

WHAT IS 'GENUINE OCCUPANCY' FOR CGT & IHT PURPOSES?

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In many family farms and landed estates there can be considerable moving around of properties for a large number of reasons, not least the changing sizes of families as children leave the nest and as young families start. In times when there have been cashflow problems within the landed estate, selling residential property has helped farms survive, particularly if these qualify as the principal private residence.

This can be from moving from the original manor house to, say, the farm manager's house and selling the main house or the conversion of barns and making these principal private residences.

Capital Gains Tax – PPR relief

One clear point is that in order to claim PPR relief for Capital Gains Tax the occupation of the residence must be permanent and there must be evidence of it having been permanent. Many farms and landed estates have involved properties being swapped around between siblings and some quite strange ownership arrangements which seemed necessary or sensible in order to sort out family arrangements and shares of the property at the time but some decades after could be inefficient with regard to principal private residence relief. Many would argue that as those properties are not going to be sold it will not be necessary but it is still important to ensure that the relief is there if needed.

IHT

Does the ownership and residence of the farm residential property give maximum relief for inheritance tax purposes?

There has been a case which has recently changed the view with regard to ownership of the farmhouse and ownership of the land and that is the case of **Hanson**. Following on from the success of **Golding**, the case of **Joseph Nicholas Hanson as Trustee of the William Hanson 1957 Settlement (TC01791)** has shown another victory for the taxpayer, although it is likely that the case will be appealed by HMRC.

The case overturns the decision in **Rosser** which strictly interpreted section 115 IHTA 1984 for agricultural property, and deemed Agricultural Property Relief (APR) to be available on the farmhouse provided there was a match between the occupation of the farmhouse and the occupation of the land.

In the **Hanson** case the farmhouse was owned by a trust and it had been lived in by the same Mr Hanson who farmed the land surrounding the property and he also owned most of this land. The ruling was that an APR claim could be made for an asset even when its ownership has been divorced from that of the farmland provided there is common occupation.

Again like **Golding** this occupation had been long-term, (since the 1970s) but it does blatantly disagree with the decision of **Rosser** and the strict interpretation approach to s115.

Action Plan

The action plan has to be for all farms and estates to review ownership of any residential property to see that the position regarding potential claims for CGT principal private residence relief and IHT Agricultural Property Relief are protected to the best of our understanding at the current time. It is important at least to ascertain exactly who owns which property.



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