# The interaction of surviving spouse exemption with APR/BPR

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It is imperative to look at all inheritance tax planning for the UK farming industry, especially with the introduction of the Agriculture Bill and increasingly elderly farmers. Emphasis must be given to the interaction of the surviving spouse/civil partner (both referred to as spouse hereafter) exemption and the basics of agricultural property relief (APR) and business property relief (BPR). A "lazy" or "rash" use of the spouse exemption may result in the loss of a "one-off" opportunity to claim APR and BPR. The advantages of the exemption for transfers to a surviving spouse (IHTA 1984, s 18) should be used as part of a well-thought-through strategy, not just to "buy time". There are advantages of transfers between farming spouses. This will particularly relate to assets that do not achieve APR/BPR. Where necessary a Deed of Variation can be put in place with the hope that the spouse will live another seven years and the transfer will qualify as a potentially exempt transfer (PET) so saving IHT.

## Deeds of Variation and Appointment

The Deed of Variation to the Will is a positive tax planning tool. If there are children, the surviving spouse could execute a deed in their favour. This allows the farm to pass to the next generation and makes use of the available APR or BPR, which might be lost with possible adverse changes to the legislation in the future. Alternatively, all the assets could be put into a discretionary trust in the Will that could then be terminated under a Deed of Appointment under IHTA 1984, s 144.

## Successions

IHTA 1984, s 120 ('Successions') provides a distinct benefit to farming spouses for both APR and BPR purposes. Generally, if someone becomes entitled to any property on the death of another person, they are deemed to have owned it from the date of death. However, if the recipient should die soon after inheriting this land, they would not have fulfilled the two or seven-year ownership requirement to achieve BPR/APR. Consequently, s 120 provides that, if the recipient was the spouse of the transferor, they are deemed to have owned the property from the time their spouse acquired it. This allows the survivor to meet the occupation and ownership requirements themselves. This would be relevant if one of the farming children is, for example, terminally ill so there is a worry over leaving them the farm as they may die before they have achieved the criteria for period of ownership to preserve the relief.

## Spouse involved as a partner

In some cases, the farm is bequeathed to a spouse even though they are not a partner in the farming business. Farm advisers may not have considered the full inheritance tax strategy. Although the spouse exemption in s 18 precludes immediate payment of inheritance tax, this is not IHT efficient as on the death of the spouse some BPR could be lost.

Should the Will leave the farm to the spouse, it makes sense that the spouse should be a business partner with an efficient partnership agreement. If the spouse is involved in the farm before death, not only will they know how the farm operates but such activity can help with APR (s 117, occupation of the farmhouse) and BPR (s 105(3), not holding investments). The spouse who inherits the farm should ideally meet the criteria of active involvement as good general practical protection at a number of levels, especially for BPR on diversified activities, **eg *Vigne (HMRC v The Personal Representative of Maureen Vigne (Deceased) [2018] UKUT 0357)*** and ***Graham (The Personal Representatives of Graham Deceased v HMRC TC06536).***

## Lifetime transfer to the spouse

Transferring farm property to a spouse before death can have tax disadvantages. For example, if there is to be a future sale the base cost cannot benefit from the "tax-free" uplift on death. Currently there are many advisers worried about the loss of APR should there be a change of government, thoughts are moving to lifetime gifts. It is more likely that gifts will be to the next generation, thereby "skipping a generation" and being left to farming children instead.

The transfer of assets on death combines favourable inheritance tax reliefs with the capital gains tax advantage of an increased base cost due to the "tax-free uplift" to probate value. If BPR can be obtained, the future base cost is the very tax-efficient probate value of death which can be positive if there are future sales.

IHT planning strategy must always be looked at "in the round" trying to consider future needs and "banking" BPR and APR whilst still available.

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