

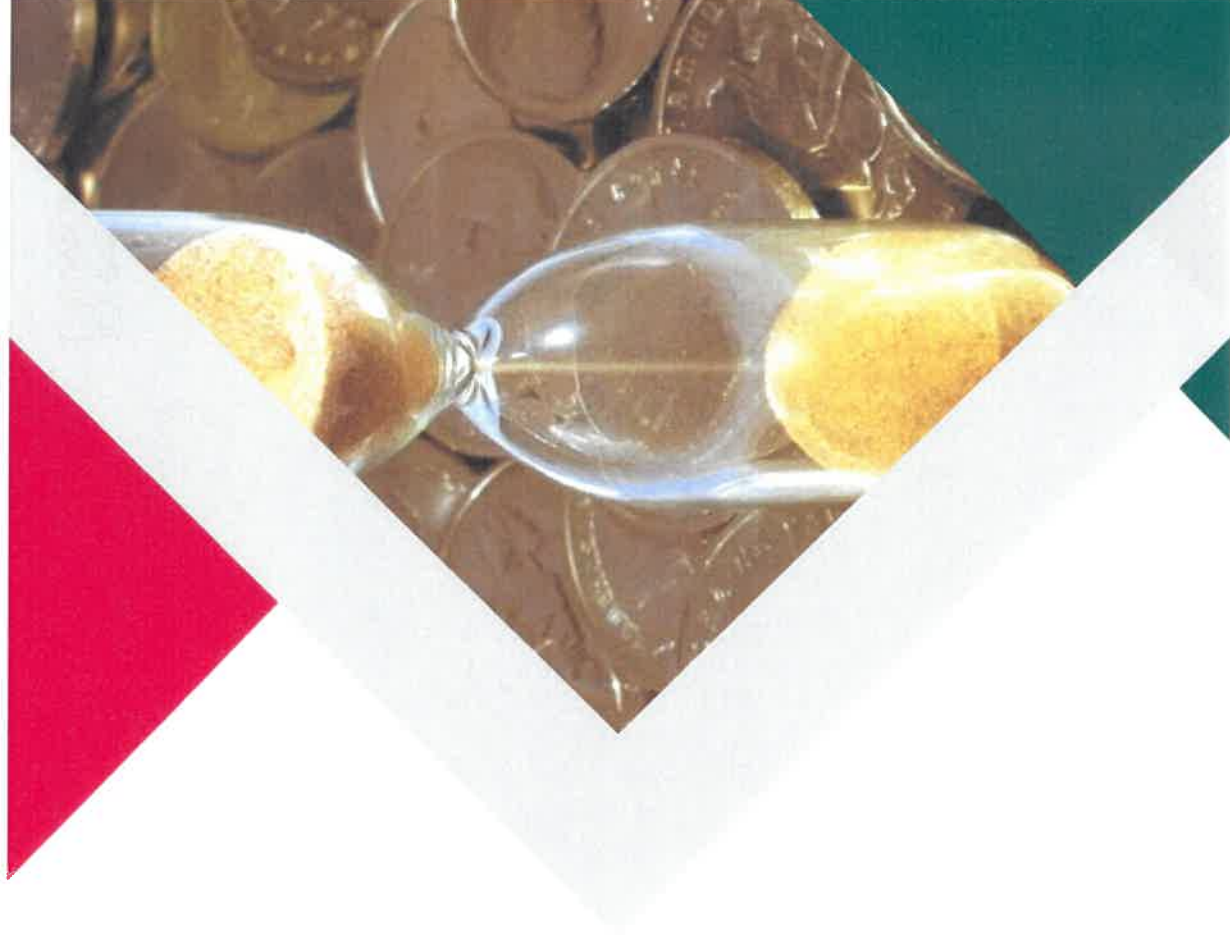


## Sustaining Your Business For The Next Generation

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## IHT reliefs for businesses

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# Inheritance Tax

“One day 60% of all this will be yours”





## **Inheritance Tax - Current Rules**

IHT Nil Rate Band - currently £325,000 per person – this means the first £325,000 is taxed at 0%.

Unused NRB transferrable to surviving spouse.

Inheritance Tax charged at a rate of 40% on the remainder of the Chargeable Estate

Gifts made within 7 years of death also within the charge to IHT.

Residence Nil Rate Band – currently £150,000 per person

Pension pots held within plan do not currently form part of your estate for IHT.

# Inheritance Tax – Current Rules

## Various Reliefs Available

- Annual Exemption for Gifts - £3,000 per tax year
- Small Gifts to One Person per tax year - £250
- Expenditure out of Income
- Gifts in Consideration of Marriage
- Agricultural & Business Reliefs
- Charitable Gifts - gift exempt & reduced rate of 36% where 10% or more of deceased's net estate (after deducting IHT exemptions, reliefs & NRB) is left to charity.

