

SHOULD FARMS AND ESTATES USE THE ADVANCE CLEARANCE FACILITY FOR BUSINESS PROPERTY RELIEF?

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Current Position

There are a number of certainties that we do know about the majority of traditional farms and landed estates. Equally, the current HM Revenue and Customs (HMRC) approach to Business Property Relief (BPR) claims for Inheritance Tax (IHT) can be very aggressive. The current position is as follows:

- There has been diversification of some kind whether this is just increased property letting;
- There will be some investment business with the farm and Estate.
- HMRC have questioned BPR eligibility in a number of cases and have recently shown that they are prepared to litigate on the eligibility of BPR, e.g. *Dance, McCall and Balfour*.
- HMRC's approach to BPR on farms and Estates at a general level has become more aggressive especially where the availability of the relief lacks certainty.

Timely Review

Perhaps the recent claims for BPR by taxpayers are not helped by the approach of some farms and Estates to take no action to review the availability nor secure the relief and then panic when HMRC question allowability. There is no doubt that IHT planning is a sensitive subject and many clients do not want to discuss it. When looking at the strength of BPR claims HMRC will consider a range of factors about the business including management time, value of assets and employees.

If the investment side of the farming business has grown too large and jeopardises the whole of the enterprise then should some investment assets be withdrawn? Does the positive ruling in *Dance* give hope for the transferring of investment assets away from the main farm and estate operation?

Advanced clearance

With clients taking advantage of the relatively new advance clearance procedure long term plans can be given greater certainty. Another advantage of clearance is that the HMRC ruling can provide a clearer understanding of HMRC's views on similar farms and estates.

The disadvantages are that many farms and estates (and their adviser) do not want to alert HMRC to their concerns and uncertainty and that the subject is sensitive. However, with the "blanket" and aggressive approach that HMRC seem to be applying to all Farms and Estates, with the high value of assets and the dependency on the claim for BPR, it can be argued that there is nothing to lose and everything to gain by achieving clarity. There are many who say let's tackle HMRC's current questioning and disagreeable stance head on.

Action Plan

Review all situations where BPR will be needed and assess the quantum of the IHT liability and safeguards that can be put in place, e.g. greater involvement by owners, prior removal of excepted assets, restructuring where there is excessive investment assets, etc.

Where there is genuine uncertainty about a situation that has arisen in good faith about the potential strength of the claim for BPR, then consider seeking HMRC clearance. It has been said that this will not increase HMRC's attention as they currently check all BPR claims very thoroughly.



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Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH

Tel: 01962 735544

Email: j.butler@butler-co.co.uk

Website: www.butler-co.co.uk

Julie Butler F.C.A. is the author of Tax Planning for Farm and Land Diversification ISBN: 0754517691 (1st edition) and ISBN: 0754522180 (2nd edition) and Equine Tax Planning ISBN: 0406966540. The third edition of Tax Planning For Farm and Land Diversification will be published shortly.

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