Reprinted from British Tax Review
Issue 5, 2016

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5 Canada Square
Canary Wharf
London
E14 5AQ
(Law Publishers)

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Current Note

A review of agricultural property relief and business property relief

Background

HMRC routinely review the operation of all major tax reliefs including those such as agricultural property relief (APR) and business property relief (BPR) that cost around £1 billion annually. To this end they have met with various representative professional bodies and organisations representing businesses. This area is both complex and controversial but before HMRC reach any conclusions on whether and if so how to "reform" these reliefs basic policy questions need to be considered. Is reform actually needed to these reliefs or do they already achieve their policy objectives? Are the original policy objectives still valid and worthwhile or are other aims more relevant now? How do other countries tax business property and farmland on death? This note considers these questions and outlines some options.

APR and BPR are currently very generous: since 1992 (when John Major increased the relief from 50 per cent to 100 per cent), taxpayers who qualify generally pay no tax on agricultural property or business property. The relief is uncapped (unlike entrepreneurs' relief) and there is no requirement to hold the property for any minimum length of time after the chargeable event (whether this arises on the death of an individual or on the settlement of business property into trust or on the 10 year anniversary of a trust).[1]

Sections 103 to 114 of the Inheritance Tax Act 1984 (IHTA) set out the conditions required to qualify for BPR and sections 115 to 124C IHTA set out the rules on APR.

BPR

All unlisted trading companies or trading groups (including AIM listed shares), listed companies where the individual or trust has control and unincorporated trading businesses receive 100 per cent relief from inheritance tax provided the transferor has owned the relevant asset for two years prior to the transfer. 50 per cent relief is given where land is used in a qualifying business but owned by the transferor personally. Investment businesses such as let property do not qualify for business property relief (although let farms are exempt to the extent of their agricultural value). However, BPR is complex and its availability can depend to a large extent on how businesses are structured. Problems arise most often in the context of the definition of an investment business, excepted assets and binding contracts for sale.

Section 105(3) IHTA provides that no relief is available where the business concerned is one of "investments", that is, where the business carried on consists wholly or mainly of dealing in

[1] The transferor or his estate can claim full relief even if the asset is subsequently sold immediately after the lifetime gift or after death. However there is a clawback of relief on lifetime gifts but only if the asset has been sold and the transferor has died within seven years of the gift. Some of the anomalies raised by business property relief are discussed in the writer's earlier article at "Capital taxes—time for a fresh look?" [2015] BTR 679.

shares or securities, dealing in land or buildings, or the making or holding of investments. However, as long as a business is "mainly", that is, more than 51 per cent, trading 100 per cent relief is available on both the trading *and* the investment property held within that business so this is not a disallowance on investment assets as such. Equally if the business is 51 per cent investment, then the entire business is disqualified from relief, not merely that part concerned with investment. Given the importance of working out whether a business is mainly trading or mainly investment, disputes frequently arise around the meaning of "holding an investment", whether a business is "mainly" trading or "mainly" investment,[2] whether a company is property dealing (no relief) or property development (full relief),[3] whether money lending qualifies for relief[4] and the meaning of control.[5]

The relief can become very complex for holding companies. If a holding company of a trading group owns directly investment property which is let out to third parties full relief is still available. On the other hand, if the holding company owns the investment property through a separate stand-alone subsidiary, relief would not be available to the extent that value is attributable to the property subsidiary.[6] If the holding company owns a trading venture jointly 50/50 with another third party this would not qualify for relief as it is not a subsidiary. If the holding company is owned by an LLP then no relief is due (according to HMRC) but if the company owns an interest in an LLP then relief is due.

Provision is made in the legislation to preclude relief from being given in respect of personal assets such as cars, pictures or yachts, which are "parked" in the business but not used in it but how cash is taxed and whether it is an excepted asset or an investment asset is not well-understood or agreed.[7]

In order to qualify for relief there must be no binding contract for sale at the relevant chargeable event.[8] This is sometimes said to encourage elderly taxpayers to hang onto their business assets until death in order to qualify for full BPR. Retaining the business until death also avoids capital gains tax as the tax free uplift is then available. There can be major differences in the net proceeds depending on whether a sale takes place just before or after death. Some examples illustrate the point (assume a 40 per cent tax rate and all sale proceeds represent gain).

