

## **The family holdings - strategy update and ideas for the future**

Edmund and his family have lived at Blackacres Manor for many generations. Their lifestyle has been maintained by the Empire Company but Edmund has discovered that whilst the debts issued by the Empire Company are now regarded as toxic and there is no immediate prospect of further dividends his bank do not regard the money lent to him as at all toxic and are 'suggesting' early repayment.

Edmund has also heard that a family friend had recently been 'helped' by HMRC on an enquiry visit which concluded in HMRC helping themselves to significant back tax, interest and penalties.

Edmund has decided a new approach is needed, not least because his accountant recently worked out how much Inheritance Tax would be payable on his estate, and has taken the first step in a makeover by telling Royal Mail that in future his property will be known as Whiteacres Manor. However, this will not be sufficient to save Whiteacres.

### **Chairman**

Rupert Ashby - CLA

### **Speakers**

Adrian Baird – CLA

Fiona Graham – Boodle Hatfield

Giles Wordsworth – Smiths Gore

Tony Edwards – landtax

November 2009  
Seminar notes

**Personal circumstances**

Edmund – age 55 - married to Caroline age 50 with children  
 Ziggy age 30 unmarried in a rock band and with no interest in Whiteacres  
 Kristal age 27 with her own catering / events business living in London with an 'unsuitable' husband and 2 children  
 Jane age 25 married with 2 children – husband is French and has a successful business - they live in France  
 David 22 engaged and just finished a business degree – has always been very interested in the estate but assumes he will have no role and currently looking for a job in London. Prospective wife involved in eventing.  
 Edmund would like to keep the estate in his family

**Brief synopsis of the holding**

	£'000
The estate of some 3,000 acres is largely within a 'ring fence' surrounding a small village where the planning policies are quite restrictive. At present ownership is wholly with Edmund	
The in hand farming is done by Blackacre Farms Limited, a company which was set up by Edmund's father. All the rents from the cottages are paid into the company and the company has incurred all the expenditure on the estate. The company has never made much profit. Edmund has personal borrowing of £1m secured on some of the farmland and is having problems meeting the capital repayments following the downturn in the fortunes of the Empire Company.	
There is a river running through the holding which is used on a casual basis by a local angling club. Edmund has never run a shoot although his father used to run a successful one.	
Whiteacres Manor stables etc and gardens of about 15 acres Occupied by Edmund and Caroline. The property has been neglected and is in a very poor condition. Now the family is older Edmund and Caroline would like to move out.	5,000
Rookery Farm – 250 acres let on AHA tenancy granted in 1970 – tenant is divorced and in his late 50s with no obvious successor. The farmhouse is a 5 bed farmhouse and there is a farm cottage which is sublet although no permission for this has been given. There is a range of traditional buildings around a large farmyard some distance from the farmhouse in the centre of the village. The farm is run down, is farmed poorly and the tenant is asking that the buildings be improved.	700
Manor Farm – 750 acres let on AHA tenancy granted in 1962 – tenant is in his late 70s and his two sons farm on the holding and run a contracting business. The farmhouse is 4 bed (the tenant, his wife and younger unmarried son occupy this) and there is a cottage occupied by the older son and his family. The buildings are all modern.	1,500
2,000 acres (arable, grass and woodland) The 200 acres of grass includes 40 acres around the Manor which is essentially parkland. There are some 250 acres of woodland.	9,250
14 houses / cottages – 1 occupied by the farm manager (about to retire) and 2 by farm workers. 2 are occupied by retired service employees and 1 by a retired farm employee. 4 are let on Rent Act tenancies and 4 on ASTs	4,500

## **Introduction - Rupert Ashby**

### **Giles Wordsworth**

Review of the family and the estate components

### **Tony Edwards**

Strategy overview

Look at whole not individual parts

Do not seek just a short term fix – simply concentrating on Inheritance Tax and trying to give assets away may not be the solution.

Approach of HMRC in self assessment era – looking for a ‘result’ and resultant risk of penalties if care not taken over detailed implementation and follow up

### **Fiona Graham**

Agricultural Property Relief

The tests for relief and rate

Need qualifying land

Buildings – use requirement and detailed questions on IHT400

Houses

Given on agricultural value (so that non agricultural value must be covered by Business Property Relief)

### **Adrian Baird**

Business Property Relief

What is a business for Business Property Relief (trading compared with investment)

When will a business be an investment business ?

[1999] STC (SCD) 321 Farmer and another (executors of Farmer, deceased) v Inland Revenue Commissioners

[2005] STC (SCD) 823 Clark and another (executors of Clark deceased) v Revenue and Customs Commissioners SpC 502

[2005] STC (SCD) 177 Ninth Marquess of Hertford and others (executors of Eighth Marquess of Hertford, deceased) v Inland Revenue Commissioners SpC 444

[2008] STC (SCD) 752 McCall and another (personal representatives of McClean (deceased)) v Revenue and Customs Commissioners SpC 678

2009] SFTD 374 Brander (representative of James (deceased), Fourth Earl of Balfour) v Revenue and Customs Commissioners [2009] UKFTT 101 (TC)

What qualifies for relief ?

