TURCAN CONNELL

Briefing Note

Inheritance Tax – Business Property Relief

Certain assets classed as "business property" attracts valuable reliefs from inheritance tax, at 100% or 50% both on death and in respect of lifetime transfers.

Various conditions apply and key points to note are:-

- "Business property" is broadly a trading business, an interest in a trading business (including partnerships), unquoted shares, shares or securities in a listed company giving control or land, buildings, plant or machinery used in a trading business.
- Relief is given at the rate of 100% for a business or interest in a business and for unquoted shares, and at 50% in all other cases. It should be noted that assets owned by the business qualify for 100% as opposed to 50% relief, although there are other considerations to be taken into account.
- Unquoted shares include those traded on the Alternative Investment Market (AIM) or the Unquoted Security Market (USM).
- In all cases (business, shareholdings, etc) the business or company might not be engaged "wholly or mainly" in dealing in securities, stocks or shares, land or buildings, or in making or holding investments.
- This wholly or mainly test, i.e. has generated many cases over the years, and the test is an all or nothing test applied at the date of the transfer. Note – this is different to the trading test for other taxes.
- The general rule is that the business property must have been owned by the transferor for at least two years leading up to the transfer.
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- Special rules apply where business property is disposed of and replacement business property is acquired within 3 years so as to dispense with a need for a new 2 year holding period.

- Even if a business qualifies as a "trading" business the relief may be restricted to the extent to which the business holds assets which are not needed for the trade – e.g. cash or investments beyond which is needed for the trading activities – "excepted assets".
- Shares in group holding companies may qualify for BPR if as a whole the group is wholly or mainly not engaged in investment activities.
- The impact of the new rules on the restriction of deduction of liabilities introduced by Finance Act 2013 will have to be taken into account and in certain circumstances could restrict the effect of relief where business property is held.
- It should be noted that Directors or Partners loan assets do not qualify for BPR.

Conclusion

BPR is potentially an extremely valuable relief. It is important to keep matters under regular review, particularly as the balance between wholly or mainly "trading" or wholly or mainly "investing" is always a moving target. Remember that it is an all or nothing test – if you fall the wrong side of the wholly or mainly test the entire value will be exposed to, rather than relieved from inheritance tax.

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