

## Agricultural (APR) and business property relief (BPR) on grey areas

Personal Representatives (PRs) can anticipate that APR and BPR claims will be queried. HMRC instructions are not to waste resources where there is little tax involved. The tax adviser should therefore agree a lifetime strategy with the client for potential claims for Inheritance Tax (IHT) reliefs.

The behaviour based penalty regime was introduced by Sched 24 FA 2007 from 1 April 2008. Schedule 40 FA 2008 extended the behaviour-based penalty regime introduced in Sched 24 to IHT.

Areas of the IHT account that HMRC has been known to look closely at following the submission of IHT 400 are as follows:

- under valuations where there are no IHT reliefs available;
- over valuations where there are reliefs and the high value could benefit tax relief in the future, eg, base costs for capital gains tax (CGT);
- incorrect claims for reliefs, eg, business property relief (BPR) where there is no business carried on for gain, where there is an investment business not a trading business (IHTA 1984 s105(3)); and
- agricultural property relief (APR) ensuring strict restriction to agricultural value and the occupation rule applies.

The first practical steps to take by owners of substantial estates are to ensure both good lifetime record keeping

and IHT available relief compliance review. At the very least if IHT reliefs such as BPR and APR are to be claimed then constant compliance checks should be undertaken to ensure eligibility. Lifetime transfers and loans should be well recorded. After death there should be robust checks between income tax and IHT recording together with the checking of legal agreements connected with all property prior to submission of the form IHT 400 to HMRC.

With the penalty based system for IHT enquiries, tax advisers can no longer take the risk of submitting weak claims for APR and BPR without being able to substantiate the basis of the claim.

One of the current areas of attack by HMRC in their attempt to deny BPR is to question commerciality. In order to achieve BPR there must not just be business but a business carried on for commercial gain. In the case of equine business, for example, there must be a profit or proof that a profit was intended.

Questions will be asked by HMRC about the original business plan, the quality of books and records, correct PAYE application re staff etc. Good record keeping is not just a requirement for income tax purposes but also supports a claim for IHT relief.

It has to be said that there are three things certain in life – death, taxes and that on the question of commerciality, HMRC will always ask for the original business plan. How can it ever be proven that an unprofitable business was to be of commercial design if there was no original business plan?

The checks on the validity of the claim for APR and BPR should be made before death – there would be plenty of time to repair penalties before death but not after death! However, not too soon before death, because

what matters is that the necessary conditions should have been satisfied during the period immediately before the death. In the case of business property relief, this may not be a great problem in practice, at least for a farmer, because the only condition that he has to have satisfied during the two years immediately before the death is to have owned the business. He does not have to be actively involved in the business. Perhaps the main risk is that arrangements with other parties will have changed in such a way that the business has crossed the boundary between the ‘trading’ and investment, by eg, other parties becoming tenants rather than contractors. Even this will not be fatal to a claim for APR, at least for the land being farmed so long as it has been owned for seven years (as it usually will have been). Invariably, the danger area for APR will be in relation to the farmhouse, where advancing years and declining health can make it difficult for the owner to satisfy the requirements of ‘occupying the house for the purposes of agriculture’. Interestingly, this seems to be the one area of the agriculture and business property reliefs where personal activity and involvement, rather than pure ownership of the property concerned, is required if the relief is to be obtained.

There are strong arguments to promote the concept of the APR/BPR ‘audit, ie, the ‘auditing’ the availability of these reliefs by the tax advisor.

---

*Supplied by Julie Butler F.C.A. Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH. Tel: 01962 735544. Email: j.butler@butler-co.co.uk, Website: www.butler-co.co.uk*  
*Julie Butler F.C.A. is the author of Tax Planning for Farm and Land Diversification ISBN: 0754517691 (1st edition) and ISBN: 0754522180 (2nd edition) and Equine Tax Planning ISBN: 0406966540. The third edition of Tax Planning For Farm and Land Diversification will be published shortly.*