

PUMP COURT
TAX CHAMBERS

Recent Developments in APR and BPR

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Impact of APR and BPR on IHT

- £30.4 billion – total IHT yield expected over the next five years
- total estimated APR and BPR over the next five years - £5.85 billion

IHT in context

Comparison with total tax ... and Alcohol Duty ... 2011-20

	IHT yield (£)	% of total tax yield	Total tax yield (£)	Alcohol Duty
2011 -12	2.9 billion	0.5	547 billion	10.0 billion
2012 -13	3.1 bn	0.6	550 bn	10.2 bn
2013-14	3.4 bn	0.6	559 bn	10.1 bn
2014-15	3.8 bn	0.6	589 bn	10.4 bn
2015-16	4.7 bn	0.7	629 bn	10.7 bn
2016-17	4.8 bn	0.7	665 bn	11.2 bn
2017-18	5.2 bn	0.7	698 bn	11.4 bn
2018-19	5.4 bn	0.8	718 bn	11.6 bn
2019-20	5.3 bn (est.)	0.7	757 bn	12.6 bn

New IHT ideas: OTS Review July 2019

“Simplifying the design of Inheritance Tax” –July 2019

OTS suggest that Govt reviews three BPR measures:

- (1) The 50/50 ‘wholly or mainly’ non-investment test for a business to qualify for BPR (s.105(3)) - should it be an 80/20 test?
- (2) The BPR exclusion (or treatment as an investment) for *indirectly held* non-controlling holdings in trading companies.
- (3) The BPR exclusion of furnished holiday letting businesses that are treated as trades for Income Tax and CGT.

New IHT ideas: The OTS Review: APR

OTS suggest that HMRC reviews one APR measure:

HMRC's approach to the eligibility of farmhouses for APR 'in sensitive cases', e.g. farmer needing to leave the farmhouse for medical treatment or to go into care.

(cf. *Atkinson v HMRC* [2011] UKUT 506 (TCC))

New ideas for IHT: APPG Jan 2020

All Party Parliamentary Group: "Reform of Inheritance Tax" proposals:

- (i) Replace IHT with a flat-rate gift tax on lifetime and death transfers - maybe 10% on lifetime 20% on death
- (ii) Nil-rate band allowance on death, transferable to surviving spouse - maybe £325,000
- (iii) annual allowance = maybe £30,000
- (iv) Remove APR and BPR reliefs. No reliefs or exemptions except spouse and charity exemptions
- (v) Remove CGT-free uplift of base cost on death

Developments in BPR: land-based businesses

The importance of evidencing the extent of service in land-based businesses to avoid denial of BPR under s.105(3) (where business consists “wholly or mainly ... making or holding investments”)

- *Vigne v HMRC* [2017]
- *Graham v HMRC* [2018]
- *Charnley v HMRC* [2019]

Developments in BPR: land-based businesses

- Owning and holding land for gain is capable of being an investment activity so that the land is an investment and part of the business is holding it
- But there is a wide spectrum at one end of which is the exploitation of land by granting a tenancy and at the other end is the exploitation of premises as a hotel or by a shopkeeper.
- Where a land-based business lies on the spectrum is a question of fact and degree
- Consider the use to which the land is being put and the way it is being turned to account
- Then stand back, and look at the matter in the round

Developments in BPR: *Vigne v HMRC*

- *Vigne v HMRC* [2018] - DIY livery 'with an edge' was not a 'business mainly of holding investments'
 - The horse was given the right to reside in a designated part of a field and a stable
 - But, services were also provided comprising worming products and their administration, where and when necessary, on a quarterly basis, hay feed during the winter (for which hay was grown), the removal of manure by a vacuum machine to secure the health of the horse, and a daily check of the health of each horse.
- Held: a level of enhanced livery services was provided which prevented it being mainly an investment business

Developments in BPR: *Graham v HMRC*

- *Graham v HMRC* [2018] – a furnished holiday letting business was, on the facts, not a ‘business mainly of holding investments’
 - A holiday let came with a cleaned heated pool, exceptional gardens, a sauna and games room, shopping and delivery services, bikes, food, personal help and transport
- The FTT scrutinised the nature and extent of the services, including the letting, and then stood back to look at it in the round. Held, the additional services predominated.

Developments in BPR: *Charnley v HMRC*

- *Charnley v HMRC* [2019] a business of providing grazing to another farmer's cattle was, on the facts, not a 'business mainly of holding investments'
 - Mr Gill rotated and herded the cattle, made silage for feed, provided barns for shelter, sheep proofed fences, dug and cleared ditches, saw to mole trapping and harrowing. He kept the land productive and looked after the cattle. He claimed Single Farm Payment.
 - Mr Gill "never stopped"; he "looked...dressed... spoke... acted like an old farmer and he was an old farmer"

Developments in APR: *Charnley v HMRC*

A house can be a farmhouse occupied for the purposes of agriculture even where the owner/occupier's land is being grazed by a third party's cattle.

Liabilities incurred to fund APR/BPR relievable property – s.162B

A liability incurred in funding

(i) the acquisition of, or

(ii) the maintenance or enhancement of the value of,

property eligible for APR or BPR must now be deducted from the unreduced value of *that property* (in priority to other property).

[s.162B(1) and (2) as regards BPR, and s.162B(3) and (4) as regards APR].

Such liabilities can't therefore reduce the value of the transferor's other property, even if charged on it.

NB s.162B catches liabilities incurred on/after 6 April 2013, unless incurred under an agreement made before then.

[Sch 36 para 5(2) and (3) FA 2013]

BPR frequent issues: 2-yr period of ownership – what must be owned?

