

## Business property relief

### Introduction

This information sheet sets out briefly for general guidance the main features of the Inheritance Tax ("IHT") relief applicable to business property. This is known as Business Property Relief ("BPR"). It is relevant to transfers both during a person's lifetime and on death (and in either case this information sheet refers to a "transferor").

### Business property

BPR applies to "relevant business property" ("RBP"). To count as RBP, the property in question must:

- fall within a specified category;
- satisfy a minimum ownership requirement; and
- not be excluded.

#### 1 The categories

For transfers on or after 6 April 1996, the following can be RBP. (Transfers before this date are outside the scope of this note. We can advise on these if required.)

- a) the business of a sole trader
- b) an interest in a business (e.g. a share in a partnership)
- c) unquoted company shares (including shares listed on AIM)
- d) unquoted company securities which gave the transferor control of more than 50% of votes on all questions affecting the company as a whole.

(It is possible to combine these with other unquoted shares or securities

owned by the transferor when working out the percentage of votes controlled.)

- e) quoted company shares or securities which gave the transferor control of more than 50% of votes on all questions affecting the company as a whole.

(Again it is possible to combine these with other quoted shares or securities owned by the transferor when working out the percentage of votes controlled.)

- f) Land, buildings, machinery or plant owned by the transferor and used wholly or mainly for the purposes of a business carried on by a company that he controlled or partnership in which he was a partner.

(Provided that his interest in the company or partnership also qualified for BPR.)

- g) Land, buildings, machinery or plant owned by a trust in which the transferor had an interest in possession (such as a life interest) and used wholly or mainly for the purposes of a business carried on by him.

(Provided that his interest in the business also qualified for BPR.)

#### 2 The minimum ownership requirement

The business property must have been owned by the transferor throughout the two years before the transfer.

There are some exceptions to this:

- If the transfer is to a spouse or civil partner on death, the survivor is treated as having the deceased spouse's or civil

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partner's ownership period as well as their own.

- If there are two transfers within two years and one is on a death, BPR will apply to the second transfer if it applied to the first.
- Where RBP is replaced by property which can be RBP but has not been owned for two years yet.

Where trustees own the business property, the minimum ownership requirement applies to the trustees if it is a discretionary trust and to the beneficiary if it is a qualifying interest in possession trust. An explanation of these terms is beyond the scope of this note but we can advise on your situation if required.

### 3 Exclusions

The following exclusions apply to the relief.

#### a) Not for gain

If the business is not carried on for a gain (i.e. to make a profit), it cannot qualify.

#### b) Investment businesses

Property cannot be RBP where the business consists wholly or mainly of:

- dealing in securities, stocks or shares;
- dealing in land or buildings; or
- making or holding investments.

The test is applied by looking at the business as a whole, both at the time of the transfer and for a reasonable period beforehand (which might be several years).

There are some exceptions, for example, a holding company of a trading subsidiary can qualify.

#### c) Binding contracts for sale

Property subject to a binding contract for sale cannot be RBP. A binding contract is one which obliges the seller to sell and the buyer to buy. Therefore options do not count.

The following exceptions apply.

- The sale is to a company which will carry on the business and the consideration is wholly or mainly shares or securities in the buyer.
- The property is shares in or securities of a company and the sale is for the purposes of the company's reconstruction or amalgamation.

#### d) Liquidation or winding-up

Shares in or securities of a company being liquidated or wound-up cannot qualify unless the liquidation or winding-up is for the purpose of reconstruction or amalgamation, or reconstruction or amalgamation occurs within a year of the transfer.

#### e) Excepted assets

BPR will not be available on the value of "excepted assets" (unless such assets qualify for BPR in their own right, e.g. under 1 f) above). An excepted asset is one which is:

- i. not used wholly or mainly for the purposes of the business throughout the period of two years before the transfer; and

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- ii. not required at the time of the transfer for the future use of the business.

## Rate of relief

Where BPR is available, the value transferred is treated as reduced by a specified percentage. For transfers on or after 6 April 1996, the rates are 50% or 100%, depending on the type of property (see above). (Transfers before this date are outside the scope of this note. We can advise on these if required.)

100% relief is available for RBP within categories 1 a) to d) above.

50% relief is available for categories 1 e) to g) above.

## Lifetime gifts

Where a person makes a lifetime gift of RBP to another individual, it will be a potentially exempt transfer ("PET") for IHT purposes. The gift will be exempt from IHT if the transferor survives for seven years after the gift. If he dies within seven years, BPR can apply to the gift only if the following conditions are satisfied:

- the recipient still owns the property (or replacement property); and
- the property (or replacement property) still qualifies as RBP (ignoring the two year ownership requirement).

Partial clawback can occur if some of the property meets the conditions and some does not.

If the recipient died first the conditions must have applied at his death.

The requirement for property to still count as RBP on the first death does not apply to:

- company shares or securities which were quoted at the time of the transfer;
- company shares which were unquoted from the time of the transfer to the date of the first death; or
- company securities which were unquoted from the time of the transfer to the date of the first death and which either by themselves or when combined with other shares or securities owned by the transferor gave control of more than 50% of votes on all questions affecting the company as a whole.

A gift of RBP to most types of trust would be a chargeable transfer for IHT purposes. This is immediately chargeable to IHT, subject to the availability of BPR. If the transferor dies within seven years, BPR can only be available if the conditions mentioned earlier in this section apply. If not, a chargeable transfer would be treated more favourably than a PET. This is because it is only the additional IHT payable as a result of the transferor dying within 7 years which will not be reduced by BPR. The IHT payable on the chargeable transfer when made and the transferor's cumulative total of gifts will be unaffected. So the clawback of BPR, if the transferor dies within 7 years and the conditions applying to the recipient are not met, is worse following a PET than a chargeable transfer.

Although Capital Gains Tax issues are outside the scope of this information sheet, assets qualifying for BPR may also attract certain Capital Gains Tax reliefs, such as holdover relief and entrepreneur's relief (but the conditions are different).

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## Tax-efficient wills

Where a person dies with an estate including property qualifying for BPR, the relief could be wasted if the property is left to the deceased's surviving spouse or civil partner.

Assets passing to a surviving spouse or civil partner would be exempt from IHT in most cases, but may not qualify for BPR when he or she subsequently dies. Accordingly, it may be preferable for the RBP to be left to other beneficiaries (such as children) or to a Discretionary Trust. Further details of such trusts are contained in our information sheets 'Discretionary Trusts in Wills' and 'Inheritance Tax-efficient Wills'.

## Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

NOTE: The law is stated as at 1 December 2017.

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