Inheritance tax - agricultural property relief

Synopsis: Conditions for agricultural property relief.

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Availability

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

The relief applies to lifetime transfers which are not potentially exempt, or which, having been so, become chargeable because the donor dies within seven years, and to transfers on death. 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.

For the purpose of the relief agricultural property means agricultural land or pasture in the UK, Channel Islands and the Isle of Man (prior to 6 April 2024 it also included the EEA, although any lifetime transfers made before 6 April 2024 will continue to benefit from the rules in place at the time the transfer is made. And, prior to 22 April 2009, it was restricted to UK, Channel Islands and Isle of Man). Agricultural property includes short rotation coppice land and farmland dedicated to wildlife habitats under Government Habitat Schemes (please see below), and any farmhouses, cottages or farm buildings which are of a character appropriate to the property. So, a large house situated on a small area of agricultural land would probably not be regarded as agricultural property, nor would farm buildings used for purposes other than agriculture.

In the case of *Dixon v. Inland Revenue Commissioners 2002,* heard before a Special Commissioner, B had a 60% interest in a cottage, with a garden and orchard. At varying times, sheep grazed on the land, fruit was picked from the orchard and sold for about £70 (but this was not declared on the tax returns). Hens and geese were kept for eggs and meat and in one year a goat was kept for milk. B died in 1998 and the executor appealed against HMRC´s refusal of a claim to APR.

The Special Commissioner held that APR applies to agricultural land or pasture: whether a property qualifies is a matter of fact and degree. In this case, the garden and orchard were of a character appropriate to a cottage in a rural area, rather than the cottage being appropriate to agricultural land. The primary purpose of the property was residential, rather than agricultural. The cottage was not of a character appropriate to agricultural land or pasture, rather the converse; the

garden and orchard were of a character appropriate to the cottage as a private residence in a rural area. Accordingly, the appeal was dismissed.

Agricultural property includes buildings used for the intensive rearing of livestock or fish if they are occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture. Such items as growing crops are included when transferred with the land. The benefit of APR is also extended to stud farms engaged in the breeding and rearing of horses and to land used for grazing associated with those activities. Woodlands are included if transferred with other agricultural land if their use is ancillary to the agricultural purposes, for example shelter belts and shade trees. But where woodlands are agricultural property, they are not eligible for the woodland relief. APR is not available on farmland converted to woodland used for the production of commercial timber, but, in this case, woodland relief may apply.

Farmland that is managed in an environmentally beneficial way under the Countryside Stewardship Scheme will usually qualify for APR, providing the land was occupied for agricultural purposes at the time it was brought within the Scheme.

APR is not intended to apply to a private residence and garden, but to apply to land and pasture used for agriculture. It is not difficult to see why the Special Commissioner came down on the side of HMRC in this case. However, it is very common for the taxpayer and HMRC to "discuss" the issue of what is or is not agricultural property in a particular case. This is especially so in respect of farmhouses.

Farmhouses

Section 115(2) Inheritance Tax Act 1984 states that relief is available for "agricultural property" which includes "such cottages, farm buildings and farmhouses, together with the land occupied by them, as are character appropriate to the property".

In relation to the availability of APR for a farmhouse, there are two hurdles to jump. The first is whether or not the house in questions is a farmhouse. If it passes this first test the second question is whether or not the farmhouse is "character appropriate" to the farm.

HMRC will investigate in detail exactly what the occupier of the residence was doing in the way of agricultural activity in the relevant period, to determine whether the residence could properly be called a farmhouse for these purposes, paying particular attention to cases where the farmer had retired and let their land on grazing agreements.

The current view of the courts is that cottages, farm buildings and farmhouses must be of a “character appropriate” to agricultural land or pasture in the same occupation, but that it is not required that they should be in the same ownership as the agricultural land or pasture to qualify for APR.

Is it a farmhouse?

In the case of Executors of John Sidney Higginson v IRC, HMRC successfully argued that the house in question was not a farmhouse at all. To view the Special Commissioner´s decision please see here.

The property was in County Down. The land on which the house was situated was 134 acres, of which only 63 acres were farmland. HMRC allowed APR on the 63 acres, somewhat unusually perhaps given that no farming had taken place on the land during the previous 15 years. However, HMRC did argue that the house was simply a private residence that was not used in a farming business.

This is the problem that some old farmers and increasingly some "new farmers" are facing. By old farmers we mean those that have been farming for generations but have diversified their businesses in order that they do not concentrate totally on farming. If it can be argued that the house is used as a dwelling house and for the purposes of some other business, the link to farming may be seen as incidental.

New farmers are those who are not really farmers at all. They may be people who have made a lot of money in towns or in "the City" who have decided to buy a farm. They live in the farmhouse but let out the land to others to farm. The link between the farmhouse and the farm is then lost, even though they may be part of the same property. The farmhouse has now simply become a dwelling house, a grand dwelling house in some cases.

