

Farm tax and legal planning – don't be complacent

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Sweeping changes to agricultural property relief will see a cap on 100% inheritance tax reliefs, requiring an immediate review of ownership, lifetime gifting and tax liability for farm owners, explains Julie Butler FCA, founding director of Butler & Co Alresford

As spring approaches (with hopefully a break in the rain), farms must ensure they are undertaking tax planning, legal housekeeping and a review of their succession strategies following changes announced for inheritance tax (IHT).

On 23 December 2025, less than a month after the November Budget, the government announced that the cap for 100% relief would be increased from £1m to £2.5m per individual from 6 April 2026.

This, combined with the allowance now being transferable, means married couples can shelter up to £5m of assets qualifying for 100% agricultural property relief (APR) and business property relief (BPR), with 50% relief applying above that threshold.

These changes are widely regarded to be a significant concession by the government. They were framed as targeting relief better while protecting 'ordinary family farms' and will be legislated in a Finance Bill amendment.

It is expected that these changes will halve the number of agricultural estates pulled into paying IHT and reduce the number of businesses pulled into the net by one third.

With the timing of this announcement two days before Christmas Day followed by the sheer work volume to meet the 31 January tax deadline, there is a risk that the response to this news from small to medium-sized firms is one of complacency.

The farm tax gossip is perhaps that small farms no longer have to worry about IHT. However, I would argue that the past 18 months have showed the opposite and there is a lot of protection work to undertake.

Transferable allowance from spouse / civil partnership

With the new rules from April 2026 capping 100% APR and BPR at £2.5m with a possible additional £2.5m from the spouse, the surviving spouse exemption and formal relationship status is now critical to farm succession planning.

The first task is to ensure that £2.5m can be transferred. It is essential that the eligibility to use the transferable spouse allowance is in place.

Farms must now reassess ownership structures, relationship status and legal agreements to secure reliefs that previously applied more generously.

Without proactive arrangements – such as cohabitation, nuptial or updated partnership agreements – families risk substantial IHT liabilities and potential disruption to the business. Now that the draft legislation has been published, the surviving spouse exemption is under the spotlight, as are the implications for unmarried partners on the family farm. It could be that some couples who have not formalised the relationship will have to do this.

Qualification for 100% relief

Before the changes first proposed on 30 October 2024 there were still risks that certain assets may only achieve 50% or even 0% APR or BPR and these will have to be revisited to ensure that the 100% relief is achieved and the allowance effectively utilised. The pitfalls for not achieving 100% relief include:

- AHA tenancies (Agricultural Holding Act 1986) only achieve 50% APR and no BPR;
- Non-partnership property, ie, property held outside the partnership, only achieves 50% BPR;
- Too many investment activities may threaten 0% BPR as shown by cases such as *Balfour (The Commissioners for HMRC v AM Brander (as Executor of the Will of the late fourth Earl of Balfour))* [2010] UKUT 300 (TCC), *Butler (Eva Mary Butler and others)* (TC8949) and *Kingsworthy Meadow Fisheries (Demetriou & Anor v HMRC)* [2024] UKFTT 830(TC)).

Furthermore, 2025 saw a lot of legal cases that show the importance of a partnership agreement, including *Merryman* [2024] EWFC 58), *Maile* [2025] EWHC 2494 (Ch)) and *Cobden* [2025] EWCA Civ 1612). The lessons learned from these cases will be important to bear in mind when reviewing the partnership agreement as part of the succession planning exercise.

The tasks that lay ahead

The work should not be done in isolation. Although it would be perhaps far easier to take on each task separately, they have to be carried out as integrated work. A lot of fact finding and background work must be undertaken, including:

1. Forensic understanding of the whole farming operation, a deep dive into the trading accounts and the trading for tax;
2. Full understanding of ownership to tie into the legal agreement;

3. Reviewing and updating the partnership agreement and the Wills, mindful of the above understanding gained of the operation and the owners in a way to protect future dispute cases;
4. Full understanding of the registration of the land and its ownership.

Land registration

A large amount of farmland has 'blurred' ownership, is still unregistered and clarification over where the beneficial interest lies will be needed. Let's start with 'first registration'.

First registration is the process where an unregistered property is registered for the first time at HM Land Registry. The information within the original deeds for the property will be transferred to an electronic/downloadable title and a title number will then be created.

First registration may be a matter of choice, in which case it is called 'voluntary first registration'. This may come about as a result of making a Will or other legal planning. There are benefits to voluntary first registration, which include:

1. **Recognisable proof of ownership** – By registering your property, this increases the security of ownership and protection against claims of adverse possession and fraud. Unregistered land is vulnerable to fraudsters who can claim your identity and attempt to sell the land without your knowledge. Original title deeds can easily be damaged or lost.
2. **Defective title** – Registering the land allows for any potential defects to be rectified at the point of registration, which may otherwise be overlooked until the property is sold. By voluntarily registering your property, you can identify and potentially deal with any issues prior to a sale of the property, saving time later.
3. **Financial incentives** – HM Land Registry offers a 25% discount on fees for voluntary registration. If you were to sell your property prior to voluntary registration, you may incur additional/increased costs and delays as the property has not been registered. Some buyers (or their conveyancers) may insist that the property is registered prior to the sale.

The registration must tie into the partnership planning which means we must now look at the elephant in the room.

Lifetime 'gifting galore'

When the £1m 100% BPR/APR allowance was first announced the farming world went into 'gifting galore' mode. Or did they? Some of the work was just preparing for gifting and then the 23 December announcement fell into the tax adviser's lap as if it were an early Christmas present. However, tax advisers must now look very seriously at:

Gifts already made – These must be reviewed in the context of overall planning, and it is essential that partnership agreements and Wills reflect those gifts made. All parties must fully understand the implications of these gifts.

Gifts not made – In reality a lot of gifts were planned but not fulfilled. These need urgent review as to whether they go ahead in whole, in part or if they are put on hold. This will require meticulous planning and detailed spreadsheets with the different IHT calculations that apply in various circumstances.

With the farming estoppel and dispute cases that fly around it is essential to ensure that the documentation is clear as is the understanding. Valuations are critical and prove that there is

a strong need for the land agent, the lawyers and the accountants/tax advisers to work together.

Some of these roles may blur with regard to responsibility; for example, the lawyers and accountants may both be implementing the tax planning, but all the professionals must come together to share their forensic understanding of the activities.

There needs to be a memorandum clearly demonstrating who is carrying out what in these changing times for farming, especially where there is so much swing on the reality of the 50% relief for APR/BPR and the level of allowances.

Complacency is the major risk. Action needs to take place now to pull together understanding, ownership, valuation, legal documentation and to draft an action plan of work that still needs to be undertaken.

About the author

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