



THE FARM, THE FARMHOUSE AND THE RNRB

Julie Butler explains how the residence nil-rate band can apply to a farmhouse

From 6 April 2017, an additional residence nil-rate band (RNRB) is now available when a residential property that had been the deceased's residence at some point is left, on death, to a direct descendant.

THE FARMHOUSE

Following the ruling shown by the *Antrobus 2* case,¹ the inheritance tax (IHT) relief on the farmhouse is restricted to agricultural value (AV), i.e. the agricultural property relief (APR) is restricted to AV. The problem with the RNRB is that it does not apply to estates over GBP2 million (subject to tapering). The RNRB is tapered down by GBP1 for every GBP2 that the estate exceeds GBP2 million. Most farms do exceed GBP2 million in value on death, so the RNRB might not apply, but the farmhouse would qualify for RNRB if the estate is kept below GBP2 million (subject to tapering). The non-AV of the farmhouse does qualify for IHT relief from the RNRB, but will such availability be wasted due to the overall value of the estate? Calculations should be carried out with up-to-date values when trying to plan the maximisation of the RNRB.

DIRECT DESCENDANTS

Direct descendants are children (including step, adopted and foster children) and

grandchildren, and the spouse or civil partner of a direct descendant, or surviving spouse or civil partner if they have not remarried or formed another civil partnership. Such identification is complicated, and all wills drafted prior to 6 April 2017 should be refreshed to take into account the RNRB utilisation.

WHICH FARM PROPERTY?

The RNRB is limited to one residential property and cannot be applied over various properties. Where there is more than one residential property in the estate, the executors can nominate which one should qualify for the relief. Such an election puts another pressure on executors. The residential property must have been occupied by the deceased as a residence at some point in time, but does not have to have been their main residence. Such leniency regarding properties could be of benefit to farmers who might have moved from the farmhouse to the converted barn, and then to the bungalow with wheelchair access. The additional RNRB will also be available for individuals who downsize or sell their home prior to death and pass assets of an equivalent value onto direct descendants on death, although evidence of the sale of the property will be required in order to claim the relief.

KEY POINTS

WHAT IS THE ISSUE?

The residence nil-rate band (RNRB) in the context of ownership of farmhouses, which typically have a high value in excess of the GBP2 million limit. Lifetime transfers should be considered to reduce future probate values.

WHAT DOES IT MEAN FOR ME?

Members should consider both the inheritance tax compliance and planning angles of the RNRB within the farming client base, as well as being mindful of the responsibility for executors of farm wills.

WHAT CAN I TAKE AWAY?

All farming wills should be reviewed and refreshed, bearing in mind the RNRB, current pressures on farming and farm succession, as well as key farming legal documentation, such as partnership agreements.

TRUSTS

The RNRB will only be available for certain types of trust for qualifying beneficiaries. A will that provides for the estate to pass into a discretionary trust (even if the only potential beneficiaries are direct descendants) would not qualify for the relief. However, if the qualifying residential property passes into a discretionary trust, it is possible for the trustees to make an appointment of the property to direct descendants to ensure the availability of the RNRB. Once again, this is placing more pressure on trustees and farm tax advisors with regard to decision-making.

REDUCING THE VALUE OF THE ESTATE

If a client's estate is worth more than GBP2 million, farmers can review whether it is possible to arrange their affairs so that the RNRB can be claimed. If a couple's combined assets exceed GBP2 million, then they should seek advice to see if

their wills can be updated to avoid any 'bunching' effect on the second death – for example, they could revise their wills so that part of the estate of the first to die is inherited by their children.

The value of the estate for the purposes of the availability of the relief (i.e. the GBP2 million threshold) does not include the value of failed potentially exempt transfers to arrive at the GBP2 million. Therefore, it could be beneficial for farmers to make lifetime gifts of other assets to try to reduce their estate. The new allowance only applies to transfers of property on death: gifts of property before death to direct descendants will not qualify to be offset against the RNRB. It remains possible for beneficiaries to enter into a deed of variation after death to ensure the qualifying residential property passes to direct descendants and the RNRB is utilised. Once again, this will place more pressure on executors and their advisors.

CONSIDERATION OF LIFETIME TRANSFERS

As mentioned, with farming clients, the lifetime transfers option, possibly using a holdover election, is very attractive as part of tax planning. Such an action involves passing part of the farm down to the next generation to reduce the GBP2 million cap for IHT, so as to maximise the use of the RNRB. Obviously, such a suggestion cannot be looked at in isolation; rather, the tax implications for the whole farm must be considered 'in the round'.

First, the capacity of the donor is something that needs careful thought. A large number of farmers are very elderly, and the professional protection that is needed around the mental capacity of the testator can be extended to lifetime gifts. Any tax advisor working in connection with tax planning around lifetime gifts should work with a solicitor, who will have similar responsibilities as to the will in deciding mental capacity on lifetime gifts.

Further, there are reporting considerations to take into account as a lifetime gift of farm assets is still an effective sale for CGT purposes and must be recorded as such. The beneficiary will have to consider the loss of the tax-free uplift on death on such a gift – i.e. in applying the holdover election, the donee will take on the base cost of the donor and their taxable gain when they themselves come to sell or gift the asset will potentially be much larger.

Notably, for planning purposes it is essential that the updated wills tie into the

farming partnership agreement (if there is one), and such action signals an excellent time to review the partnership agreement.

THE VALUE OF THE RELIEF

While the RNRB is good news for those wishing to pass on the value of their family home to their children or grandchildren, the nil-rate band (NRB) itself is now frozen until at least April 2021. Such a freezing means that, for the unmarried, and for those who leave no children or grandchildren, the IHT NRB of GBP325,000 will remain the same, so more families may be drawn into the IHT net.

The additional NRB will be phased in over the tax years as follows:

2017/18	GBP100,000
2018/19	GBP125,000
2019/20	GBP150,000

Clearly, review of all homeowners and farmers has to be considered.

ACTION POINTS

With so many changes facing the farming community, such as the future of subsidies, etc, all farming operations need comprehensive succession planning.

Valuations of farms and estates, and future calculations of possible IHT liabilities, will be needed. With regard to farm valuations, it is imperative to have both full market value and AV, including the farmhouse together with calculations of liabilities, to see the total values and weak areas, and possibilities for lifetime transfers, if any.

Wills must be reviewed and refreshed, and clients will need a lot of information about the subject and the possible strategies, including the advantages and disadvantages of lifetime gifts for tax purposes. This is likely to be incorporated as full succession planning. Some serious work lies ahead for the professionals, and the extra work placed on the executors cannot be overlooked.

1 Lloyds TSB Private Banking Ltd as personal representatives of Rosemary Antrobus deceased v Peter Twiddy (2005) DET/47/2004



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