

# TAXline

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## IHT

### 203. APR and continuous use

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.

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.

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 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 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 decided for 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.

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 the farmhouse the day after the farming partner moves into a care home! This could be quite difficult for some farming partnerships which would need the rental income to pay for the care home. Equally the property should be kept available for use by the elderly partner and not emptied of his possessions.

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