

# Business relief

(also known as 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 relief or business property relief (and is referred to in this information sheet as "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.)

Categories (a) to (d) broadly allow relief at 100%:

- 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 securities of a company which (either by themselves or together with

other securities and any unquoted shares owned by the transferor) gave the transferor control of the company.

Categories (e) to (g) below broadly allow relief at 50%. In the case of (f) and (g), the transferor's interest in the business must also qualify for BPR:

- e) quoted company shares or securities which (either by themselves or together with other securities and shares owned by the transferor) gave the transferor control of the company;
- 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 the transferor controlled or a partnership in which he was a partner;
- 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 the transferor.

### 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\* on death, the survivor is treated as having the deceased spouse'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

**Head Office**  
Heathervale House  
2-4 Vale Avenue  
Tunbridge Wells  
Kent TN1 1DJ  
T 01892 510000  
F 01892 540170

**Thames Gateway**  
Corinthian House  
Galleon Boulevard  
Crossways Business Park  
Dartford  
Kent DA2 6QE  
T 01322 623700  
F 01322 623701

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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:

- where 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;
- where 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:

- not used wholly or mainly for the purposes of the business throughout the period of two years before the transfer; and
- not required at the time of the transfer for the future use of the business.

The most common excepted asset is cash held by a business in excess of its trading

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needs and with no specific future project or use in mind.

### Rates of relief

Where BPR is available, the value transferred is treated as reduced by either 100% or 50%, as set out in the first section 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) qualifies as RBP immediately prior to the transferor's death (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 or her 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 (either by themselves or together with other securities and any unquoted shares owned by the transferor) gave the transferor control of the company and which were unquoted from the time of the transfer to the date of the first death.

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.

Where the conditions set out above (i.e. the property or replacement property is still owned, and qualified for relief immediately prior to the transferor's death) are not met, then a chargeable transfer would be treated more favourably than a failed PET. This is because it is only the additional IHT payable as a result of the transferor dying within seven 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 seven 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 business asset disposal relief (formerly known as entrepreneurs' relief) although the conditions to qualify for those reliefs 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 6 April 2022.

If you require further information, please contact Mark Politz or Nicola Plant on 01892 510000 or by email at:

[mark.politz@ts-p.co.uk](mailto:mark.politz@ts-p.co.uk)

[nicola.plant@ts-p.co.uk](mailto:nicola.plant@ts-p.co.uk)

\*All references to the term spouse include a civil partner as defined by Section 1 of the Civil Partnership Act 2004

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