



inheritance tax relief for farmers and landowners

Agricultural Property Relief (APR) and Business Property Relief (BPR) are valuable tools in minimising the amount of Inheritance Tax (IHT) payable on death or on lifetime gifts. With increasing anti-avoidance legislation and case law we look at the fundamentals and at some points that might prejudice securing the Reliefs

Agricultural Property Relief

APR is generally available (wholly or partially) on gifts of land occupied for the purposes of agriculture, together with buildings and farmhouses used for agricultural purposes. The property in question must have been either occupied by the owner for the purposes of agriculture for two years prior to the gift or owned by him for seven years and occupied by someone else for the purposes of agriculture throughout that seven year period.

There are further conditions regarding occupation and use that will determine whether the rates of relief will be 50% or 100%. If the land is in-hand, let on a Farm Business Tenancy (FBT) or the owner has the right to vacant possession within 24 months, 100% relief should be available. In most other cases only 50% relief would be available. The relief is however only available in respect of agricultural value.

What is Agriculture?

In broad terms, agriculture is farming as generally understood and includes horticulture, fruit growing and the intensive rearing of livestock or fish for human consumption. It also includes woodlands that are ancillary to the farming operation, eg woodland shelter belts.

What is excluded?

There are a few specific exclusions. Stud farming is, but provision of livery and grazing horses used for recreational purposes is not agriculture. Derelict buildings are not “occupied for the purposes of agriculture” and entitlements under the Basic Single Payment scheme do not qualify for APR (although BPR may be available).

Broiler houses for rearing poultry have also been excluded in the past on the basis that the buildings are not used for a purpose “ancillary” to the agricultural land and pasture. Again, BPR may well be available in this instance where the activity is run by the land owner.

Farmhouses

There has been extensive coverage of recent cases in the agricultural press. You may be aware of the “character appropriate” test. An important consideration for the relief is the location of the farming business. Is it the farmhouse or a farm office? The answer will impact on the availability of the relief for the farmhouse. Don’t assume that APR is automatically given on what might be considered to be the farmhouse. The whole of the value will not be agricultural. Particularly exposed to HMRC “attack” are older farmers with small/medium sized farms with beautiful farmhouses.

Older farmers should beware of retirement - HMRC may view the farmhouse as a home rather than being the centre of operations for the farming business. Beware of losing reliefs with house moves.

Diversification Issues for both Landlords and Owner Occupiers

Tenancy reforms to enable tenants to widen the scope of their activity on the land they occupy may be widely viewed as a good step towards encouraging profitability through diversification.

Bear in mind that if you are the landlord, APR will only be available if the tenant is carrying on agricultural activities. If the tenant diversifies and sets up another business (eg grazing horses or operating bed and breakfast, holiday lets, kennels), the land is no longer occupied for the purposes of agriculture and APR will not be available. BPR is not available to the landlord as he is not the person operating the business. If part of the tenant's activities are farming but most are not, arguably he is not occupying the farmhouse for the "purposes of agriculture". If there is diversification - be careful. Similar considerations apply to owner occupiers.

Grazing licences

Land let on grazing licences is unlikely to be "occupied" by the owner, unless he retains sufficient responsibility for maintaining the land. Particular care should be taken where the land has not been owned for seven years.

Agricultural value

APR is restricted to the agricultural value of the property. Owners should bear in mind that hope or development value and the value of sporting rights will not qualify for APR. In some circumstances, Business Property Relief (BPR) may be available but the level of BPR depends on the basis of ownership of the property.

Business Property Relief (BPR)

Where full or partial APR is not available BPR may apply. Business property can be relieved at 100% (businesses, interests in businesses and shares in unquoted companies) or 50% (land, buildings and plant owned by the person making the transfer or used by a company controlled by or a partnership of which he is a member). There is a minimum ownership period of two years and the business must not consist wholly or mainly of making or holding investments. Investment properties fall into this exclusion. Surplus properties let within a farming business may still attract BPR.

In summary

Review the assets and their use to establish a view as to their likely IHT treatment. The family farming business may have undergone considerable changes since the last IHT review was carried out and with ever-rising property values it is crucial that APR and BPR are maximised.

With good planning and advice there may well be ways of improving the situation before a potential problem arises and APR/BPR is lost.

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