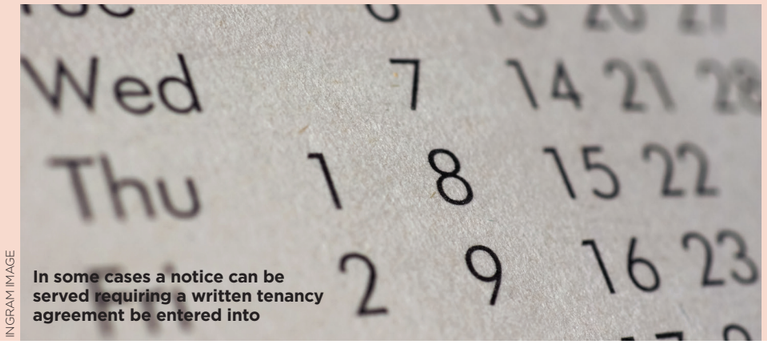
If the tenant assigns it to a company, one of the grounds for regaining possession would be lost, namely the ability to serve a notice to quit following the tenant's death.

A landlord faced with a company tenant would have to rely upon using one of the other statutory grounds in order to regain possession.

There is a mechanism with the 1986 Act whereby either party can serve a "section 6" notice, which requests that a written agreement be entered into.

Significantly, where that notice is served by a landlord, a block on any assignment of the tenancy immediately arises, thus removing the risk of the tenancy being transferred to a company tenant.

I would therefore recommend that you prioritise the service of a section 6 notice. That will at least ensure you can serve a notice to quit on the death of the tenant.



In some cases a notice can be served requiring a written tenancy agreement be entered into

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