Agricultural Property Relief and Business Property Relief changes and the impact on farmers

Synopsis: Agricultural Property Relief and Business Property Relief changes.

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The 30 October Budget changes

The nil rate band (NRB - £325,000), the residence nil rate band (RNRB - £175,000) and the taper threshold for the RNRB (£2m) will all be frozen for another two years, meaning that they will not increase until at least 6 April 2030. The NRB has not moved since April 2009. Had it been index-linked in line with the CPI, in 2025/26 it would now be about £510,000.

From 2026/27, 100% Agricultural and Business Relief (APR and BPR) will be capped at a total for of £1m. This cap will apply to the combined valued of agricultural and business property in the estate. Thereafter, 50% relief will apply without limit. Unlike the NRB and RNRB, the £1m allowance will not be transferable to a surviving spouse or civil partner.

The £1m cap will not apply to business and agricultural property that qualifies for relief at the lower rate of 50%. From 6 April 2026, the lower 50% rate of relief will also apply to shares listed on a stock exchange that is not a recognised stock exchange, such as AIM shares, which currently qualify for 100% BPR.

The scope of APR will be extended so that the environmental value of land managed under an environmental land management agreement will be eligible for APR for deaths and other transfers of value from 6 April 2025.

From 2027/28, pension death benefits will generally be included in the member's estate for IHT purposes. At present they are normally excluded.

The availability of APR and BPR to farming businesses

APR is available for transfers of agricultural property, whether it is owned, occupied or let. It is available for transfers made both during lifetime and on death. The relief also extends to certain transfers of shares in companies that own or occupy a farm.

Lifetime transfers which are not potentially exempt, or which, having been so, become chargeable because the donor dies within seven years can qualify for relief both at the time made and on death within seven years.

However, the relief is only available in calculating the tax, or additional tax payable as a result of the donor's death within seven years, if the donee still owns the property (or qualifying replacement property) when the donor dies, or if earlier, when the donee dies. Where relief on the transfer is at 100%, there will be neither a chargeable transfer nor a potentially exempt transfer at that time, but the transfer will be counted at death if the donor does not survive the seven-year period.

Agricultural property includes "such cottages, farm buildings and farmhouses, together with the land occupied by them, as are character appropriate to the

property". The relief only applies to the agricultural value of the property, and, in arriving at that value, any loan secured on the agricultural property must be deducted.

Those who have bought farms without the intention of being farmers and without carrying on or actively managing the business of farming from the property are unlikely to get APR relief on their dwelling house, in which case the RNRB might apply. Where there is part business use of the farmhouse, for example for bed and breakfast, BPR may apply on the business proportion.

APR operates by reducing the value transferred by a transfer of qualifying agricultural property. The part of the value transferred that is attributable to agricultural value is reduced by 100% if immediately before the transfer...

1. The owner had the right to vacant possession of the property or the right to obtain it within twelve months;

2. The owner has a controlling interest in a company that occupies the property;

3. Land is let on or after 1 September 1995;

4. By concession from 13 February 1995, let land where the owner's interest in the property either...

    - Carries a right to vacant possession within 24 months of the date of transfer, or

    - Is, notwithstanding the terms of the tenancy, valued at an amount broadly equivalent to the vacant possession value of the land.

5. Land is let, and the donor had been beneficially entitled to their interest in the property since before 10 March 1981 and would have been entitled to the higher rate of relief (then 50%) under the provisions for APR which operated before that date.

In all other cases, the value transferred is reduced by 50%. Any exemptions or other reliefs relating to transfers of value are given after APR has been given.

Where agricultural property satisfies the conditions for BPR, APR is given first and BPR is given on the value of the remainder (including any value of agricultural land in excess of its agricultural value). This means that, in the case of a farm business, the value of land and buildings will be eligible for APR (provided the conditions for APR are satisfied) and the value of the remaining assets, such as the stock and plant and machinery, for BPR (provided the conditions for BPR are satisfied).