Lifetime gifts to individuals in excess of the above limits will be potentially exempt transfers ("PETs") & leave the individuals estate for IHT after 7 years from the date of the gift

# Residence Nil Rate Band (RNRB)

**Additional NRB for homeowners but restrictive rules limit benefit**

The RNRB was introduced in 2017 at a rate of £100,000. Now at £150,000 but has been increasing incrementally as follows:

- (1) For deaths in 2018/19 - £125,000
- (2) For deaths in 2019/20 - £150,000
- (3) For deaths in 2020/21 - £175,000

Where one spouse has died without using the relief the unused amount can be passed to the surviving spouse.

Applies in addition to the normal NRB and so can increase total nil rate amount available on second death to £1million but there is a tapered withdrawal of this relief for estates valued at more than £2 million. Additionally, estate value is calculated before reliefs for this purpose, this includes before APR & BPR. Relief withdrawn at the rate of £1 for every £2 over the £2m limit.

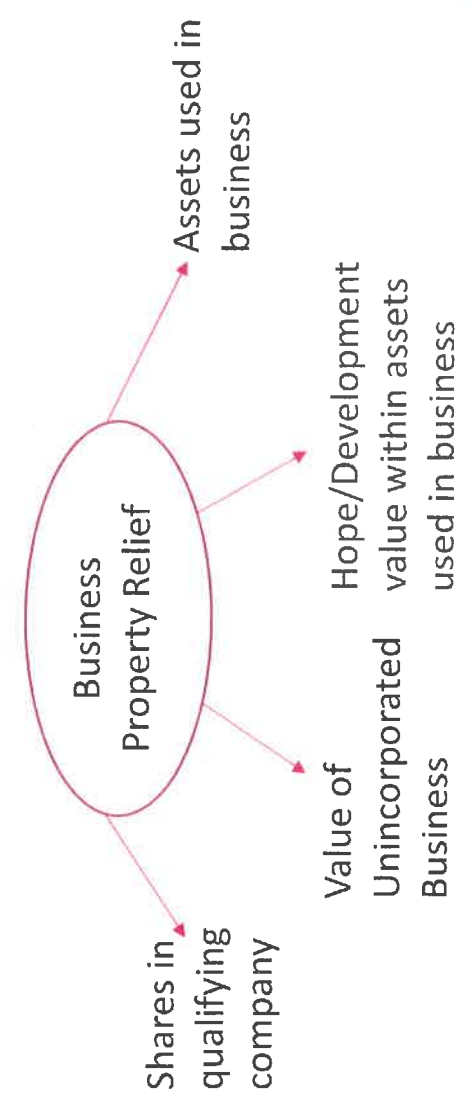
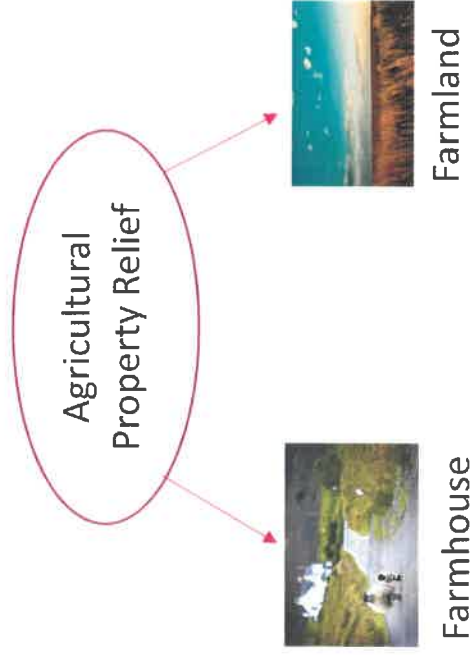
The relief only applies when the value of a residence is being passed, on death, to one or more direct descendants, such as children or grandchildren (step children included).

# Current Reliefs Available to Business Owners

- Very generous inheritance tax reliefs available to businesses include:

Agricultural property relief – up to 100% of agricultural value

Business property relief – up to 100% of business including development value





## **Business Property Relief Pitfalls/ Current Rules**

100% Relief Can be Available

Business Needs to be Wholly or Mainly Trading to qualify for any relief. This means > 50% trading. Considering asset values, turnover, profits, time spent on each activity.

50% Relief May Apply When

Assets owned by a Partner as an Individual are used by a Trading Partnership  
Assets owned by a controlling shareholder are used by their Unquoted Trading Company

Changes in composition of a business over time. E.g. surplus cash build up or investment assets acquired.

Excepted Assets.

Investment activities if they amount to a Business - can be considered BPR qualifying if they don't tip the balance to Wholly or Mainly Investment.



