

Mother and son**Holdover relief on farmhouse not occupied by the owner.**

My client came into ownership of a farm and farmhouse in May 1998 on the death of her father. From the time she became owner until December 2010 the farmhouse remained vacant. From December 2010, her son moved into the farmhouse after spending his own money on the house to make it habitable. During the years that the house was vacant it was being used by the son and the client's husband to change into their work clothes, to store drugs for animals, for interviews with vets and meal salesmen, and for other such similar activities.

The client's son had been always been an employee on the farm but by the date he moved into the farmhouse he had become a partner in the farm alongside his mother. My client would now like to give the farmhouse, yard and a shed with a strip of ground that holds a septic tank to her son while retaining ownership of the rest of the farmland.

My question is whether the mother would be able to claim holdover relief on the farmhouse from 1998 to the present? She does not live on the farm.

I look forward to hearing from *Taxation* readers.

Query 19,480

- *Family Farmer.*

TCGA 1992, s 165 relief is available for qualifying agricultural property.

TCGA 1992, s 165(2) states that relief for gifts of business assets is available if the asset has been used for the purposes of a trade carried out by the transferor. However, TCGA 1992, Sch 7 extends this relief to agricultural property qualifying for agricultural property relief (APR) under IHTA 1984, which does include 'cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property'. As such, if the house qualifies for APR to any extent then holdover is available in full and there is no apportionment for non-trade use (TCGA 1992, Sch 7 para 5(2)).

The question is therefore whether the property qualifies for APR to any extent. To achieve this it must be of a nature and size appropriate to the farming activity taking place and meet the ownership and occupation requirements of IHTA 1984, s 117; namely, it must be occupied for the past seven years by someone for the purposes of agriculture together with the land.

The *Hanson* case ([2013] STC 2394) tells us that it is the occupation of both the house and land that counts, rather than the ownership of the house and land. From what we are told, the land is occupied by the partnership and the house is occupied by a partner and used for partnership business. The test is

therefore satisfied and holdover should apply in full.

Wherever claims are made for farmhouses as agricultural property, it is always advisable to ensure there is solid evidence in the form of witness statements, minutes of meetings, post addressed to the partnership and suchlike in case HMRC challenges the claim.

- *Fred Butler,
Butler & Co.*