Example 1

X sells the trading company in exchange for cash just before his death for £1 million. Gain £1 million. Full entrepreneurs' relief. Tax at 10 per cent leaves him with cash of £900,000. The balance of the proceeds is taxed at 40 per cent leaving his family inheriting £540,000. If he had sold in exchange for non-qualifying corporate bond loan notes then there is no capital gains tax

[2] IHTA s.105(3). Note the "mixed business" cases especially: *Farmer v IRC* [1999] STC (SCD) 321; *George & Loochin (Stedman's Executors) v CIR* [2003] EWCA Civ 1763; [2004] STC 163; and *Brander (Representatives of Fourth Earl of Balfour) v HMRC* [2010] UKUT 300 (TCC); [2010] STC 2666.
[3] *Executors of Piercy deceased v RCC* [2008] STC (SCD) 858.
[4] *Phillips (Executors of Phillips Deceased) v HMRC* [2006] STC (SCD) 639.
[5] *Walding v IRC* [1996] STC 13 (Chancery Division) and *Walker's Executors v IRC* [2001] STC (SCD) 86.
[6] IHTA s.111.
[7] IHTA s.112. See *Barclay's Bank Trust Co Ltd v IRC* [1998] STC (SCD) 125 and contrast *Brown's Executors v IRC* [1996] STC (SCD) 277.
[8] IHTA s.106.

(CGT) on the sale; CGT uplift on his death. Inheritance tax (IHT) of 40 per cent on £1 million leaving the family with £600,000 cash.

Example 2

X sells his company for guaranteed preference shares in the acquiring unquoted trading company. No CGT on sale or death; full BPR. Family redeem preference shares immediately after death and receive £1 million free of CGT and IHT.[9] The family keep £1 million.[10]

Example 3

X gives the shares into trust during his lifetime. He holds over the gain. Trust acquires the shares at nil value. No CGT until sale but entrepreneurs' relief less likely for the trust. No tax on X's death provided he survives seven years or the trust still holds the shares. Potentially the trust after sale (and assuming no clawback of BPR) retains either £800,000 without entrepreneurs' relief (at current 20 per cent rate of CGT) or £900,000 with entrepreneurs' relief (10 per cent rate).

Can these differences be justified in policy terms? It seems clear that the well-advised can often structure matters to maximise reliefs. One might argue that there is no economic difference between selling for cash or selling for guaranteed preference shares but the tax results are startlingly different.

APR

Farmland qualifies for relief from inheritance tax typically at a rate of either 50 per cent or 100 per cent. The relief from inheritance tax is given on the agricultural value of land not the hope value but often BPR relieves the hope value element if the transferor is farming the land himself. The relief has been extended since 1995 to include 100 per cent relief for tenanted farms. Certain minimum periods of ownership are required (two years if the land is being farmed in hand and seven years if tenanted) to prevent death bed planning. Farmhouses can also qualify for relief although[11] this has been a controversial area and is subject to a number of limitations.

If any tax is due on death (for example because the business contains some excepted assets) then interest free instalment relief is available over 10 years.

What are the policy objectives?