Subject to what is said above about unquoted shares listed on a stock exchange that is not a recognised stock exchange (e.g. AIM shares) BPR is available for transfers during lifetime and on death, on transfers of the following categories of 'relevant business property' at 100% for...

- A sole proprietor's business or an interest in a business (such as that of a partner);

- A life tenant's business or interest in a business (including assets of which they were life tenant in possession under a settlement which were used in that business);

- A holding of unquoted securities which, by themselves or in conjunction with other such securities owned by the transferor and any unquoted shares owned by them, give the transferor control of a company; or

- Unquoted shares.

And at 50% for...

- Shares or securities of a company which are quoted and which, either by themselves or in conjunction with other such shares or securities owned by the transferor, give the transferor control of the company.

- Land, building, plant or machinery owned by a partner or controlling shareholder and used wholly or mainly in the business of the partnership or company immediately before the transfer, provided that the partnership interest or shareholding would itself, if it were transferred, qualify for business relief.

- Any land, building, machinery or plant which, immediately before the transfer, was used wholly or mainly for the purposes of a business carried on by the transferor, was settled property in which they were then beneficially entitled to an interest in possession and was transferred while the business itself was being retained.

The impacts of the Budget changes on farming businesses

It has been stated that the reform of APR and BPR has been designed to catch larger business and farms. HMRC says in their paper on the changes that almost 75% of estates claiming APR and the majority of estates claiming BPR in 2026/27 are expected to be unaffected. However, farming groups have argued the policy is a threat to the future of family farming.

Treasury data demonstrates that for 2021/22, 73% of APR claims came from estates with qualifying assets worth less than £1m. For BPR, 88% of claims came from estates with qualifying assets worth less than £1m. However, farmers often need to claim a combination of APR and BPR, where not all of their assets qualify for APR, and the new £1m allowance applies across both of these reliefs.

It will apply to the combined value of property in an estate qualifying for 100% BPR and 100% APR and replace the current regime under which relief is unlimited for both asset types. If the total value of the qualifying property to which 100% relief applies is more than £1 million, the allowance will be applied proportionately across the qualifying property, with any excess qualifying for relief at the lower rate

of 50%. For example, if there was agricultural property of £3m and business property of £2m, the 100% allowance for the agricultural property and the business property will be £600,000 and £400,000 respectively (and vice versa), with the remainder qualifying for relief at 50% only. This means a potential IHT liability of £800,000 on death, before the application of any other exemptions and the NRB and RNRB (£5m - £1m allowance = £4m - 50% relief = £2m x 40% = £800,000.)

Note that, where a 20% IHT rate is referred to by the Government on excess qualifying assets above the £1m allowance, this is based on a combination of the 50% relief available on that excess and the 40% death rate of IHT. (Non-qualifying assets would of course not benefit from the £1m allowance, or the 50% relief.)

If a chargeable lifetime transfer causes the settlor to exceed their NRB (on a seven-year cumulative basis) there is currently an immediate 20% IHT charge on the excess over the NRB. A further tax liability (at 20%) on the gift could arise if the settlor dies within seven years of making the transfer, although tapering relief can reduce the rate of tax payable. So, in the case of chargeable lifetime transfers of business or agricultural property qualifying for relief at 50% only (perhaps because the transfer is in excess of the £1m allowance or because the transfer is of AIM shares), this would seem to translate to a lifetime rate of 10% (20% of 50%) on each occasion.

Note that individuals start to lose part/all of their RNRB when their net estate exceeds £2m. So, in the above example of an estate which is at least £5m, no RNRB would be available.

The policy paper published alongside the Autumn Budget states that the new £1m allowance will cover the following transfers...

- property in the estate at death;
- lifetime transfers made to individuals in the seven years before death (failed potentially exempt transfers);
- chargeable lifetime transfers where there is an immediate lifetime charge, so for example when property is transferred into trust.

No draft legislation or technical guidance is yet available, so detail is limited, but it sounds as though the allowance will be a lifetime allowance that will apply only to the first £1 million of business and/or agricultural property transferred by the same transferor – whether during lifetime or on death.

