

# APR & CONTINUOUS USE

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***In the case of Atkinson and another (executors of Atkinson deceased) v HMRC TC00420 it was emphasised that to qualify for agricultural property relief (APR) the agricultural property (in this case a farmhouse) has to be used for an agricultural purpose for seven years, but the use does not have to be continuous. The case showed that there can be breaks in that use.***

A farmhouse qualifies as agricultural property (s 115, IHTA 1984) subject to being 'of a character appropriate' and provided it meets the occupation test of s 117, IHTA 1984. Section 117(b), relevant in this case, requires the transferor to own the property for seven years and for it to be occupied throughout that period by him or another for the purposes of agriculture but does this use have to be continuous?

Mr. Atkinson, who owned the farmhouse (actually a bungalow), died in 2006. In the four years prior to that he lived in a care home but he did visit the bungalow which still contained his belongings. The bungalow plus other farm property and the land owned by Mr. Atkinson was let to the family farming partnership. He was still involved in farming decisions as the senior partner.

His executors claimed APR on his bungalow but HMRC refused the claim on the grounds that the bungalow had not been occupied by Mr. Atkinson throughout the previous seven years and had not been used for agricultural purposes while he was in the care home. The tribunal supported the claim by the executors, on the grounds that the bungalow was occupied by the farming partnership and, in relation to the 'purposes of agriculture' test, it was used to accommodate the diminishing needs of the senior partner of the farm.

This case gives guidance to those elderly farmers in a similar situation, and perhaps the action plan of the relatives is not to rush out and let out the farmhouse the day after the farming partner moves into a care home! This could be quite difficult for some farming partnerships who could need the rental income to help pay for the care home costs. To achieve the relief the property should be kept available for use by the elderly partner and not be emptied of his possessions.

If it is accepted that many farmers do not pass the farm down to the next generation and that as a significant proportion of the population will end their final days in a care home then this case is important although HMRC have said they will appeal. It must be remembered that this was a bungalow. At a general level concerns over BPR and APR claims for very elderly farmers do raise concerns and passing the assets to the next generation in a well structured and timely manner does become attractive. Perhaps it can be argued the recent pre-nuptial case (Radmacher v Granatino) gives parents more encouragement to pass wealth to the next generation.



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