The intention here is to deny tax relief to those who own and live in big houses surrounded by farms but do not use those houses for farming purposes - obviously the farmland will still attract APR if farming is taking place.

The McKenna case (Arnander, Lloyd and Villiers (McKenna's Executors) v HMRC [2006] SSCD 800) was another that confirmed that to qualify as a farmhouse the owner needs to have carried on the business of farming from the property. In this case, the owners were retired and the farming was carried out and managed by contract farmers. The house was, as a result, held not to be a farmhouse.

Is the farmhouse "character appropriate"?

This is an issue of size. HMRC would seek to deny APR to a huge house on a small farm - even though all the business of the farm is conducted from the house.

The farmhouse must be appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farmland being farmed. This is all very subjective. The basic question appears to be "is this size and type of farmhouse traditionally associated with farming in this area"?

Substantial and/or grand houses will always struggle to qualify for APR, particularly if there is relatively small acreage perhaps on which few or no farm buildings stand or if all of the land is occupied under a grazing agreement.

There are many decided tax cases that provide guidance on what is and is not deemed 'character appropriate'.

In the case of Lloyds TSB as Personal Representative of Rosemary Antrobus deceased v IRC 2002, HMRC was unsuccessful in its argument that a particular farmhouse was not character appropriate. To view the Special Commissioner´s decision please see here. The property was in Warwickshire. Miss Antrobus lived in Cookhill Priory and farmed 126 acres of land. There was no issue as to whether or not Cookhill Priory was a farmhouse. The business of farming WAS carried on from the farmhouse. It appears that Miss Antrobus spent most of her time farming and little else. The house was the base for her farming operations – even though they were not always profitable.

The exterior had a grand façade but the interior at her death was far from grand as it had been neglected for some time. It was therefore accepted that this was "a farmhouse with a farm and definitely not a house with land". However, over the centuries the owners of Cookhill Priory had continually added to it so as to make it seem like a grand country dwelling house, leading HMRC to attempt to deny APR or at least only permit APR on such proportion of its value that was represented by its agricultural value.

Miss Antrobus's personal representatives were successful in the APR claim for two reasons. The first was that the deceased lady's accountant had carried out an investigation of similar farms in the area and presented details of 27 of them to the Special Commissioners. The acreages of these farms were similar to the one in question and so were the size of the houses.

Consequently, it would have been difficult to argue that the house was large in relation to the farm. However, a subsequent Land Tribunal ruling (please see the section on Agricultural Value below) reduced the APR by a discount factor of 30%.

The more recent case of Golding (2011), confirms that the Antrobus principles for establishing character appropriateness still hold good and importantly, further provides authority for the fact that profitability of a farming business is not determinative of the property's 'character appropriateness'.

When advising on or claiming APR, it is extremely important to understand the likely attitude of HMRC in relation to the property in question. These cases show the value of research when defending a challenge, however, 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 should be advised they are unlikely to get relief from inheritance tax (IHT) on their dwelling houses.

Nature of the relief

The relief 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 any reliefs relating to transfers of value are given after APR has been given. Where agricultural property satisfies the conditions for business relief, APR is given first and business relief is given on the non-agricultural value. As with business relief, APR is given without the need for a claim.

It was announced in the 30 October 2024 Autumn Budget that, from 6 April 2026, the current 100% rate of APR will only apply for the first £1 million of combined agricultural and business property reducing to 50% thereafter. On 23 December 2025, the Government announced that the £1 million threshold would be increased to £2.5 million from 6 April 2026.

Qualifying unquoted shares, that are traded on a recognised stock exchange, (most obviously Alternative Investment Market (AIM) shares), will not be eligible for 100% relief and only 50% relief will be available. The value of those shares will, however, not be taken into account in determining the extent to which the above-mentioned £2.5 million allowance has been used.

The value of other qualifying assets automatically receiving 50% relief (such as assets owned personally and used in the business of a trading company) will also not use up the £2.5 million allowance. The £2.5 million allowance will apply to each individual transferor (so £5 million between spouses/civil partners) . In the initial announcements the 100% allowance was to apply to each individual transferor – so spouses/civil partners would each need to own sufficient qualifying assets to use the allowance. However, in the 25 November 2025 Autumn Budget, it was announced that the allowance would be transferable between spouses/civil partners if unused on first death in the same way as the nil rate band and residence nil rate band even if first death occurred prior to 6 April 2026.

The £2.5 million allowance will take effect for deaths on or after 6 April 2026. However, anti-forestalling measures provide 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.

Minimum period of ownership or occupation

The basic ownership or occupation requirements relating to agricultural property are contained in Section 117 IHTA 1984. They apply to death transfers and lifetime transfers that are chargeable when made (see below). Additional tests introduced by the Finance Act 1986 have to be satisfied where a charge or increased charge to IHT arises because the transferor dies within seven years of the transfer.