The £1m allowance will take effect for deaths on or after 6 April 2026.

Any transfers to individuals more than seven years before death will continue to fall outside the scope of IHT, and, as mentioned above, the rate tapers down from three years after the transfer. However, anti-forestalling measures will mean that the new allowance will also apply to failed lifetime transfers of business or agricultural property made on or after 30 October 2024 if the donor dies on or after 6 April 2026 (although it would appear that business owners and farmers in a position to transfer business or agricultural property into trust prior to 6 April 2026,

would be able to do so without any immediate IHT charge regardless of the value transferred).

In addition, lifetime transfers often aren't desirable, not least because the donor(s) would not be able to benefit from the assets after the transfer. Otherwise, the gift with reservation provisions would mean the assets would be treated as still being in the donor(s) estate.

As mentioned above, assets automatically receiving 50% relief (such as assets owned personally and used in the business of a trading partnership or company) will not use up the £1 million allowance.

The £1 million 100% allowance would seem to apply to each individual transferor (so £2 million between spouses/civil partners if they each own £1 million of qualifying business and/or agricultural property and those assets don't pass to the surviving spouse/civil partner on first death, as unused allowance will not be transferable between them).

Where the Government has referred to a £3m allowance being potentially available, it would appear that this is referring to a situation where two people own the farm, but not as joint tenants, and each of them passes their share of the farm to a child or grandchild on death. In this situation, both would benefit from the new £1m allowance, in addition to a £325,000 NRB and, assuming the farmhouse, or another property, qualifies, a £175,000 RNRB. So, two x £1.5m = £3m. Please also see the example below.

The House of Lords has put together the following table which may be helpful in summarising how the new IHT rules might apply to farms…

Who owns the farm?	Who is it being passed to?	Available allowances	Value passed on free of IHT
Farm owned by two people	Child or grandchild	2 x standard £500,000 tax-free allowance (£325,000 for NRB + £175,000 for RNRB) + 2 x £1m tax-free allowance for agricultural property inheritance	= £3m
Farm owned by two people	Anyone who is not a direct descendant	2 x £325,000 for NRB + 2 x £1m tax-free allowance for agricultural property inheritance	= £2.65m
Farm owned by one person	Child or grandchild	1 x standard £500,000 tax-free allowance (£325,000 for NRB + £175,000 for RNRB) + 1 x £1m tax-free allowance for agricultural property inheritance	= £1.5m
Farm owned by one person	Anyone who is not a direct descendant	1 x £325,000 for NRB + 1 x £1m tax-free allowance for agricultural property inheritance	= £1.325m

Source: [Budget 2024: Inheritance tax and family farms - House of Lords Library]

100% APR is available for transfers of agricultural property whether owned by individuals outright or in partnership. However, note that, where farming assets owned jointly qualify for BPR, they will only achieve 100% relief (and be impacted by the new £1m allowance) where they are owned in partnership. Non-partnership assets (e.g. assets held jointly, but not in a partnership), can only achieve 50% BPR (and will not be impacted by the new £1m allowance) as such as assets are effectively owned personally and used in the business of a partnership.

Jointly owned property, i.e. where the farmers own the assets together in joint names, but not in a formal partnership, can be owned as joint tenants or tenants in common. Where the assets are held jointly as joint tenants, on death of one joint owner, the survivorship rules mean that the deceased's share passes automatically to the surviving joint owner(s). If the owners are married to each other, or are in a civil partnership, the new £1m allowance will not be used on first death because of the spouse/civil partner exemption. And, as unused £1m allowance will not be transferable between them, it will be lost. Conversely, where the assets are held jointly as tenants in common, the deceased's share passes in accordance with their will, or under the rules of intestacy.

With a partnership, the legal owners hold the assets in trust for the partnership. The partnership agreement will normally provide for the understanding of ownership. And, in this case, planning can be carried out to ensure that the partnership share is dealt with in the most appropriate manner on death and satisfies the objectives of the partners. However, if it does not, then as partnership property is held jointly as joint tenants, the assets will pass to the remaining partners on death, which may not be desirable, or as was intended.

