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Briefing document

Business and farming inheritance tax reliefs

Introduction

Business Property Relief (BPR) and Agricultural Property Relief (APR) are important Inheritance Tax (IHT) reliefs available against certain types of business and agricultural assets. The reliefs can reduce the value of the assets for IHT purposes by either 50% or 100%.

There is no cap on the value of the asset being relieved through BPR or APR and, as such, it can prove very valuable in reducing the value taken into account for IHT purposes on lifetime transfers or in an individual's estate on death.

Relief may be restricted in some cases where there are debts deductible from an individual's estate, even if those debts are not secured on the business or agricultural assets. A separate briefing on deduction of liabilities is available on request.

Business property – qualifying property

The level of BPR available (50% or 100%) depends upon the type of property being transferred.

Property that qualifies for 100% BPR is set out below:

- Property consisting of a business or an interest in a business, which includes an interest in a partnership;
- Any unquoted shares in a trading company;
- Securities of an unquoted company that either by themselves, or together with other donors, gave the donor control of the company on all major matters affecting the company.

Property that qualifies for 50% relief is set out below:

- Quoted shares or securities where the transferor has control of the company immediately before the transfer;
- Land, buildings, machinery or plant which immediately before the gift, was used wholly or mainly for a business carried on by a company of which the donor then had control or by a partnership of which he or she was then a member;
- Land, buildings, machinery or plant which is held in a trust (the income of which the donor has an absolute right to enjoy as it arises) and which is used wholly or mainly for the purposes of a business carried on by him or her.

Under the above rules, shares and securities are treated as being 'quoted' if they are quoted on a recognised stock exchange. Shares traded on the Alternative Investment Market (AIM) are generally treated as being unquoted.

Business property – qualifying activity

Only certain types of businesses qualify for relief. Business activities 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.

Similarly, shares or securities held in companies will not be eligible for relief where the companies concerned do not themselves satisfy these tests. This restriction is 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 undertake qualifying activities. Similarly, market-making companies are treated as undertaking a qualifying activity.

Where "excepted assets" are held by the business, BPR is restricted by leaving the "excepted" element of the business out of the calculation when determining the amount of relief.

An asset is an excepted asset if it is:

- Not used wholly or mainly for the purposes of the business throughout the two years immediately before the transfer (or since its acquisition by the business if more recent), and
- Not required at the time of the transfer for identified future use for the purpose of the business; or
- Used wholly or mainly for the personal benefit of the transferor, or a person connected with the transferor (e.g. the spouse, a child or other relative of the transferor).

In some cases, large cash balances may be treated as excepted assets if it cannot be shown that the cash is required for current or future use by the business.

Where the business is within a company, the proportion of the value of the shares that is attributable to the excepted assets held by the company will not attract relief.

Business property – minimum period of ownership

The general rule is that property must be held for a minimum of 2 years immediately before the transfer although there are special rules where property is replaced by other qualifying assets, or where a business is incorporated. In addition, there are relieving provisions where a surviving spouse or registered civil partner inherits assets that qualified in full for BPR, so that the earlier period of ownership by the deceased goes towards the survivor's period of ownership provided all the other requirements are met.

In addition there are ownership conditions which apply when business property is the subject of a lifetime gift – see below.

Agricultural property – qualifying agricultural property

As with BPR, the level of APR available on transfers of property depends upon the type of property being transferred. Unlike BPR, agricultural property must be located in the UK, Channel Islands, Isle of Man or European Economic Area in order to be eligible for relief. APR is given in priority to BPR, but BPR can potentially apply to the value of assets in the farming business that are not covered by APR.

Properties qualifying for 100% APR are set out below:

- Where the donor's interest in the property, immediately prior to the gift, carried the right to vacant possession or the right to obtain it within the next 12 months;
- There are also special rules which allow for 100% relief where the interest in the agricultural property held by the donor did not entitle him or her to vacant possession in this way because the property was let on a tenancy, which began on or after 1 September 1995;
- There are further rules which provide 100% relief where the donor held his or her interest prior to 10 March 1981.

In all other cases, the rate of APR will be 50%.

APR can also apply to shares or securities if their value can be attributed to the agricultural property which forms part of the company's assets and they give the individual control of the company. Further conditions on the nature and duration of occupation also need to be met

Agricultural property – qualifying activity

Agricultural property is defined as the following:

- Agricultural land or pasture;
- Woodlands and any buildings used in connection with the intensive rearing of livestock or fish, where the woodlands or buildings are occupied together with the land, where they are of a character appropriate to the agricultural property concerned;
- Property and buildings used in connection with the breeding and rearing of horses on a stud farm, including associated grazing, will also qualify for relief.

The relief given by the statutory rules is limited to the "agricultural value" concerned. This is the value that the property would have if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property. This typically restricts APR on land that has development potential, although BPR may apply to the unrelieved element in some cases.

Assets such as livestock, plant and machinery and harvested crops do not qualify for APR.

Agricultural property – minimum period of occupation or ownership

The general rule is that APR will not be available unless the property was:

- Occupied by the donor for the purposes of agriculture throughout the period of two years ending with the date of the gift; or
- Owned by the donor throughout the period of seven years prior to the gift, and it was occupied during that period by someone for the purposes of agriculture.

Whilst these are the general rules, there are a number of exceptions, including those that deal with replacement property and where farming businesses are incorporated. As with BPR, there are also special rules ownership conditions which apply when the property is the subject of a lifetime gift – see below.

Additional rules for BPR and APR

Lifetime gifts

There are specific rules that deal with the position where a donor has made a potentially exempt transfer of business assets or agricultural property and fails to survive the making of the gift by seven years or more. In order for the gift to benefit from relief, further conditions have to be met. In general terms, these are that the recipient of the gift must still own the property concerned at the date of the donor's death (or the donee's death if that is earlier), although this rule is relaxed where the recipient has sold the asset concerned provided that an equivalent asset is acquired within the following three years.

In the case of BPR, the assets must still qualify for the relief at that date. In addition, where APR applies, the property must be occupied for the purposes of agriculture throughout.

Buy and sell agreements

Neither BPR nor APR is available if there is a binding contract for sale in place at the time of the transfer. It is very important not to lose BPR or APR as a result of contractual arrangements committing the owner to sell the BPR or APR assets, and others to buy them, in certain circumstances. This is particularly relevant to owner-managers of private companies where their family are likely to want to sell the shares they inherit on death.

BPR and corporate investment activities

It is comparatively easy to lose the full benefit of BPR where a company or a group of companies undertake investment related activities unrelated to their qualifying business activities. For this reason, it is important to keep the activities of a company or a group of companies under periodic review.

Find out more…

This note reflects the law in force as at 25 March 2021. 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 Michelle Robinson (michellerobinson@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.