The reliefs are justified on the basis that they promote enterprise and provide continuity because they ensure that a family business does not have to be sold or split up on death to pay tax. This is particularly helpful where one side of the family wants to continue running the business and the other side does not. Having a 100 per cent relief enables the first side to buy the other side

[9] See *Vinton (Executors of Dugan-Chapman) v HMRC* [2008] STC (SCD) 592 for some death bed tax planning.
[10] See *Reynaud v IRC* (1999) STC (SCD) 185 where HMRC unsuccessfully sought to challenge a scheme where the taxpayer settled shares into trust, claimed business property relief to avoid a 20% entry charge and then the shares were sold the next day.
[11] See *Executors of McKenna and another, deceased v HMRC* (2006) SpC 565; *Lloyds TSB (PRs of Antrobus Deceased) v IRC* [2002] STC (SCD) 468; *Golding v IRC* [2011] UKFTT 351 (TC); *RCC v Hanson* [2013] UKUT 224 (TCC).

out more easily as cash flow is less constricted. The relief is intended to enable farms/businesses to be retained by the next generation and allow businesses to plan for the longer term without fearing an unexpected tax charge on a death. Without any relief, inheritance tax ultimately has to be funded out of company reserves by declaring dividends. This prevents the company being able to reinvest the profits. The writer calls this objective the "succession policy".

However, it is fair to say that this is probably not the only policy objective of the reliefs for any government. There is also an "investors' policy". With the introduction of 100 per cent relief in 1992 and the extension of the relief to all unquoted shareholdings whatever their size from 1996, along with the various investor reliefs for income tax and capital gains tax (such as Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS), etc.) BPR is just one of the many reliefs that encourages outside investors to invest in risky privately owned or AIM listed trading businesses. Such capital provides very useful finance for small to medium size businesses. Originally shareholdings with fewer than 25 per cent voting shares received a lower level of relief so the investors' policy was less in point.

The difficulty is to ensure that any relief, whatever the policy, is targeted. It could be argued that as currently structured the reliefs do not necessarily achieve the objective of preserving family businesses (even assuming this is a desirable aim[12]) given the ability to sell the farm/business immediately after the owner's death free of CGT and IHT. There appears to be no data on how long a business is typically held after death by those who inherit and therefore whether the reliefs do provide stability or just a tax free break for heirs. Arguably the reliefs are rather arbitrary. Hence BPR offers a complete exemption to a company which is 51 per cent trading and 49 per cent investment property on death but no exemption if those two figures are reversed. Given that inheritance tax is intended partly to reduce inequality is it fair that a large part of the nation's wealth remains untaxed? Why distinguish between investment property and trading assets so starkly given the former can also involve risk and management time?

What are the options?

A number of options for reform could be considered. These include:

1. Reducing the rate of relief from 100 per cent to 50 per cent particularly given that even if tax is due, it can already be paid over 10 years in interest free instalments. Possibly different levels of relief could be given depending on the percentage shareholding on the basis that tax on a 10 per cent shareholding is much easier to fund without breaking up the business than tax on a 100 per cent shareholding and therefore relief should be more limited.
2. The relief could be made conditional on continued ownership of the business by the transferee for at least some minimum time after the death or other chargeable event.
3. The relief could be capped in the same way as for entrepreneurs' relief, for example, at £10 million per transferor over a lifetime.

[12] The IFS suggests that there is some evidence that the retention of medium-size businesses within certain families might, through inferior management practices, actually harm the efficiency of the UK economy (N. Bloom, 2006).

4. The relief could be restricted so that instead of a "wholly or mainly" test businesses do not qualify for relief except to the extent of their trading assets. Hence a business holding a portfolio of let property would not qualify for relief on this investment element even if was mainly trading. This would stop it being "an all or nothing" relief. Alternatively the relief could be limited to businesses that are 75 per cent trading.
5. To the extent that the business has qualified for BPR on death, CGT tax free uplift could be denied on death so that on a later disposal by the heirs the gain from date of acquisition by the deceased is taxed.
6. Extending the required length of ownership so that assets have to be owned by the transferor for longer than two years before any relief is due. This is particularly relevant for trusts which can buy AIM shares at say the end of the 7th year, hold the shares for two years until the 10 year anniversary and then immediately sell the shares.

In the writer's view, the only options that merit serious consideration are the last two and possibly Option 4. All the others have the significant disadvantage of additional complexity for the taxpayer and administrative hassle for HMRC without necessarily being certain to raise much more revenue or be justifiable in policy terms. Before discussing these options in more detail it is worth considering how other countries tax business and farmland.