“Property is not relevant business property ... unless it was owned by the transferor throughout the two years ... preceding the transfer”- s.106

- It is the *business/interest in a business/shares* etc (s.105(1)) that have to be owned for 2 years (not the underlying assets of the business).
- The activities of the business need not satisfy the s.105(3) ‘wholly or mainly’ test throughout the 2-year period, but must do so at the transfer date.
- A sole trader, or partnership, or company can acquire further business assets without the 2-year period starting afresh.

BPR frequent issues: Replacement property- extending period of ownership

s.107 allows a period of '2 years in total out of the last 5' to be the ownership period where the proceeds of sale of old 'relevant business property' is applied in acquiring new relevant business property.

NB s.107(4) allows new shares issued by a company to be treated as owned from the date of acquiring the original shares – but only on a 'rights issue' - s.107(4)
See *Vinton v HMRC* [2008] STC (SCD) 592 - a cautionary tale.

BPR current issue – Owned ‘throughout the two years ... ’

“Property is not relevant business property ... unless it was owned by the transferor throughout the two years ... preceding the transfer”- s.106

Will a temporary cessation of trading activity put the 2-year period of ownership at risk?

Is the intention to carry on as before, or to stop altogether?

Is the activity after the interruption the same in scale and/or nature from the previous activity?

Compare:

Seaman v Tucketts Ltd [1963] 41 TC 422, *J G Ingram & Son Ltd v Callaghan* [1968] 45 TC 151 (where the trade was held to have ceased), with

Kirk & Randall Ltd v Dunn [1924] 8 TC 663 and *Robroyston Brickworks Ltd v IRC* [1976] 51 TC 230 (where it was held to have continued).

BPR frequent issues

The 50% BPR rate

Farmland is often held outside the partnership which farms it. The effect is:

- APR: 100% rate - on 'Agricultural Value' s.116(2)(a)
- But BPR: 50% rate only - on the 'super-value' s.105(1)(d) and s.104(1)(b)

An interest in a partnership which owned such land would give BPR at the 100% rate.
s.105(1)(a) and s.104(1)(a)

- Consider contributing the land to the partnership – it increases the rate of BPR from 50% to 100%.

NB. The uplift is immediate, on an alteration of the p'ship s.107(3) trumps s.107(2).
CGT – Part disposal to other partners?
SDLT – Charge under Sch 15 para 12 FA 2003?

APR Current Issues

The 50% APR trap

- The APR rate is 50% where the interest in the agricultural property is subject to a tenancy beginning before 1.09.1995 giving no right to vacant possession within the next 24 months. s.116(2)(c)
- BPR is not available on the unrelieved 50% - s.114(1)
- Consider replacing pre - 01.09.95 tenancies with FBTs
 - s.4(1)(g) Agricultural Tenancies Act 1995
 - CGT: Sargaison v Roberts 45 TC 612; surrender and re-grant is a *part* disposal at most - CG Manual 70774
 - SDLT: Sch 17A para 3 FA 2003

Why is 'Balfour' so important?

Farmer v IRC [1999] STC (SCD) 321 – value of single estate business consisting predominantly of farming but also letting cottages attracts 100% BPR

Brander v HMRC (2010) 80 T.C. 163 (aka 'Balfour') showed difficulty of defining the extent of a sole trader's business in a trust context.

(Lord B's problem - partnership only in being 7 months before he died. Necessary (under s.107 IHTA) to see position before then, when a sole trader.

Did he carry on a single business, of farming and letting, over the entire estate when the trustees, not Lord Balfour, held the title to the cottages?)

Easier to show (a) a single business and (b) what are the assets of the business (s.110) in a partnership (or company) case, than in a sole trader case.

BPR – Balfour partnerships

Consider: Land/buildings in separate but connected ownerships are transferred to a single estate partnership/LLP which runs the whole estate as a single mainly farming/forestry business

IHT – s.10 IHTA - no transfer of value if at arm's length. 100% BPR after 2 years (sooner if partner had a qualifying business before).

CGT – separate Land Capital Accounts – s.59 TCGA and D12

SDLT: Sch 15 paras 10 to 12 Finance Act 2003

VAT – Is any of the land opted? If so, ensure TOGC. VAT (Special Provisions) Order 1995/1268 paras 5(1) and 5(2).

Incorporating Balfour partnerships

Consider: converting partnership to company if profits are substantial and not all required by the partners

IHT s.10 IHTA – unlikely to be a transfer of value

s.107(3) IHTA – 2-yr ownership does not have to re-start.

CGT s162 – ‘roll-over’ relief on incorporation of ‘business’ not confined to trade (*Ramsay v HMRC* [2013] W.T.L.R. 307)

SDLT Sch 15 para 18 FA 2003 likely to limit or remove SDLT where partners are ‘connected’, unless incorporation of company pre-arranged at time of formation of p’ship (NB s.75A FA 2003)

APR and BPR under wills

Consider drafting will, creating a single settlement with two funds and a power of appropriation between funds.

- Will creates:
 - (i) *relevant property* fund (discretionary trust, of nil rate + APR/BPR property), and
 - (ii) *IPDI* fund for surviving spouse (of residue), remainder to *relevant property* fund
- The trustees may cross-appropriate APR/BPR property in *relevant property* fund for non-relievable property in *IPDI* fund
 - CGT – no disposal - s.69 TCGA 1992
 - SDLT – no disposal - FA 2003 Sch16 paras 2,4,8; SDLTM 31745
 - IHT – value in surviving spouse’s estate becomes eligible for APR/BPR following required period of ownership.

Q & A

William and Elizabeth will now try to answer your questions - via Ben

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Thank you for attending our webinar.

We would normally ask you to join us for post-seminar drinks and canapés. We look forward to being able to doing so again soon.

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