Transfers on death and lifetime transfers chargeable when made

Relief is available if...

- The agricultural property was occupied by the donor/owner for agricultural purposes for the two years immediately before the transfer;

or

- It was owned throughout the seven years immediately before the transfer and throughout that period has been occupied for agricultural purposes (whether by the donor/owner or by another) – Section 117 IHTA 1984.

For this purpose, the following apply...

1. If the donor inherited the agricultural property on the death of another person, the period of ownership (and the period of occupation if it is subsequently occupied) is regarded as beginning on the date of that death. If the other person was the donor's spouse or civil partner, the spouse's or civil partner's period of occupation or ownership can be added to that of the donor – Section 120(1) IHTA 1984.

2. Occupation by a company controlled by the donor is treated as occupation by the transferor - Section 119(1) IHTA 1984.

3. Occupation by a Scottish partnership is treated as occupation by the partners - Section 119(2) IHTA 1984.

4. If, at the time of the transfer, the donor has occupied the property for agricultural purposes for less than two years, but that property replaced other agricultural property which the donor had previously occupied for agricultural purposes, the occupation condition is treated as satisfied if the donor had occupied one or other of the properties for a combined period of at least two years out of the five years preceding the transfer – Section 118(1) IHTA 1984. If the first property had a lower value when the donor ceased to occupy it than the second property had when the donor began to occupy it the relief is scaled down – Section 118(3) IHTA 1984.

5. In corresponding circumstances to 4, the ownership condition is treated as satisfied if the donor has owned one or other property for a combined

period of at least seven years out of the ten years preceding the transfer and throughout the seven years the properties had been occupied (by the transferor or another) for agricultural purposes – Section 118(2) IHTA 1984. Relief may also be scaled down as in 4. above.

Transfers within two (or seven) years

If property is transferred within two (or seven) years of an earlier transfer on which it qualified for APR under Part V Chapter II IHTA 1984, the occupation or ownership tests are treated as satisfied on the second transfer if...

- The first or second transfer took place on death;

and

- The first transfer was made to the second donor or his or her spouse or civil partner;

and

- The property at the time of the second transfer was occupied for agricultural purposes either by the second donor or by the personal representatives of the first donor.

Where the property at the time of the second transfer replaced other property, relief is restricted to that which would have been available had the replacement not been made. Where the first transfer was a sale at less than market value, the relief available on the second transfer is restricted to the proportion that the element of gift in the first transfer bore to the total value – Section 121 IHTA 1984.

Transfers where a charge or increased charge arises because the transferor dies within seven years

Relief is available on property which qualified for relief at the time of the gift if...

- That property has been owned by the donee throughout the period between the gift and the death of the transferor and (subject to special rules for replacement property) is not subject to a binding contract for sale – Section 124A(3)(a) IHTA 1984;

and

- That property is agricultural property immediately before the donor's death and has been occupied for agricultural purposes throughout the period mentioned above – Section 124A(3)(b) IHTA 1984.

If the property originally given consists of shares or securities in a company and agricultural property forms part of that company's assets, the agricultural property must have been owned by the company and occupied for agricultural purposes throughout the period between the gift and the death – Section 124A(3)(c) IHTA 1984.

Agricultural value

The relief for agricultural property applies only to its agricultural value, which is the value of the agricultural property on the footing that it must be used perpetually for agricultural purposes - Section 115(3) IHTA 1984. The relief does not extend to any other element in the value of such property, for example development or 'hope' value. Where there is part business use of the farmhouse, for example for bed and breakfast, business relief will apply on the business proportion. 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.

In Lloyds TSB Private Banking Plc (personal representative of Rosemary Antrobus deceased) -v- Peter Twiddy (Inland Revenue Capital Taxes) 2004, the Lands Tribunal determined that even where a farmhouse met all the strict conditions necessary to qualify as agricultural property for the purposes of APR, IHT could still be payable by the estate if the open market value of the farmhouse exceeded the agricultural value.

Under section 116 of the Inheritance Tax Act 1984, APR is limited to the agricultural value of the property concerned. Agricultural value is defined by section 115(3) as "the value of the property if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property".

HMRC contended that an "agricultural occupancy condition" (AOC) imposed under planning permissions was equivalent to the perpetual covenant mentioned above. HMRC then produced evidence of three properties where an AOC had been imposed and had as a consequence reduced the open market value of the properties by one-third. HMRC suggested that the agricultural value of the farmhouse in this case (on which there was no AOC) should be at a 30% discount to its open market value, which had already been agreed in a previous hearing.