Regimes in other countries

It is notable and perhaps surprising that the US has no special relief for business property although the threshold for paying federal estate tax in the first place is high at $5.43 million (that is, nearly $11 million for couples). Hence the effective tax rate for most estates is significantly lower than the highest rate of 40 per cent. Family farms receive a reduction of $1.10 million on taxable value provided they continue to be farmed for 10 years after death and the family participates in the business. Federal estate tax is deeply unpopular among businesses and farmers. Paul Ryan, Republican, at the House Ways and Means Committee in March 2015, expressed the views of many when he noted:

> "This tax doesn't just hit the big guy. It hits the little guy—like the small business and the family farm."[13]

Republican Sanford Bishop noted:

> "I believe that the estate tax is politically misguided, morally unjustified and downright un-American. It undermines the life work and the life savings of farmers and small and medium-sized businesses in Georgia and across the nation."[14]

The UK business and farming reliefs are not out of line with those found in continental Europe and Ireland although more conditions are imposed in other countries and the policy there is much more clearly geared towards encouraging succession rather than incentivising investors. It is

[13] Rep. Paul Ryan (R-WI), 25 March 2015 House Committee on Ways and Means hearing.
[14] Rep. Sanford Bishop (D-Ga.), news release, 27 March 2015.

difficult to make direct comparisons as, given it is a "donee based" tax, inheritance tax is structured very differently in the majority of countries. The individual beneficiary rather than the deceased's estate is taxed and the rates are generally higher the more remote the relationship.[15]

In France business and farming relief is given at up to 75 per cent but the thresholds are relatively low. The relief on farm assets is reduced to 50 per cent if the value exceeds €101,890. The transferee must be a farmer at the valuation date (a person whose assets comprise at least 80 per cent agricultural property). Similarly the relief does not cover all unlisted companies.

In Ireland the relief is more similar to that in the UK, and is given on 90 per cent of the value but relief is clawed back if the business or farm is sold by the transferee or he ceases to trade within six years of the date of transfer unless the business or farm is replaced by equivalent property.[16] In addition no relief is available unless the transferee either works in the business full time after the gift and owns 10 per cent+ of the company or, if not working full time, owns more than 25 per cent of the voting shares. Hence the relief is firmly targeted at a succession policy—enabling family businesses to continue. As with the UK, in Ireland there is a minimum two year period of ownership imposed on the transferor in respect of death transfers. In the case of lifetime gifts Ireland imposes a higher minimum ownership period by the transferor of five years.

In Germany business property relief has been the subject of some political controversy. In 2014 Germany's constitutional court ruled that business relief gave unfair privileges to rich business owners and deepened inequality and could not remain in its then current form.[17] Many of the criticisms levelled by the court are heard in the UK today. After a period of uncertainty a new agreement was announced by the German Coalition Government in June 2016 which is expected to raise an additional €235 million. Most family-owned companies will continue to be exempt from inheritance tax but only if they operate and retain jobs and wages at a similar level for five years (85 per cent relief) or do the same for seven years (100 per cent relief). There are rules restricting relief on businesses holding more than 10 per cent of passive non-operating assets, that is, investment property. The tax exemptions are to be reduced for companies worth more than €26 million and are eliminated for companies worth more than €90 million. Companies with up to 20 workers previously did not need to prove that they will maintain jobs but now only companies with five or fewer employees will be exempted from this burden of proof. The leader of the SPD noted that inheritance tax would become "socially more just, without endangering jobs and the continuation of businesses".[18]

[15] Interestingly the UK Government chose to adopt this policy in respect of inheriting the family home—from April 2017 issue who inherit the residence of the deceased will qualify for an additional nil rate band of up to £175,000 per transferor but this is not available to siblings or parents of the deceased who inherit a home.

[16] For development land it is up to 10 years for the clawback. Replacement business property of an equivalent type is allowed.

