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Is now the time to bank Business Property Relief from inheritance tax?

It is widely agreed that tax is not straightforward, and inheritance tax (IHT) is no exception. Layers of complexity have built up to the extent that the Office of Tax Simplification (OTS) has reviewed IHT and recommended a raft of changes. One recommendation focuses on relief available on certain assets related to businesses, Business Property Relief (BPR). BPR can be extremely valuable; if the circumstances are right, it has the effect of reducing the value of business interests, such as private company shares or an interest in a partnership, to nil when calculating IHT, either following death or when putting assets into a trust.

The circumstances are limited and one key limitation is that BPR is not available for 'investment businesses' (as opposed to trading businesses), which often proves problematic. Many businesses, especially those that have diversified, have an element that is investment even if their original focus was an obvious trade. A farm is the classic example – whilst it may traditionally have operated purely as a trading farm, a major part of the business is often now represented by farm buildings or cottages converted to units and let out, or other investment strands such as rental income from renewable energy installations.

Under the current rules, it is accepted that a business, such as a diversified farm, is a 'trading business' attracting BPR if, when taken in the round, more than 50% of its capital value, profit, turnover and employee time spent is represented by non-investment elements of the business (i.e. traditional farming). The OTS report recommends increasing this requirement to 80%, to align with similar reliefs from capital gains tax, which would make it much more difficult for diversified businesses to qualify for this valuable tax relief.

While this may sound disastrous, it is only a recommendation and, to date, almost no OTS recommendations have made it into law. Nonetheless, it is an indication of the way the wind is blowing and action may well be needed sooner rather than later.

If you have a business, such as a farm or other diversified trade, then it is worth considering making a transfer to trust or a direct gift to the next generation now, while Business Property Relief is more likely to be available without making significant changes to the structure of the business in order to tick the relevant, qualifying boxes.

Every business and family's circumstances will be different but with our combination of estate planning, tax and corporate structuring lawyers we are well placed to work with you to assess the value of taking action and, if appropriate, help you with implementation.

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