Interaction between £1m allowance and RNRB in farming businesses

Whilst it's possible for a farmhouse, or another farm property, to qualify for the RNRB (where it doesn't qualify for APR or BPR), there will often be a problem with the size of the net estate, as the available RNRB is reduced by £1 for every £2 by which the deceased's net estate exceeds a £2m taper threshold. The practical effect of this taper is that for a single person who dies the RNRB will be lost altogether where the net estate exceeds £2.35m. For married couples/civil partners who are leaving everything to the other spouse/civil partner on first death, the corresponding figure on the second death is £2.7m. Net estate for these purposes means everything to which the deceased is beneficially entitled after deducting liabilities such as loans but before deducting exemptions and reliefs such as BPR or APR.

This means that business and agricultural property is included at its full value - thereby precluding many farmers and business owners from benefiting from the RNRB altogether. This means that, in cases where the total net estate (including agricultural and business property) exceeds £2.7m and passes in its entirety to the surviving spouse/civil partner on first death, the maximum allowances will be £1.65m, i.e. two x NRB of £325,000 and one x £1m allowance = £1.65m, and not

£3m. The £3m 'IHT-free' threshold is therefore likely to be unachievable for many family farmers.

Example of where the £3m might apply

Alex and John are married and each has £1.5m of assets including £1m of agricultural property. Alex dies first leaving their agricultural property to their children and the other £500k to John. On John's death, he would then be able to leave his £1m of agricultural property to his children as well as £1m of other assets to his children (provided that the other £1m included a home qualifying for the RNRB, but not qualifying for APR or BPR, worth £350,000) without any IHT. There is no taper as neither the estate of Alex on first death, nor the estate of John on second death, exceeded £2m.

There are various permutations of this, but the key is that each spouse/civil partner has at least £1m of agricultural or business property in their sole name, between them they own a home (or former or second home) worth at least £350,000 which qualifies for the RNRB, but not for APR or BPR, and neither the estate on first death nor the estate on second death exceeds £2m. It would also be achievable if the surviving spouse/civil partner makes lifetime gifts to reduce the estate on second death to below the RNRB taper threshold.

Trusts

The trustees of certain trusts are liable to an IHT charge of up to 6% of the value of property held in a trust every ten years. There is also an exit charge when property leaves the trust. APR and BPR can apply to property in trust. There will be a combined £1 million allowance for trustees on the value of qualifying property to which 100% relief applies, on each ten-year anniversary charge and exit charge, consistent with the treatment of qualifying property chargeable to IHT on death. The Government will publish a technical consultation in early 2025 on the detailed application of the policy regarding charges on property within trust, however, this would seem to be a separate £1m allowance to that available to the individual farmer or business owner.

Settlors may have set up more than one trust comprising qualifying business property and/or agricultural property before 30 October 2024, in which case, from 6 April 2026, each trust would have a £1 million allowance for 100% relief. However, the Government intends to introduce rules to ensure that the allowance is divided between these trusts where a settlor sets up multiple trusts on or after 30 October 2024.

Although it would appear that business owners and farmers in a position to transfer business or agricultural property into trust prior to 6 April 2026, would be able to do so without any immediate IHT charge regardless of the value transferred, careful consideration of the long-term ramifications of this will be essential. While a tax rate of 3% every ten years on value in excess of £1 million may sound more appealing than the 20% rate which would otherwise apply on a death, the implications for trustees holding business or agricultural assets are significant.

Where (for example) trustees hold shares in a trading company as their sole asset, there may be no options for funding the charge other than taking a dividend from the company – which will be taxable in their hands at 39.35%. This increases the overall tax payable to around 5%; not far off the 6% rate which would apply if no relief were available at all.