[17] BVerfG, Urteil des Ersten Senats vom 17. Dezember 2014 - 1 BvL 21/12 - Rn. (1-7) (Constitutional Court, judgment of the First Senate of 17 December 2014).

[18] S. Gabriel, Deputy Chancellor and Leader of the social democrats (SPD) (20 June 2016).

Pros and cons of options

Option 1

Reducing the rate of relief to 50 per cent might seem a reasonable compromise. Estate duty gave no special reliefs for businesses (although agricultural property was generously treated) and with the introduction of capital transfer tax in 1975, the only relief initially given to business property was that the tax could be paid by interest free instalments. The Finance Act 1976 gave additional relief at 30 per cent for transfers after 6 April 1976 with reliefs being further increased in subsequent years. By 1992 the reliefs had been increased to 100 per cent in most cases and from April 1996 100 per cent relief was extended to shareholdings of unquoted shares of any size. So businesses did survive previously with much more limited relief.

Nevertheless reducing the relief to 50 per cent could cause significant hardship for large shareholdings and is more likely to lead to disruption and breakup of the business. It would be less generous than the regime given in many other countries. There are also administrative issues. At present there is no need for HMRC to waste time and resources valuing businesses if they obviously qualify for relief. Once the relief is limited or capped in some way valuations will become a lengthier and more expensive process for both taxpayer and revenue. It could be argued that relief could be reduced for small unquoted shareholdings where sale does not cause great hardship and therefore the succession policy is still fulfilled but this would be at odds with the investors' policy, that is, to incentivise investment in unquoted trading companies.

Even more objection could be made to a cap of £10 million (in line with entrepreneurs' relief) (Option 3). A very successful business worth £20 million would be penalised compared with an inefficient business that had decreased in value. Moreover avoidance would be difficult to stop if any cap is imposed. The cap could be avoided by the transferor settling shares into numerous different trusts while the overall value remains under £10 million. How then would the trusts be taxed going forward? Would the £10 million allowance be shared between all trusts set up by the settlor so on every 10 year anniversary and exit charge thereafter the trusts would need to look to the relief claimed by the other trusts? What if some shares were sold by one trust—can the relief be reallocated to other trusts? What about existing trusts holding shares? Should the cap apply to them? A similar idea of sharing the settlor's nil rate band allowance between all trusts set up over a lifetime was abandoned in 2014 due to the complexity and difficulty and potential unfairness that could arise. Capping the relief would not achieve the objective of enabling a large successful business/farm to be passed on to the next generation without an undue tax burden. It would result in many more valuations needing to be agreed and the costs of this would necessarily reduce the net yield. It does not seem to achieve either the investors' or the succession policies. Of course the cap could be set higher and thus reduce the need for valuing smaller businesses but the same points, as referred to above, on avoidance will arise.

It should be borne in mind that BPR and APR are different in objective from EIS and entrepreneurs' relief. IHT is a dry tax arising most often on the holding of wealth on death rather than on the realisation of gain; unlike CGT the occasion of charge is generally involuntary and unpredictable. While CGT arises on a disposal and the occasion can be chosen by the taxpayer with tax then payable out of the sale proceeds, this is not possible in relation to IHT on death.

Option 2

Option 2 would involve clawing back the relief if there was any sale of the business or farm within a minimum period after death or transfer. The reliefs are then conditional on continued ownership of the asset. This would be in line with the succession policy (encouraging succession and retention of family businesses) but be at odds with the investor policy (encouraging the outside investor who decides to invest in an AIM portfolio in order to secure reliefs and thus provide capital to the equity market. On his death the family may well not want to keep AIM listed shares).

The current UK system is slightly inconsistent in relation to clawbacks. If a transferor makes a lifetime chargeable transfer or a potentially exempt transfer (PET), relief is available at the time of the gift even if the transferee sells it immediately but if the transferor dies within seven years the IHT or extra IHT payable is calculated on the basis that business relief is not available unless the original (or substituted) property remains owned by the transferee at the death of the transferor and would qualify for business relief immediately before the transferor's death. By contrast, relief on death is not similarly withdrawn if business property is left to someone on the transferor's death and is then sold immediately after the death. Under current legislation 100 per cent relief is available not only on the 10 year anniversary of a relevant property trust but also on all distributions out of the trust for the next 9.9 years even if the trustees distribute cash.