Key considerations when structuring a business / inclusion of investment assets within a larger trading business

Relief is ‘all or nothing’ - if nothing no relief on farm stocks and equipment

**Tony Edwards**

Business Property Relief

The excepted asset test

Distinction between an asset used for business purposes and an excepted asset

What is the 'asset' for the purposes of this test ?

Partnerships and sole traders – Business Property Relief given on capital account (and then look at assets) – importance of defining which assets form part of business

**Adrian Baird**

Business Property Relief

Alternative structures / rates of relief

Sole Trader

Partnership

Partnership with limited partners

LLP

Company

What qualifies / interest in a business etc

[2008] STC (SCD) 792 Re the Nelson Dance Family Settlement; Trustees of the Nelson Dance Family Settlement v Revenue and Customs Commissioners SpC 682

Gift of property that would not qualify in isolation – use of trusts as opposed to PETs

Adding property to an existing business (partnership or company) that already qualifies for Business Property Relief.

[2008] STC (SCD) 592 Vinton and another (executors of Dugan-Chapman (deceased)) v Revenue and Customs Commissioners SpC 666

Importance of documenting (eg partnership agreement) what property is and is not part of the business and then making sure accounts and returns reflect documents on an ongoing basis.

Analyse existing structures – are these working and if not how can they be changed.

### **Giles Wordsworth**

Analysis of the holding – threats and opportunities:

General matters

Opportunities to include land in local plans – long term nature of this compared to small developments (farmyard / barn conversion). How estate fits into other developments – e.g. road building / requirement for masts.

Resources of holding e.g. minerals

Review of components of the Blackacres Estate.

Farming – review of in hand operation – would this be better dealt with at least partly on a contract basis. Age of farm workforce / need for modernisation / bringing in more commercial management / release of capital from machinery

Manor Farm – look at a succession AHA tenancy to increase rate of Agricultural Property Relief from 50% to 100%. Factors to consider – possibility of using sons as contractors with involvement in farming land on the estate.

Rookery Farm

In view of situation is it possible to negotiate a deal with the tenant – would he be prepared to move to a house in the village and give up tenancy if suitable financial arrangements can be made.

Cottages – analysis of occupancies and values – possibility of some gifts into nil rate band trusts.

Correct procedures to stop agricultural workers getting protected occupancies.

Inadvertent creation of 'in house' tenancy for Blackacre Farms Limited and implications of company carrying out improvement works on property it does not own.

Other matters relevant to review of the estate:

Skills of family to expand activities and wishes for preservation of the estate.

Should Kristal be brought in to manage a business operating out of Whiteacres Manor (with Edmund and Caroline moving into another house on the estate) – describe possibilities of operations. Opportunity to have a partnership between Edmund and Kristal with 100% Business Property Relief on Whiteacres Manor after 2 years.

Can stables be developed with a horse enterprise (possibly using the park)

Should David come back to run the estate rather than working in London.

Importance of family looking at personal objectives and what roles they can play.

Importance of advisers in getting family members to have this type of discussion.

Gifting – identifying assets suitable for lifetime gifts after analysis of the reliefs available and valuations. Particular emphasis on assets that are less valuable now due to occupancy conditions and assets where enhanced valued can be realised in the future.

**Adrian Baird**

Agricultural Property Relief

The elephant in the room - Agricultural Property Relief on farmhouses

Relief on cottages with agricultural workers and on tenanted holdings

Non agricultural value of farmhouses

**Fiona Graham**

Protecting the assets

Are trusts viable vehicles post 2006 ?

Family limited partnerships - The purposes and benefits of them

Protecting assets against divorce and bankruptcy

Pre-nuptial and post nuptial agreements

The use of pilot settlements for wills

Variations and cautions over their use

Lau (executor of Lau (deceased)) v Revenue and Customs Commissioners [2009] STC (SCD) 352

**Tony Edwards**

Funding and tax relief

Use property not qualifying for Inheritance Tax reliefs as security. Borrow against such property and use loan money for a qualifying purpose – e.g. as introduction of partnership capital.

Gearing up a rental business.

**Giles Wordsworth**

Valuation requirements

Inheritance Tax

Capital Gains Tax

Indicative for planning purposes

HMRC approach

Importance of specific instructions and valuations for HMRC reflecting structures and reliefs to be claimed.

Identifying non agricultural values to seek to ensure Business Property Relief available on this.

Main residence relief re Whiteacres Manor – identifying area that will qualify – last 3 years will always qualify so possibility of obtaining 100% Business Property Relief before gift and still making gift with benefit of full main residence exemption.

**Tony Edwards**

Summary - Possibilities for restructuring

Partnership for farming (between Edmund and Blackacre Farms Limited) to enable 100% Business Property Relief on property included in the business. Possibility of including some rented property which can then be gifted with benefit of Business Property Relief.

Partnership between Edmund and Kristal to give Business Property Relief on Whiteacres Manor – to include fishing and shooting venture ? – ability to claim costs of refurbishment of the Manor against tax / recover VAT. Business Property Relief after 2 years to make gift – possibility of using a series of trusts.

Equestrian venture

Restructure borrowing to get interest relief – look at long term borrowing, interest only, perhaps some on fixed rates.

Summary of review process

**Question time**