

Q&A



Will business property relief come under attack in the October budget?

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As we approach the first Labour Budget for some 14 years, there are concerns that inheritance tax business property relief (BPR) is vulnerable. Which areas could come under attack and how can we prepare for them?

What steps should a tax adviser take now?

It is considered that an attack on BPR would take longer to plan than the time we have before the Budget because there is arguably more 'low hanging fruit' for the chancellor to consider. Also, BPR supports businesses which provide employment and the all-important growth.

The areas of attack could be the areas that require making a BPR claim more robust, once the change is implemented. HMRC could continue to 'wage war' against 'holding investments' as opposed to making the IHTA 1984, s 105(3) attack made more vigorous and more clear and this where attention should be focused.

What about the 'bright line' position?

Many tax advisers have been waiting with 'baited breath' for more information to be delivered by the Treasury on the 'bright line' between trading and investment. It could be that the Budget at last clarifies the position.

The 'bright line' was mentioned in the Upper Tribunal case of *CRC v The personal representatives of the estate of Maureen Vigne (deceased)* [2018] UKUT 0357), and the way to try and make the business/trading side of the business as robust as possible.

An example would be the storage of caravans which might appear to be an investment activity, but services such as meet and greet, refreshments on arrival and departure, cleaning and servicing of the caravans together with possibly a 'hamper' in the caravan would 'shine' a light on the activity to enable classification of trading where possible. The plan is to make the activity as robust as it can be from a trading viewpoint.

Where there are doubts about being able to meet the IHTA 1984, s 105(3) criteria for not holding investments, lifetime transfers could be considered. Such action comes with negatives – the short window available, gifts with reservation of benefit risks (GROB), the risk of a failed potential exempt

transfer as well as the loss of income and loss of control. There is a short period to decide while holdover election is still available for capital gains tax.

Simply removing investments assets from a farming partnership, for example, and outlying rental property could be held by the underlying owners in their own name to reduce the investment income in the business. Relief would of course be lost on this specific asset but with the intention to preserve relief on the rest of the business. Effectively this would be sacrificing one asset for the good of the others.

It is thought by some, and hoped by many, that where assets are gifted before 30 October 2024 which qualify for APR or BPR under the existing rules, the retesting which has to be carried out on the death of the donor can be done by reference to the current rules rather than under any more restrictive rules which might be introduced in the budget. Timing is running out and there will be a lot of pressure on the solicitors to enable such transfers in the short period. It appears that a lot of farmers and landowners who were perhaps considering a gift of agricultural land or business assets are trying to act now as the forthcoming Budget has focused the mind.

The above would also include farmers and landowners who may have solar or wind farm opportunities and transferring the land on which it may be developed – albeit highly speculative at the moment – down a generation or into a separate company for example.

If rates rise, would achieving BPR be more critical?

It is thought that with a need to fill 'the black hole' of tax collection, inheritance tax rates could rise. We have looked at making BPR more robust for s 105(3) plus lifetime gifting. There are the criteria of BPR where the trading is marginal or even insignificant. Again, ensuring the trade is robust is important (see 'Focus on trade', *Taxation*, 13 July 2023).

In this instance it is not moving an investment to a trade but moving an 'insignificant' trading to a qualifying trading operation. This will involve increased sales, increased activity and a more robust trading operation. It could be argued the action plan would be similar to making s 105(3) more robust.

Will practitioners have enough time?

Long-term BPR planning of robust trading activity and lifetime gifts must start immediately. Where there are too many investments, a strategy should be considered regarding selling assets that are not trading (see 'Future of farm cottages', *Taxation*, 14 September 2023). This can be debatable as strong income streams from investments is a worry.

There are various schemes for protecting buy to let property by transfers into a partnership, etc. Many would argue that removing investments is strong but if BPR were to be removed that would be a tough 'judgment call'.

Everything needs to be looked at on a case-by-case basis and we are looking at 'crystal ball' theories. Of course, we can only guess what will be announced in the Budget and, of course, we have to consider that BPR has not been mentioned as an area of specific attack (unlike VAT on school fees, which has been covered in the magazine previously 'Q&A: Proposal to apply VAT on school fees' by Elizabeth Small, 9 November 2023. ●