Example 4

Trust set up in June 2007 owns a portfolio of listed shares worth £1 million. In 2014 it sells all the shares and invests in an AIM portfolio which it retains until June 2017. 100 per cent BPR is available. In July 2017 the trust sells the AIM portfolio and buys a house for occupation by the beneficiary. In May 2027 the trust distributes the house to the beneficiary. There is no IHT. Contrast the position if the trust had sold the AIM portfolio just before June 2017. In that case there would be no relief on the 10 year anniversary or on the transfer of the house to the beneficiary later.

As Examples 1 to 3 illustrate, there is a significantly different result at present between a lifetime sale and gift of the cash versus a lifetime gift of the business property versus a retention of the asset until death followed by a sale shortly after death (no CGT and no IHT). It seems hard to discern any policy justification for the different treatment between a lifetime gift of the shares and a transfer on death. The German and Irish models of imposing a minimum of five to seven years ownership on the transferee do ensure continuity although arguably distort sensible commercial decision making and would be a disincentive for investors. A family may decide to continue running the business to preserve the relief rather than taking the commercially sensible decision in some cases to sell or amalgamate. Instead of paying capital gains tax on the sale at 20 per cent (10 per cent with entrepreneurs' relief) the family now face a clawback of 40 per cent inheritance tax. One option is to have a tapered clawback with less clawback after more years of ownership by the transferee. However, it would be another complication and no doubt transferees would find ways round it, for example, by selling ordinary share capital for guaranteed preference shares. It is suggested that Option 5 below has the same practical effect with less complication.

Option 4

Option 4 is to limit the relief to the assets used in the trading part of the business and disallow relief on the investment assets. Germany adopts this policy although Ireland uses a "wholly or mainly" test. Certainly it seems anomalous that holding let properties in a separate subsidiary will mean that no relief is available on such assets but spreading them through the trading group will enable relief to be available. Such a policy encourages people to "dump" the investment properties in the trading group. However, investment properties do provide the security and cash flow to fund riskier enterprises by the trading part of the business. In addition if those assets are taxed there will need to be a lengthy valuation exercise to work out how much value is attributable to the investment assets and how much to the trading part. The business may only hold investment assets temporarily. This sort of approach is not followed in entrepreneurs' relief so adds to the complexity of the reliefs as shareholders have to satisfy different conditions.

It is possible one could allow relief on the investment assets but change the mainly test (generally interpreted to mean more than 50 per cent) to a 75 per cent test so that over 75 per cent of the business has to be trading before any relief is available. This is unlikely to discourage investment in unquoted shares by AIM investors (where the panoply of other income tax and capital gains tax reliefs do not generally allow high levels of investment assets to be held anyway). It is more similar to the approach taken in entrepreneurs' relief.

Option 6

Option 6 suggests extending the minimum ownership period by the transferor so that business and agricultural property cannot qualify for relief unless it has been owned for a longer period. Ireland imposes five years on lifetime gifts and two years on death gifts. This seems worth considering as a relatively simple anti-avoidance technique. The two year ownership period is particularly easy for trusts to manipulate as, unlike individuals, trustees know exactly when the chargeable event will arise. Individuals cannot readily predict when they will die. There may be a case for imposing a longer period of ownership by the transferor in relation to lifetime transfers, and in relation to trusts. The five year period could stop some short-term avoidance which does not achieve the policy objectives of either encouraging investment in unquoted trading companies or planning for succession. A trust wanting to avoid a 10 year anniversary charge or an individual wanting to settle assets into trust without a 20 per cent entry charge would have to hold the business assets for rather longer before relief was available.[19] This would discourage people from investing in assets purely to obtain business property relief and they would be more likely to look at the merits of the investment itself (as the longer the minimum holding period the safer they would want the investment to be).