Holding assets within a discretionary trust typically provides a greater level of protection for the family than owning those assets personally. These assets are generally protected against claims for monetary amounts arising in connection with a divorce, bankruptcy or provision for long-term care. The beneficiaries' access to the funds can be managed by the trustees to ensure the protection of the funds and to preserve the assets within the bloodline. As with many planning strategies, there are a few areas which the settlor will also need to consider prior to undertaking the planning.

Once the gift has been made, the recipient (the trustees) will need to retain the BPR/APR-qualifying asset (or a replacement asset which also qualifies for APR/BPR as appropriate) within the trust for the earlier of the settlor's lifetime or seven years from the gift date. If death happens within seven years, and the asset is no longer APR/BPR-qualifying, the gift effectively fails and comes back into charge for IHT with relief given at outset clawed back. As mentioned above, if the death occurs on or after 6 April 2026, the £1m cap will also be applied retrospectively, limiting the amount of relief even in cases where the recipient still owns the qualifying property.

Capital gains tax (CGT) can apply when chargeable assets are transferred into trust. Hold-over relief will normally be available to defer the liability to CGT if the transfer into trust is immediately subject to IHT, which would be the case on a transfer into a discretionary trust. The relief applies even if no IHT arises on the transfer. If the settlor elects for hold-over relief, the CGT gain is passed on to the trustees and taxed on a subsequent disposal by the trustees. In the case of business or agricultural property, hold-over relief can also be claimed on outright gifts that are potentially exempt transfers, assuming the property qualifies under the CGT rules for relief for gifts of business assets.

Of course, if assets qualifying for APR or BPR are gifted during lifetime, the qualifying assets are no longer owned by the settlor and therefore the opportunity for a CGT-free uplift to market value on their death will be lost. Careful thought therefore needs to be given to the donation of chargeable assets by an elderly and/or seriously ill individual – even if hold-over relief is claimed - as, on death within seven years, the CGT ultimately payable may be more than the IHT saving made as a result of the gift (especially in cases where the IHT relief is clawed back or restricted as explained above).

For the right clients, lifetime gifting can be useful planning to consider. However, professional legal advice should always be taken with regard to the tax and legal implications involved.

Comment

The wider restriction to APR and BPR will be a concern for many business owners and their families who may now need to consider how to fund an IHT bill without breaking up or selling the family business. The potential adverse implications of denying or reducing the availability of APR to working farmers are also obvious. There is an option to pay IHT in ten annual instalments on such assets until they are sold. Interest relief may be available, so that each instalment would be interest free if paid on or before the due date. However, late payment interest at the new higher rate, would be due on any instalment payments paid late or in cases where interest relief is not available.

The options to deal with the impact of these lowered reliefs need to be considered in the context of overall estate and IHT planning, including that, from 6 April 2027, most pension funds will fall into the estate for IHT purposes. In some instances, the solution will be to make lifetime gifts. In many cases, life insurance in trust may be the best option for clients facing new liabilities as a result of the changes. This will be especially so for farmers who may find it more difficult than other business owners to make lifetime transfers of qualifying property without relinquishing control and IHT efficient access.

Professional legal advice should always be taken with regard to the tax and legal implications involved in any planning. Both BPR and APR are complex reliefs and farming businesses, and ownership of the business and agricultural property, are often equally complex. Tax planning cannot be carried out until all of the basics of legal ownership are understood. For example, are land and buildings partnership property or non-partnership property and in single or joint ownership, or as tenants in common? Many business families have an understanding of how property is held, which can be very different from the evidence relating to the actual ownership.

As mentioned above, an interest in a partnership can achieve 100% BPR (so will be impacted by the new £1m allowance) whereas non-partnership assets can only achieve 50% BPR (so will not be impacted by the new £1m allowance) as such assets are effectively owned personally and used in the business of a partnership.

It will clearly be important to understand what parts of the farm will qualify for APR, what will qualify for BPR, and at what rate, and how these reliefs will impact on the use of the spouse/civil partner exemption and vice versa.

Please also bear in mind that the current Government may change its mind over aspects of these Budget announcements before they become law.

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