

Are business and agricultural property relief at risk?

(Lecture P1068 – 8.33 minutes)

HMRC have recently published a paper on the influence of IHT reliefs and exemptions for estate planning, with a particular focus on business and agricultural assets. The research found that, for most people, the key objective is keeping assets within the family and not having to break them up on death. Saving IHT is a secondary concern. People rarely purchase business or agricultural assets, they said, with the sole aim of minimising IHT. In fact, it transpires that most people who inherit such assets usually retain them.

There have been long-standing rumours that business relief and agricultural relief may be restricted. At the moment, it is not clear whether the Conservative Government will go ahead with such changes. However, it must be admitted that now may be a good time for clients to organise both their gifts and their lifetime estate planning strategies, while the two main reliefs are still available and are not restricted in value.

If a client holds assets which qualify for business or agricultural relief on death, ideally the will should include provision for leaving such property to a non-exempt legatee, eg. children, grandchildren or a family trust (rather than the spouse). This ensures that, if the relief is still around, it will not be wasted.

Although business or agricultural relief would not be lost if a spouse qualifies for relief under S18 IHTA 1984 on the death of the property owner, there is a significant risk that the critical relief may no longer be available when the surviving spouse dies (or that the rates of relief may have changed). Thus the client has potentially lost the opportunity to pass on business or agricultural assets to the next generation on an IHT-free basis.

If the client's spouse might need the business or agricultural assets after the owner's death or if it would not be appropriate to give the assets to children or other descendants outright, it is always possible to transfer them to a discretionary will trust. The surviving spouse should be included as one of the potential beneficiaries so that they can enjoy the trust's income or capital if they want (subject, of course, to the trustees' discretion).

If, after death, business and agricultural relief continues to be available, the assets can be kept within the trust without attracting an IHT charge and, at a later stage, the trustees can appoint them out to the children (or other beneficiaries) as and when they decide that this is sensible. If the reliefs are no longer available at the date of death, the trustees can transfer the assets to the spouse within two years of the death under S144 IHTA 1984, using the spouse exemption to save IHT.

Contributed by Robert Jamieson