Option 5

Option 5 is also worthy of further consideration. The policy aims of preserving family businesses and encouraging investment into AIM and other risky trading ventures could still be achieved. The APR/BPR exemptions would be retained for individuals but on death the assets would be

[19] See Example 4 above.

transferred to the transferee on a no gain no loss basis rather than with a CGT free uplift on death. To the extent the asset qualified for full IHT reliefs, on death there would be no tax free CGT uplift on death. The gain would only be taxed on a later sale and by reference to the acquisition cost of the asset to the original transferor immediately before his death. This would not be a hold over relief where the existing gain is suspended but would be similar to the no gain no loss rule between spouses. Hence on a later disposal any gain would be picked up at that point but if the business had gone down in value since death the gain charged to tax would be the actual gain on sale not the gain on death. This would avoid the costs for both HMRC and the taxpayer in doing a CGT valuation at the date of death and ensure that any tax charge arises at the time cash is available (that is, on sale or at least on a later voluntary disposal). Having the CGT deferral would also reduce the difference between lifetime and death gifts as in both cases the gains would remain on the clock and available to be taxed in the future.[20] If the shares only partially qualified for business property relief, for example, because of excepted assets, the value subject to inheritance tax on the transfer of value on death would qualify for a capital gains tax uplift. (It is appreciated that this could raise some tricky valuation issues but a fairly broad approach could be taken, for example, if the excepted part was 5 per cent of the total value then 5 per cent of the eventual gain on the later sale would be exempt from tax.) It would mean that if a sale occurred immediately after death by the family, capital gains tax would be paid. Investors have certain CGT reliefs (for example, on EIS and SEIS investments) so the interactions here would need to be carefully considered.

Taking Examples 1 to 3 and comparing how this option would work:

Example 1

Position as before on sale for cash, that is, £540,000 net cash.

On sale for loan notes, as the loan notes are taxed on death, CGT uplift is available and the family end up with £600,000 cash as before.

Example 2

No IHT on death. On redemption of the preference shares the £1 million is subject to tax at 20 per cent leaving the family with £800,000.

Example 3

Same position as at present—£800,000 on sale by the trust. (If the trust sold within seven years and the transferor died within seven years then there would also be a clawback of IHT with a net position of £540,000.)

Agricultural property—some brief thoughts

The peculiarities surrounding the taxation of agricultural property have not been discussed in detail. One option often suggested is to restrict APR to working farmers. This is on the basis that there is a shortage of farm land and therefore the reliefs should not be extended to investors

[20] The mechanism would be slightly different though as hold over relief is available on lifetime gifts.

as this will further increase land values. On the other hand, it could be argued that such a limitation might discourage more innovative investors entering farming and modernising farming practices. In addition, how does one define a "working farmer". Many farmers have a diversified portfolio and much of their income may not come from farming at all. Presumably one would have to define it by reference to a minimum level of time spent on farming not a minimum level of farming income. This could be difficult to police and over what period would it have to be in force? What about the retired farmer? Will all relief be lost the day after he retires?

The issue of farmhouses is another difficult area as the agricultural value of a farmhouse can be entirely exempt from inheritance tax if it qualifies as a farmhouse of a "character appropriate".[21] The capital gains tax model could be extended here so that CGT private residence relief would not be available in the future where APR had been available on that property.[22]

Conclusions

Before undertaking any reform of these two reliefs, it is important that the Government is clear as to what policy objectives the reliefs are designed to achieve. Any change can then be tested against these objectives. Any change should avoid complexity given the practical effect it can have on business. The great advantage of Options 5 and 6 is that they would involve relatively little complexity on either the administrative or legislative side.

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[21] See IHTA s.115(2).
[22] The views stated in this note are personal to the writer and do not represent the views of any organisation.

Agricultural property relief; Business property relief; Comparative law; Inheritance tax

[*] Barrister, Pump Court Tax Chambers.