

Briefing Note

Agricultural Property Relief (“APR”)

Agricultural property can attract relief from inheritance tax, both on death and in respect of a lifetime gift. The relief is available at either 100% or 50%.

Key points to note include the following:

- “Agricultural property” means agricultural land and pasture. It can include woodlands and buildings used in connection with the intensive rearing of livestock or fish. The land can now be located anywhere within the EU and still qualify.
- Cottages, farm buildings and farmhouses, together with the land occupied by them, may qualify as agricultural property.
- The agricultural property must either have been:
 - farmed by the owner for at least two years; or
 - owned by the individual for seven years prior and farmed by someone else throughout that time.
- A controlling shareholding in a farming company (i.e. where the shareholder has more than 50% of the voting rights) will qualify for APR if agricultural property forms part of the company’s assets and part of the value of the shares/securities can be attributed to the agricultural value of the property.

Some traps for the unwary

Like many tax reliefs, APR can operate in unexpected ways and there are many traps for the unwary. Some issues to watch out for are as follows.

Agricultural value

APR operates by applying the 50% or 100% relief to the agricultural value of property. This is not necessarily the market value of the land. For example, any development/hope value or value arising from mineral rights will not be eligible for APR. In these circumstances, business property relief (BPR) may still be available to relieve the value over and above the agricultural value.

Pre-1995 leases

If the land is let out, in order to obtain 100% relief:-

- (i) it must be possible to obtain vacant possession of the land within 12 months; OR
- (ii) the tenancy agreement must have commenced after 1st September 1995.

Pre-1st September 1995 leases that do not permit vacant possession within 12 months (which is commonly the case for agricultural tenancies) qualify for relief at only 50%. If a tenant is agreeable, it may be possible to restructure such leases in order to qualify for 100% relief but care is required in respect of the capital gains tax and land and buildings transactions tax (LBTT) implications.

Farmhouses

Farmhouses can be problematic. HMRC has litigated several cases in the past few years challenging whether a house ancillary to a farm is a "farmhouse" for the purposes of APR. HMRC's most common objections to APR applying whether:-

- (i) the person occupying the farmhouse is actually doing so for agricultural purposes, i.e. have they been involved in sufficiently in the operation of the farm? and
- (ii) the character of the property is appropriate as a farmhouse, i.e. is too large or "grand" to be a farmhouse, is it normal for land of this nature to have a house of this size and type?

Ancillary buildings

A tax tribunal decision in 2003, *Rosser*, interpreted the APR legislation as requiring the ownership of an ancillary agricultural building to match the ownership of the adjacent agricultural land. This meant that some agricultural buildings could not qualify for relief where there was one person or entity owned the building but another owned the ancillary land. However, in 2013 a tax tribunal decision, *Hanson* held that APR could apply to an ancillary building provided the adjacent land was either in common ownership or occupation or even where it was possible to demonstrate that the building served the land. Care is still required here.

Planning

Each of these, and other traps, means that it is important for owners of agricultural property to review their landholdings and farming operations ahead of time in order to benefit from APR. Where APR is not available, it is sometimes possible instead to qualify for business property relief (BPR) for inheritance tax depending on the circumstances of the land and business.

Please note that this briefing note is intended as a short summary of Agricultural Property Relief. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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