A Guide to

Agricultural Property Relief and Business Property Relief

leonard gray

Always here for you.

- Understand the types of relief available
- Understand when these reliefs are available
- Understand the application of these reliefs

This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to Agricultural Property Relief and Business Property Relief. Legal advice should always be obtained from Leonard Gray in application to a particular case.

Section 1

Agricultural Property Relief (APR)

This Section of the Guide seeks to outline the basics of APR and how the relief can be used.

APR is a relief from Inheritance Tax. It is available for transfers on death and lifetime transfers for agricultural property.

1. What assets qualify for APR?

It can be land or pasture that is used to grow crops or to rear animals. It also includes:

- Growing crops
- Stud farms for breeding and rearing horses and grazing
- Trees that are planted and harvested at least every ten years
- Land not currently being farmed under the Habitat Scheme
- Land not currently being farmed under a crop rotation scheme
- The value of milk quota associated with the land
- Some agricultural shares and securities
- Farm buildings, farm cottages and farmhouses

Assets that do not qualify for APR:

- Farm equipment and machinery
- Derelict buildings
- Harvested crops
- Livestock
- Property subject to a binding contract for sale

The relief is given on the agricultural value of agricultural property situated within the UK, Channel Islands, Isle of Man or a state within the European Economic Area which has been occupied for the requisite period of time for 'agricultural purposes'.

2. Minimum period of ownership or occupation

The property must have been owned and occupied for agricultural purposes immediately before its transfer for:

- Two years if occupied by the owner, a company controlled by them, or their spouse or civil partner; or
- Seven years if occupied by someone else.

If you inherit property, ownership runs from the date of death. This is also true for occupation if it is subsequently occupied.

If a spouse or civil partner inherits property, APR is available for any period during which their spouse or civil partner owned or occupied it.

3. Rates of Relief

APR is available at 100% if:

- At the date of the transfer you have the right to vacant possession or you could obtain it within the next twelve months; or
- Land was let on a grazing licence; or
- Property is let on a tenancy beginning on or after 1 September 1995.

APR is only available at 50% in all other cases.

4. Farmhouses

Farmhouses must be of a character appropriate to the size and nature of the farm.

A common problem is when the farmer has gifted or sold a large amount of the land prior to transfer, for example, a farmer owns 500 acres and gifts 475 acres away to his children. The farmhouse may then be classed as a large house with a much smaller area of land.

The farmhouse must be occupied for the purposes of agriculture. This needs to be by an individual who is actively involved in the farming activities. Problems here can arise when for example the farmer due to age is no longer active or the farm is farmed and managed by contractors.

5. Cottages

A cottage must be occupied by a farm worker. Unlike farmhouses, the cottage can be occupied by a retired farm employee or their surviving spouse/civil partner if either one of the following conditions is satisfied:

- The occupier is a statutory protected tenant; or
- The occupation is under a lease granted to the worker for their life and that of any surviving spouse/civil partner, as part of their employment contract by the landlord for agricultural purposes.

6. What about a lifetime gift of agricultural property?

For Inheritance Tax purposes, it is necessary to survive seven years from the date of the gift for it to be considered outside of your estate. APR will be available in that situation if all of the following conditions are met:

- At the date of the gift, the property qualified for APR;
- The property was owned by the transferee (the person to whom the gift was made) throughout the period from the date of the gift to the death of the transferor (the person who made the gift) or the death of the transferee if earlier;
- It is not subject to a binding contract; and
- At the date of the death it is still considered to be agricultural property and has been occupied for agricultural purposes throughout the period.

7. Agricultural shares and securities

Some company shares and securities are eligible for APR if their value gave the deceased control of the company at the time of death and/or comes from agricultural property that forms part of the company's assets

8. Replacement agricultural property

If agricultural property that qualified for APR is replaced by other agricultural property that also qualifies (apart from the minimum period of ownership requirement) then all of the following conditions must be met if the original property was gifted:

- All of the sale proceeds must be used to purchase the replacement property;
- The sale and purchase must be an 'arm's length transaction' in which the buyers and sellers act independently and have no relationship to each other; and
- The sale and purchase must take place within three years of each other.

