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# Will planning with Business and Agricultural Relief – 'Two Fund' Model

Claiming Business Relief and Agricultural Relief on the transfer of certain assets on death can generate significant savings of inheritance tax. An individual's Will can be carefully drafted to make the most effective use of the reliefs available, while achieving the succession objectives.

## Inheritance tax planning

Will planning with relievable assets often takes account of the following:

- assets qualifying for Business Relief ("**BR**");
- assets qualifying for Agricultural Relief ("**AR**"); and
- the available Nil Rate Band Allowance.

In each case, where the conditions for the reliefs are met, BR and/or AR reduces the value of any property transfers made during lifetime or on death, for the purposes of calculating any inheritance tax due.

An individual may own assets where there is some uncertainty over whether a relief will apply or which change frequently in nature. A flexible approach to Will drafting is therefore advantageous. Quite often both BR and AR are included in a Will, to ensure flexibility for the future and cover any changes to the testator's asset structure before their death.

## Business relief

To qualify for BR, the property must be 'relevant business property' ("**RBP**"). An asset is RBP if it satisfies the following conditions:

- it falls within one of the prescribed categories of property:
  - a business or interest in a business;
  - unquoted company shares or securities;
  - quoted shares or securities where the transferor has control of the company; or
  - land, buildings, machinery or plant owned by the transferor (or certain trusts) and used for a business controlled by the transferor or a partnership of which the transferor is a partner;
- the property has been owned by the transferor throughout the two-year period leading up to the transfer (with some relaxations for transfers between spouses/civil partners, quick succession on death or for replacement property); and
- the underlying business must be carried on for gain and must not consist wholly or mainly of either dealing in:
  - securities;
  - stocks or shares;
  - land or buildings; or
  - making/holding investments.

In other words, the business must be trading.

Transfers of RBP qualify for relief at either of the following rates:

- 100% relief on transfers of a business or interest in a business and unquoted company shares or securities – "***Fully Relievable BR***"; and
- 50% relief on transfers of qualifying quoted shares or securities and relevant land, buildings, machinery, or plant – "**Partly Relievable BR**".

## Agricultural relief

AR is given on the agricultural value of agricultural property situated in the UK (and the Channel Islands, the Isle of Man or the EEA if the relevant transfer is before 6 April 2024), which has been occupied or owned by the transferor for the required period for agricultural purposes. From 6 April 2025 the relief will be extended to include all environmental land management schemes.

The required period is as follows:

- it has been occupied by the transferor for the purposes of agriculture throughout the two years before the date of the gift or the transferor's death; or

- it has been owned by the transferor throughout the seven years before the date of the gift/transferor's death and occupied (by any person) throughout the seven-year period for the purposes of agriculture.

Occupation may be by an individual, a company, a trust or subject to a grazing licence, contract farming or share farming arrangements.

There are two rates of AR:

- 100% relief (if the transferor had the right to vacant possession immediately before the transfer, or the right to obtain it within the next twelve months (or by concession within 24 months in certain circumstances) from the date of the transfer. To encourage agricultural tenancies, this relief is also available where property is let on a tenancy starting on or after 1 September 1995 – "***Fully Relievable AR***"; and

- 50% relief is available on any other qualifying agricultural property – "**Partly Relievable AR**".

## Nil rate band allowance

Everyone within the UK inheritance tax net is entitled to a nil rate band allowance of £325,000. If the value of an otherwise chargeable transfer of property falls within the nil rate band allowance, the actual rate of inheritance tax charged on that property is 'nil'. On death, the testator's personal representatives will need to deduct the value of any chargeable lifetime gifts from the allowance but otherwise can set it against the testator's chargeable estate. If all or part of the allowance is not used following a death, the unused percentage can be transferred to that person's surviving spouse or civil partner, to be claimed on their subsequent death.

## Reasons to incorporate planning with BR and AR in a Will

If a married individual has property that qualifies for BR and AR, they could, on their death, pass all their estate (including that property) to their spouse/civil partner. There will be no inheritance tax to pay due to the spouse exemption and the value of the property will be in the spouse/civil partner's estate (whether absolutely or through a trust) to be assessed for inheritance tax on their subsequent death.