# Business Property Relief Pitfalls/Current Rules

## Example 1 – wholly or mainly trading under current rules

### Example - Say Year 5

A Hotel Company	£ Trade Hotel Trade	£ Non-Trade Business Let Properties	£ Total
Balance Sheet Asset Value	400,000	200,000	600,000
Profits	100,000	50,000	150,000
Percentage trade/non-trade - assets	66.67%	33.33%	
Percentage trade/non-trade - profits	66.67%	33.33%	

**Trade = over 50% - therefore wholly or mainly trading under current rules**

Result - Company Shares Qualify For BPR - Non-Trade Business also potentially covered

# Business Property Relief Pitfalls/Current Rules

Example 2 – not wholly or mainly trading under current rules

## Example - Say Year 12

A Hotel Company Year 12	£ Trade Hotel Trade	£ Non-Trade Business Let Properties	£ Total
Balance Sheet Asset Value	400,000	500,000	900,000
Profits	100,000	110,000	210,000
Percentage trade/non-trade - assets	44.44%	55.56%	
Percentage trade/non-trade - profits	47.62%	52.38%	

Trade = less than 50% - therefore no longer wholly or mainly trading under current rules

Result no BPR available on the shares.



# Other Issues

## **Legal Rights (discuss with your solicitor)**

Certain assets such as land and properties are considered “heritable” for legal rights purposes meaning that they can pass under your Will without challenge by other family member such as your spouse or children.

Other assets are however considered “moveable” (e.g. cash, shares etc) for legal rights purposes and the destination of these assets under your Will can be challenged by your spouse or children where assets are left unequally.

Generally, when land and buildings are held within a partnership there is a risk that they will be considered moveable for legal rights purposes.

A legal rights claim can therefore change your wishes for your assets under your Will and IHT might also be affected.

## Other Issues

### Furnished Holiday Lets

These can benefit from many tax reliefs similar to trading businesses. E.g. capital allowances, capital gains tax reliefs such as rollover/holdover/entrepreneurs' relief.

But typically HMRC resist claims for BPR in such circumstances.

Subject of several tax cases over the years most have been unsuccessful.

Current position is that FHL unlikely to Qualify for BPR unless more services being provided so as to be more like a Hotel. Recent case of Graham's Personal Representatives V RCC. This case went in favour of the taxpayer but has been appealed by HMRC to the Upper Tribunal and therefore all can change.



# OTS Report – Simplifying the Design of IHT

Office of Tax Simplification (OTS) Report – issued July 2019

- Independent review of the IHT system ordered by the Chancellor in January 2018
- Has proposed changes to the following key areas:-

Lifetime Gifts

Interaction with CGT

Reliefs for Businesses and Farms

- At this stage these are only proposals and there has been no government announcement to say that they will be adopting any of these changes but it could be a sign that there will be changes to IHT reliefs in the future.

# OTS Report – Simplifying the Design of IHT

## Lifetime Gift Exemptions

### Recommendations

- Replacing the yearly £3,000 exemption and gifts in consideration of marriage or civil partnership exemption with a gifts allowance.
- Reforming the normal expenditure out of income exemption (eg % of income) or replacing this with a higher gifts allowance.
- Reviewing the level of the current £250 small gifts exemption – suggestion is that it is increased to £1,000.
- Proposal to reduce the period where gifts to individuals (PETs) are taken into account from 7 years to 5 years
- Abolish taper relief and gifts to individuals after 5 years are exempt.
  - This would result in a cliff edge with gifts made close to 5 years before death being taxed/accumulated with no benefit of taper relief.
  - This is currently the case with 7 year rule regarding gifts covered by NRB
- Removal of '14 year rule'



# OTS Report – Simplifying the Design of IHT

## Businesses and Farms

### Recommendations

- The Government should consider whether it is appropriate for the level of trading activity for BPR to be set lower than that for comparable CGT reliefs (eg s165 holdover relief or entrepreneurs' relief). i.e. mismatch of BPR qualification test (>50%) and the "trading test" (80%+) used for CGT reliefs.
- Uplift to market value for CGT at date of death discourages passing assets during lifetime and recommendation to remove uplift with IHT reliefs given.
- Review the treatment of indirect non-controlling holdings in trading companies
- Align the treatment of furnished holiday lets for IHT with that of Income Tax and CGT
- HMRC should review their current approach around the eligibility of farmhouses for APR in sensitive cases
- HMRC should be clearer in their guidance as to when a valuation of a business or farm is required and, if this should be a formal valuation or an estimate.

# ACTION POINTS/POINTS TO CONSIDER

Discuss with Solicitor or Tax Advisor

- Wills – ensure current & consider power of attorney. Consider where you would like assets to go and are there any barriers in the way. e.g. legal rights.
- Think about value of your estate and which reliefs might be available. e.g. RNRB
- Consider current business structure in relation to available IHT reliefs. Will relief apply, can it be maintained or could the position change. e.g. sale or retirement.
- Start planning now to improve the position for the future.
- Be aware that all taxes need to be considered especially if making gifts of assets or changing business structure. This includes capital gains tax, income tax, LBTT & VAT.
- Maximise Business Reliefs and keep in mind potential future changes to IHT legislation.





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