

Briefing document

Business property relief clearances

Introduction

Business Property Relief (BPR) is an important statutory Inheritance Tax (IHT) relief, potentially saving 40% IHT.

HM Revenue & Customs (HMRC) offer a non-statutory clearance service for business owners in relation to the BPR consequences of transactions that affect the business. This service therefore offers business owners an opportunity to verify whether their business will qualify for BPR in the eyes of HMRC.

Availability of clearance service

In order for the clearance service to be available, there must be an immediate charge to IHT, such as would arise on most gifts into and out of trust, but not on gifts to other individuals. Both individuals and trustees are able to apply for clearance. In practice, HMRC may choose to limit responses to clearance applications to cases where the potential IHT charge is significant.

In addition, there must also be material uncertainty surrounding the availability of BPR. This may include the effect of certain transactions the company is considering, or has done, such as takeovers and flotations.

There are certain exclusions from the BPR clearance service. In addition to being unavailable on gifts to other individuals, which are potentially exempt transfers for IHT purposes, the exclusions include ten-year anniversary charges that apply to most trusts; the potential consequences of entering into a Deed of Variation to revise the way in which a deceased person's estate is distributed, and; the disposition of property under a will where this is conditional on the availability of BPR. The BPR clearance service team do not provide clearance on valuations, though other HMRC teams may be able to comment on valuations in some circumstances.

Qualifying property

Below are some examples of the types of property which currently qualify for 100% BPR:

- Property consisting of a business or an interest in a business;
- Unquoted shares in a company;
- Securities of an unquoted company that either by themselves, or together with other shares or securities owned by the donor, give the donor control of the company.

Only certain types of business qualify for relief. In particular, businesses do not qualify where they wholly or mainly consist of dealing in securities, stocks or shares, land or buildings or the making or holding of investments. Where an eligible business is carried on, relief will be restricted to the extent assets are held which are not needed for business purposes.

Similarly, shares or securities held in companies are not eligible for relief where the companies concerned do not themselves satisfy the aforementioned tests and BPR may be restricted where the companies concerned hold assets which are not required for business purposes. These restrictions are relaxed in the case of a company that wholly or mainly acts as the holding company of a group where one or more of its subsidiaries undertakes qualifying activities.

For example, if a taxpayer owns unquoted shares in a trading company with an investment business and the company has recently bought or is considering buying a portfolio of residential property for rental, then this could result in the loss of BPR. Likewise, where there is (or it is proposed that there will be) a major reconstruction, for example a flotation or takeover, the potential impact on the availability of BPR should be considered if an event involving an immediate charge to IHT is being considered.

The clearance procedure

Clearances will be provided by HMRC both pre-transaction and post-transaction, although if pre-transaction then specific evidence will need to be shown as proof that the transaction is being genuinely contemplated. Pre-transaction clearances will remain valid for six months; clearance may need to be reapplied for if a proposed transaction does not occur within the six month period.

As the BPR clearance service is non-statutory, HMRC is able to choose whether or not to respond to clearance applications, and, as noted above, may choose not to provide clearance where the potential immediate IHT charge is not considered to be significant.

HMRC state that they usually respond to clearance applications within 28 days of receipt, though they may take longer to reply where the issues involved are difficult or complicated. There is no deadline by which HMRC are obliged to respond to non-statutory clearance applications.

Reliance on clearances provided by HMRC

In general, applicants should be able to rely on any clearances received from HMRC. However, for the clearance to be considered binding it will be necessary to show that all relevant facts and details of issues relating to the transaction have been provided to HMRC. It will not be possible to rely on a clearance if there are any changes to the situation following a submission or any changes to the law or HMRC's interpretation of thereof.

It is worth noting that it is not possible for one individual to rely on a clearance obtained by another, even where their situation is alike. For example, if all the owners of a part trading, part investment business wish to benefit from a BPR clearance, each of those individuals will need to submit a separate application.

The process

With regards to the submission of the clearance application itself, HMRC have provided a checklist which details all of the points that will need to be brought to their attention in relation to the application. The list can be found at: <http://www.hmrc.gov.uk/cap/annex-c.pdf>

Find out more...

This note reflects the law in force as at 9 April 2020. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Patricia Mock (pmock@deloitte.co.uk).

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