Business Property Relief and Business Trusts

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Business Property Relief

Business Property Relief (BPR) is a relief given on interests held in businesses and the assets owned by the businesses.

The main aim of BPR is to reduce the risk of the Inheritance Tax bill resulting in the break up of a business when an owner dies.

The business interests must have been owned for at least two years to qualify and it must be a business or an interest in a business (sole trader / partnership) or unquoted shares in a company that does not consist wholly or mainly of dealing in shares or securities, land or buildings, making or holding investments and is not subject to a binding contract of sale.

BPR reduces the value of business assets for Inheritance Tax purposes. For some assets, the reduction is 100% (full BPR) so the asset is exempt from Inheritance Tax. For others, the reduction is only 50%. The rates of relief can be seen in the table at the end of this factsheet.

It is a relief claimed on death in an attempt to reduce the potential Inheritance Tax by the deceased business owner's executors. The deceased will either have died owning a business or shares in it or will have given it away in their lifetime and failed to survive for seven years.

If an asset is used mainly for the benefit of the proprietor of the business (a sole trader) or their family, it will not qualify for BPR – for example, the private living accommodation above a pub or shop, if it is occupied by the proprietor and / or their family.

If an asset is not used for the business, it will not qualify. A typical problem here is surplus cash retained in a company, and if the company has significant amounts of cash, advice should be taken on how to reduce the risk of it being excluded from BPR. If it can be shown that the cash is required for future use in the business, it may qualify for BPR after all. For instance, if the cash is for future expansion as per a business plan.

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Property that would otherwise qualify for BPR will get no relief if at the time of the owner's death it is subject to a binding contract for sale.

It is not unusual in family businesses for some of the business assets (typically the business premises) to be owned outside the business. For example, the children may have shares in the company, or be partners in the business, but the business premises are owned by the mother and father as individuals and the business pays them rent for using them.

Where the property is owned outside the partnership or company, the rate of BPR is only 50%, so half the value of the premises will still be chargeable to Inheritance Tax on the parents' death and 50% relief is only available if the owner of the property used by a company had a controlling interest in that company (that is, more than half of the voting shares were held by them or by them and their spouse together). If this is not the case then no BPR will be available and the whole value of the property will be chargeable to Inheritance Tax.

Beware of director's loan accounts. It is quite common for a director or shareholder to have loaned significant sums of money to their company – indeed there are tax planning strategies when a business is transferred to a company which involve deliberately creating a large loan account, because it offers a way of extracting profits from the company without suffering income tax. The problem is that in the hands of the director, the value of their loan account is an asset (they are owed money by the company) but it is not an asset that qualifies for BPR.

It must be noted when a person dies and the value of their Estate is above the Inheritance Tax allowance and they therefore require the additional Residence Nil Rate Band allowance, the assets will be valued before any BPR or other reliefs are applied. See our factsheet on IHT for more information on the RNRB.

Business Trusts

Assets that qualify for full BPR can be passed on to any beneficiary free of any Inheritance Tax. As a person is automatically exempt from paying Inheritance Tax on any assets left to them by their spouse or civil partner (exempt beneficiaries), it can therefore be a waste to leave these assets to them and, depending what happens with the assets, they may no longer qualify for BPR when the exempt beneficiary dies.

It would therefore be better to leave these assets to non-exempt beneficiaries (for example children or grandchildren). However, you may not want to leave the assets to non-exempt beneficiaries until your surviving spouse or civil partner has died.

A Business Trust is a good solution to this problem. It is a Discretionary Trust in nature, it preserves the BPR and allows both exempt and non-exempt beneficiaries to take the property as and when the trustees think fit as the assets held in the trust are held entirely by the Trustees who control which of the beneficiaries benefit, in what quantities and when.

These trusts will take in all the business interests you hold at the date of your death that qualify for full BPR. They can run for 125 years and you should choose multiple beneficiaries or classes of individuals (spouse or civil partner; children; grandchildren; etc.). It allows the Trustees to use the Trust in a discretionary format and the income and capital can be appointed out as they see fit, taking into consideration a letter of wishes written by you which sets out your reasons for setting up the trust and how you would like them to hold the fund.

Discretionary Trusts are particularly good for people looking to generation skip (useful for mitigating Inheritance Tax); to control who receives money at the discretion of the Trustees; to look after minors; to manage assets for individuals who are unable to look after it themselves; to protect against those with alcohol or drug addition problems; as a way of protecting a legacy; excluding people you do not wish to benefit.

Inheritance Tax charges

If the business interests continue to qualify for BPR then there will be no ongoing Inheritance Tax charges.

If the business assets are gifted in a Will as part of the whole of the deceased's Estate then no BPR is attached to those assets specifically and instead, the relief is apportioned between exempt and non-exempt beneficiaries. In some circumstances this can result in a higher Inheritance Tax charge.

If BPR is not available, the assets can be distributed to the surviving spouse or civil partner within two years of the first spouse or civil partner's death in order to pass them on free of any Inheritance Tax.

Setting up the Trust

It is possible for the Trust to be set up during your lifetime or on death by your Will or by Deed of Variation.

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Rates of relief

Property	BPR rate
A business carried on by a sole trader.	100%
An interest in a business (for example a partnership).	100%
Unquoted company shares including those listed on AIM (The Alternative Investment Market (AIM) is a sub-market of the London Stock Exchange designed to help smaller companies access capital from the public market.	100%
Unquoted company securities (for example, loan notes) that either by themselves or when combined with other unquoted shares and securities owned by the transferor gave control of more than 50% of votes.	100%
Quoted company shares or securities that either by themselves or when combined with other quoted shares and securities owned by the transferor gave control of more than 50% of votes.	50%
Land, buildings, machinery or plant owned by the transferor directly or used wholly or mainly for the business carried on by the company (provided the transferor's interest also qualifies).	50%
Land, buildings, machinery or plant owned by the transferor directly or used wholly or mainly for the business carried on by a partnership (provided the transferor's partnership interest also qualifies).	50%

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