

Farming matters

The introduction of taxes on agricultural land has been much in the news recently. Julie Butler outlines the changes and considers tax planning in light of the new proposals



Julie Butler FCA is joint managing partner at Butler & Co, editor of *Farm Tax Brief* and author of *Tax Planning for Farm and Land Diversification* (Bloomsbury Professional), *Butler's Equine Tax Planning* (Law Brief Publishing) and *Stanley: Taxation of Farmers and Landowners* (LexisNexis),

The autumn budget 2024 saw the slashing of inheritance tax (IHT) relief for agricultural property relief (APR) and business property relief (BPR) from 100% to 50% on the first £1m, causing considerable concern for the agricultural sector. Property lawyers, tax advisers and valuers are currently in high demand. With the value of APR and BPR diminished, tax planning is key, and it is important to look at the tax reliefs that have remained:

- holdover relief for capital gains tax (CGT)
- rollover relief for CGT, and
- surviving spouse exemption for IHT.

As many farmers want to keep the farm in the farming family, gifting the farm using holdover relief has become very attractive before April 2026 when the new rules become effective.

Gifting with holdover relief

Many UK farmers are elderly, and following the budget changes to IHT they and their families can see immediate negatives should they die after April 2026.

With holdover relief for CGT having survived, there has been a flurry of lifetime transfers, particularly of agricultural land. The problem is that the potential IHT savings that can be achieved with the transfer to the next generation could be outweighed by the potential future CGT liability. It is therefore essential to ensure that there is a full understanding of the plans for the farm and tax calculations as to what the

best decision is for the future. Against this background is the concern that the budget on 30 October was only the beginning of tax changes, and that worse will follow. Regardless, future permutations and combinations must be considered.

The tax disadvantage of the lifetime transfer is the uplift in market value on death. The result is that farm succession planning cannot be undertaken lightly. There must be full understanding of liabilities and plans for the farm, and well-completed spreadsheets of tax that change to cover various alternative scenarios. If lifetime transfers are going to be made, ascertaining which of the most tax-efficient assets are best given away is key. For example, arguably it is better to give away areas of the farm least likely to be sold while those retained should be assessed as areas / assets / property that could be sold to pay IHT if required, or to provide liquidity to ensure funds go to non-farming children. So, if there is a second farmhouse occupied by a partner it can be advantageous to give this away given the availability of holdover relief and no restriction on future principal private residence for the recipient. Securing the residential nil rate band for IHT has also got to be factored in.

Potential increase in farm sales

The main drive for gifting is to keep the farm in the family without IHT worries. However, part or all of the farm might have to be sold for the following reasons:

- development or amenity value too difficult to turn down
- to pay IHT liabilities
- to fund other areas of the farm business or for expansion / survival
- family members not wanting to continue farming.

Some of these reasons might not be too expensive in CGT terms. For example, the development gain could be rolled into farm property and improvement. It will be important to consider how the rollover will be claimed and by whom. However, the CGT liability must be calculated if, say, rollover relief were to be taken away in a future budget. Calculations should also be carried out to see the impact of an

increase in CGT rates to, say, income tax rates (which was promoted in an Office of Tax Simplification report). Currently, the lower rate of CGT for non-residential property has risen from 10% to 18% and the higher rate from 20% to 24%. These new rates came into effect immediately on 30 October. Following the budget, the rates for business asset disposal relief will rise gradually to 14% from 6 April 2025 and then again to match the main lower rate of 18% from 6 April 2026. This is only the second time in recent years that there has been a mid-year CGT rate rise, and both HM Revenue & Customs and accountants' tax software packages will have to adapt quickly to take account of the change.

Accountants will have to work with property lawyers, who will be kept very busy by all the various gifts and sales, to ensure that the ownership is correctly transacted between the family members and the sales are dealt with efficiently.

£1m limit at 100% APR / BPR

The 100% APR / BPR rate remains only for the first £1m and will apply in addition to existing nil-rate bands. Transfers between spouses and civil partners will continue to be IHT free. This new £1m allowance will be apportioned proportionately between agricultural property and business property attracting 100% relief, unlike the current rules where APR takes priority. It applies to transfers both in lifetime and death, and any unused allowances will not be transferable between spouses, so careful planning is called for. Independent of this £1m threshold, personal nil-rate bands are being frozen for a further two years, until 2030. This means that the first £325,000 of any estate continues to be inherited tax free. This can then rise to £500,000 with the aid of the residential nil-rate band if the estate is below £2m and includes a residence passed to direct descendants.