The taxpayer argued that the farmhouse could be occupied by anyone who farmed the surrounding land and that such an occupier need not be wholly or mainly working in agriculture, but might include an occupier whose main source of income lay elsewhere, e.g. a lifestyle farmer. In such a case, the agricultural value could be equal to the open market value, so no discount would apply.

The Tribunal held that the evidence produced by HMRC was sufficient to accept a discount of 30% as credible. Further, it stated that a farmhouse can/will only qualify for APR where the person farming the land does so on a day-to-day basis, or did so before retirement, and occupies the farmhouse. Therefore, a farmhouse occupied by a lifestyle farmer, who leaves the management of the farm to someone else, would not qualify for APR.

The Antrobus cases (please see earlier) also addressed this point of APR only applying to the agricultural value of a farmhouse.

Relief is not typically given for investment property, however, in the case of Farmer and another (Executors of Farmer deceased) v Inland Revenue Commissioners 1999, the Special Commissioner allowed the executors` appeal against HMRC's

denial of relief, determining that the question of whether a business consists 'mainly' of farming, must be considered in the context of all the relevant factors taken together.

Initially, APR was allowed in respect of the £2.25 million attributed to the farmland and farm buildings but was refused in respect of the £1.25 million attributed to the let properties on the ground that the latter was a separate business which consisted "wholly or mainly of "making or holding investments".

However, the Special Commissioner held that the business consisted mainly of farming and was therefore eligible for IHT business relief. Accordingly, he rejected HMRC`s contention that the investment properties situated on the farm (which were let out on short term tenancies) constituted investments, even though in some years they produced more profit than the farming activities. It was necessary to view the business 'in the round'. The farm was run for profit and, even though there were losses in some years, the business consisted mainly of farming.

These principles were upheld in the later Balfour case (HMRC v Andrew Michael Brander (as executor of the will of the late fourth Earl of Balfour)[2010] UKUT 300 (TCC)) where a landed estate with a number of different trading and investment activities were held to comprise a single composite business on which relief was allowed.

Mortgages

If the agricultural property is transferred subject to a mortgage or other secured liability, or if the relief is due on part only of the property transferred, a proportionate calculation is made of the part to which the relief applies – Section 116(1) IHTA 1984.

Company shares and settlements

APR also applies where shares or securities in a company are transferred if...

- Agricultural property forms part of the company's assets and part of the value of the shares and securities can be attributed to it;

and

- The shares or securities gave the transferor control of the company immediately before the transfer;

and

- The agricultural property had been occupied for agricultural purposes by the company or the donor for the two years immediately before the transfer or had been owned by the company for the seven years immediately before the transfer and had been occupied throughout that period by the company or another person for agricultural purposes;

and

- The shares or securities had been owned by the transferor for a corresponding period of two years or seven years as appropriate.

The relief extends to that part of the value of the shares or securities transferred by a chargeable transfer which is attributable to the agricultural value of qualifying agricultural property – Section 122 IHTA 1984.

Contracts for sale

Relief is not normally available if the agricultural property or the shares or securities are subject to a binding contract for sale at the time of the transfer – Section 124 IHTA 1984. However, the relief would be available if instead of a binding contract for sale an option to buy and sell is entered into.

Land in habitat schemes

Finance Act 1997 extended APR, for transfers made on or after 26 November 1995, to include land in a habitat scheme. Land is treated as being in such a scheme if an application for aid under the following enactments has been made and is still in force...

- Habitat (Water Fringe) Regulations 1994
- Habitat (Former Set-Aside Land) Regulations 1994
- Habitat (Salt-Marsh) Regulations 1994
- Habitat (Scotland) Regulations 1994
- Habitat Improvement Regulations (Northern Ireland) 1995

All land in a habitat scheme will be treated as agricultural land, and buildings used in carrying out the management of the land will be treated as farm buildings. If the gift was made prior to 6 November 1995 but becomes chargeable to tax after that date relief is available.

In the 30 October 2024 Autumn Budget, the Government announced that Chapter 2, Part V (agricultural property) of the Inheritance Tax Act 1984 will be amended 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. Relief will be available for land managed under an environmental agreement with, or on behalf of, the UK Government, devolved administrations, public bodies, local authorities, or approved responsible bodies. This change is intended to prevent the potential loss of APR being a barrier to the involvement of agricultural landowners and farmers in land use change under an environmental agreement including, but not limited to, the environmental land management schemes in England and equivalent schemes elsewhere in the UK.

Legislation will be included in Finance Bill 2024/25 and the details were set out in a consultation response published by the previous Government on 6 March 2024. According to that response, relief will be available where there is an agreement or

undertaking in place for the environmental land management scheme on or after 6 March 2024. This includes an agreement or undertaking entered into before 6 March 2024 if it remains in place on or after 6 March 2024.

Also as set out in the consultation response, this will repeal section 124C (land in habitat schemes) of Inheritance Tax Act 1984 in its current form, since it no longer applies.