However, this simpler planning may not use the reliefs to best advantage for the following reasons:

- the individual may wish to direct the assets to a non-exempt beneficiary at an earlier stage of the succession process, without incurring inheritance tax;

- the nature of the property might change such that it no longer qualifies for the relief;

- the rules on BR and AR might change to be less favourable; and

- further tax planning opportunities, after the first death, may be lost.

## Planning opportunities

An alternative arrangement would be to direct the property qualifying for BR and AR into a flexible discretionary trust. This has the following advantages:

- the relief is secured and the property is kept out of the estate of the surviving spouse/civil partner, where it might otherwise become subsequently chargeable;

- the spouse/civil partner can access the property (or the income from the property) if necessary but otherwise it can be used for the benefit of other beneficiaries;

- based on current rules, discretionary Will Trusts can be changed within two years of death and the changes written back to the date of death for inheritance tax purposes, to retain flexibility; and

- there may be options for further tax planning, following the first death, as appropriate.

## Traditional 'Double-Dip' Will Planning

The traditional form of this planning involves directing the following into a discretionary trust structure on the first death for the benefit of the family:

- any assets that qualify for Fully Relievable BR and Fully Relievable AR, by reference to the applicability of the relief at the date of death;
- any assets that qualify for Partly Relievable BR and Partly Relievable AR, by reference to the applicability of the relief at the date of death; either in full or only to the extent that the gift of assets does not generate an inheritance tax charge (taking into account the available nil rate band allowance);
- either a full or a 'top up' of such of the available nil rate band allowance as hasn't been used in respect of lifetime gifts, other chargeable gifts in the Will or partly relievable property (as appropriate).

All other assets are then left directly to the surviving spouse, who can purchase the business assets from the trust (or into a life interest trust where the trustees could do the same) and provided the criteria for relief are met again they would qualify for relief again on the second death.

This planning enabled the family to benefit from relief from IHT on the first death, and then use that same relief again on the second death. Some (but not all) of the assets were also protected by the trust using this model.

## The Mills & Reeve 'Two Fund Trust' Will Planning

We have expanded the planning, so that on first death all the assets noted above pass into a single flexible trust. Critically, the trust is divided into two sub-funds (a 'Two Fund Trust'):

- the 'Relief Fund' holds the relievable assets (e.g. business property or agricultural land); and
- the 'Spouse Fund' holds all other assets (e.g. the half share of the family home) and is taxed as if inherited directly by the surviving spouse.

This ensures that all assets benefit from the asset protection of the single trust and simplifies the process of the asset transfer between the two sub-funds which can give rise to tax savings.

This asset transfer within the Two Fund Trust:

- is simpler and faster to document compared to a full sale of the assets;
- is even more tax efficient, by mitigating transfer taxes (e.g. CGT or SDLT);
- keeps all assets under the control of the chosen trustees; and
- maintains trust asset protection benefits over all the assets.

In common with traditional Double-Dip planning, the IHT saving of Two Fund Trust planning (40% of the asset values) is partially offset by periodic IHT charges. These are applied to the non-relievable assets (e.g. the half share of the family home) held in the Relief Fund after the swap. But these charges are limited to 6% every 10 years and there are options for mitigating the 6% charges depending on the circumstances. The two spouses would need to die more than 60 years apart for the costs to outweigh the savings.

Likewise, in both versions the planning might prove unsuccessful: there is no added saving if the surviving spouse does not qualify for relief on the assets on second death (for example, business assets need to be held by the surviving spouse for two years to qualify for relief again). However, the costs of implementation will have been small, and insurance may be available to offset the short-term risks if needed.

Please speak to your usual Mills & Reeve contact for further details of the planning or contact us via our website [Mills & Reeve Solicitors | UK Law Firm With Global Reach (mills-reeve.com)](mills-reeve.com).

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