Tax advisers will need the assistance of agricultural property lawyers to deal with the transfers of property that will arise from the changes, and property lawyers will need to understand basic tax or seek advice to make everything run more

smoothly in terms of legal ownership and so on. Likewise, private client and commercial lawyers will have to check that wills and partnership agreements are all updated to reflect any changes.

Surviving spouse exemption

One relief that ‘survived’ (pun intended) the autumn budget was the IHT surviving spouse exemption. This can be used for integrated IHT planning but can be a very sensitive subject with farmers not wanting to lose control. As part of all the planning work that lies ahead, there are some difficult questions to ask clients on health, life expectancy and marital status. Such questioning will need to be handled with care by all involved. In addition, everyone must fully understand the implications of the decisions being made. Such significance places extra pressure on property lawyers.

The changes to APR and BPR (with effect from April 2026) will significantly impact trading farming businesses and farmers, many of whom have been thinking of gifting to the next generation but have been put off either due to inertia or worries over losing control and family protection. We have found the budget has meant farmers are more focused and galvanised to act.

Further legal work

There will be a vast amount of work for farmers and small businesses involving the whole legal profession to tie into full succession planning. In general terms, it is important for legal advisers to be involved from the outset. Examples of work include:

- updated wills with the appointment of capable executors who can deal with future developments
- updated partnership agreements to reflect all the property changes together with changes to the farm strategy, and
- integrated succession planning working with updated farm values and development opportunities.

The legal team, tax advisers and land agents valuing the farm and areas of the farm must work together to achieve their objectives.

Farm lifestyle and vanity projects

With the potential increase in farm sales, values could drop (although there are no dramatic signs of this at the time of writing). This could offer lots of opportunities for those wanting to buy farms. Many consider that farms still offer a lot of tax advantages that will still be of



Agricultural property Tax planning

interest to the 'lifestyler', who can continue to roll over a gain into the purchase and still benefit from 50% IHT relief.

The farm market will soon reveal to advisers what the general opinion is and where demand lies, and calculations will need to be updated on a regular basis for what could be changing values. One of the negatives could be how busy farm advisers are in the months ahead. The £1m allowance of 100% APR / BPR must be protected within the family and while moving assets down a generation is the general goal, younger members could predecease older members of the farming family. Sadly, this is not uncommon on working farms.

Whatever happens, if there is an increased supply of farms on the market due to the tax changes then property lawyers will also be busy buying farms for clients. Dealing with the legal issues of buying, selling and transferring agricultural property is always complex as there can be misunderstandings over 'rights of way', access, shared lanes, long-term environmental contracts and tenancies (written and unwritten), as

well as dilapidation clauses and possibly terminating tenancies. The 'vanity projects' of vineyards, environmental projects and exotic farm diversification have been very attractive over the last few years, and lots has been learned on increasing profitability. It will be interesting to see how this market develops.

Executors

Many property lawyers might have taken on the role of farm executor or be assisting their colleagues in this role. The role of the farm executor has always been a difficult one for a multitude of reasons. Farmers like to 'die with their boots on', so there is normally a living business to deal with. For a sole trader, this could mean the executor has to 'stand in the shoes' of the deceased and run the farm until the terms of the will are actioned. For a share in a partnership, there must be careful inspection of the partnership agreement, understanding the implications thereof and its interaction with the will. For a share in a limited company, the shareholders agreement must be understood.

With the drop in APR and BPR from

100% to 50% there is more likely to be an IHT liability that could impact the terms of the will as shown by *Hall (Hall and Another (as Trustees of Carolina Raboni Deceased) v HMRC* [2022] TC 8691). The funding of IHT liabilities will be critical for executors and legal interpretation.

All farm wills will need reviewing in the context of the choice of executor and the provision for IHT liabilities and increased lifetime planning. Such work will have to be part of full succession planning. When updating wills, it will become even more important for those drafting the will to see the farm accounts to fully understand the trading operation. It will also be very important for the will drafter to review the farm's partnership agreement to see what will happen on the death of a partner or if it stays silent on the matter, therefore resulting in a dissolution of the partnership. If they identify areas that will impact on the administration and distribution of the estate, they must flag up the concerns. All farming and business partners will have to work together with legal advisers to achieve the required outcomes.




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