If the agricultural property was in a person's estate when they died and it had replaced other agricultural property it can still qualify for APR if:

- The original and replacement property have been occupied by the owner, for the purposes of agriculture, for a total period of at least two years during the five years immediately before the death; or

- The original and replacement property was owned and occupied (either by the owner or by someone else) for the purposes of agriculture for at least seven years during the ten years immediately before the death.

APR is limited to what would have been available before the replacement. If the property was sold at less than the market value, APR is limited by the proportion that was given as a gift.

The next Section seeks to outline the Inheritance Tax relief for Business Property.

Section

2

Business Property Relief (BPR)

This Section of the Guide seeks to outline the basics of BPR and how this relief can be used.

1. What is BPR?

BPR is also a relief from Inheritance Tax. It is available for transfers on death and lifetime transfers for certain types of businesses or business assets subject to a minimum ownership period.

2. Categories of relevant business property and rates of relief

For deaths and transfers occurring on or after 6 April 1996, the table below sets out the types of property that can qualify as relevant business property:

Type of Property	BPR rate
A business or interest in a business (such as sole trader or partnership).	100%
A holding of shares in an unquoted company, including shares traded on the Alternative Investments Market (AIM).	100%
A controlling shareholding in a listed company - more than 50% of votes on all questions affecting the company as a whole.	50%
Land, buildings or machinery used in a business (but owned by the deceased) in which the deceased was a partner or controlling shareholder.	50%
Land, buildings or machinery held in a trust, where the deceased had the right to benefit and the asset was used in their business.	50%

- *Example:*
  Jessie has controlling shareholding in a small company called 'Cakes R Us Ltd' which makes cakes for all occasions and is worth £500,000. She owns the freehold premises, worth £1m, from which the business is carried on. The shares in the company will qualify for 100% BPR but this is only available on the premises at 50%. If the company had owned the premises BPR at 100% would still be available on the shares, the value of which would have been increased by the company's ownership of the premises. If Jessie did not have a controlling shareholding (ie, generally less than 51% of the shares), no BPR would be available at all on the freehold premises.

3. Assets that do not qualify for BPR

You cannot claim BPR on shares in a company if the company:

- Mainly deals with securities, stocks or shares, land or buildings, or in making or holding investments;
- Is a not-for-profit organisation;
- Is being sold, unless the sale is to a company that will carry on the business and the estate will be paid mainly in shares of that company; or
- Is being wound up, unless this is part of a process to allow the business of the company to carry on.

You cannot claim BPR on an asset if it:

- Also qualifies for Agricultural Property Relief;
- If the asset was not used mainly for business in the two years before it was either passed on as a gift or as part of the will; or
- Is not needed for future use in the business.

If part of a non-qualifying asset is used in the business, that part might qualify for BPR. An example would be if you use one room in a building as a salon and the other rooms are used as your home, the salon will qualify for BPR but not the other rooms.

4. Minimum ownership requirement

To qualify for BPR the property concerned must have been owned by the transferor throughout the two-year period leading up to the transfer. The nature of the business carried on need not be the same throughout the two year period, but there must have been a business throughout that period

The minimum ownership requirement is subject to relaxations as follows:

- If you inherit the property from your spouse/civil partner, BPR is available for any period during which your spouse/civil partner owned it.
- BPR is available if a transferred property replaces other property which would have qualified for BPR.
- If you inherit the property, ownership runs from the date of death.
- If the transferred property was acquired on an earlier transfer within a two year period, relief is available if:
    - The earlier transfer was eligible for business relief;
    - The earlier transfer was made to the current transferor (the person making the transfer) or spouse/civil partner;
    - One of the transfers was made on death, and
    - The property apart from the two-year rule, would qualify for BPR.

5. What about a gift of property?

For Inheritance Tax purposes, it is necessary to survive seven years from the date of the gift for it to be outside of your estate. If you do not survive for seven years, the value of the gift is added back into your estate.

BPR will however be available if the property gifted away was:

- Relevant business property at the time the gift was made;
- Owned by the person to whom the gift was made (the transferee) throughout the period from the date of the gift to the death of the transferor; and
- At the date of the transferor's death it remains property which is eligible for BPR.

The next Section of this Guide will look at how to make an appointment.

Section

3

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact a member of our team: **Chris Kelly**, **Jenna James** or **Sigourney Rutkowski** who will be happy to do so.

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We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9am to 5pm. Alternative times by arrangement.

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