

AGRICULTURAL (APR) AND BUSINESS PROPERTY RELIEF (BPR) ON GREY AREAS

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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.

Background

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

Areas of the IHT account that HMRC have 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, e.g. base costs for Capital Gains Tax (CGT);
- Incorrect claims for reliefs, e.g. 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 s.105(3)), Agricultural Property Relief (APR) ensuring strict restriction to agricultural value and where the occupation rule applies.

Process

The first practical steps to take by owners of substantial estates are to ensure both good lifetime record keeping and an IHT review to check available relief compliance. 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 documented and 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.

Current area of attack

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.

Conclusion

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 might be plenty of time to repair penalties before death but not after death!

There are strong arguments to promote the concept of the APR/BPR “audit”, i.e. “auditing” the availability of these reliefs by a trusted tax advisor.



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