

## Farm Succession Planning

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16.30 – 17.30



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## Starting the Conversation

- People come in concerned about the amount of tax payable or one of their beneficiaries is.
- Farmers don't retire.
- Farmer on Death Certificate.
- 40 hours a week is retired.



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## Once you start:

- What do they want to achieve?
- What are their concerns?
- What future plans does everyone have?
- Listen - As a professional, they will tell you

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- I'm not worried that my son will get divorced but what would happen if he did?
- She's a nice girl, but...
- He's not really like us



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### What happens if you don't plan?

- **Worst case** →
  - farmers bank account in his sole name
  - dies
  - middle of winter
  - short illness
  - not enough food for the animals.
- Improved by banks releasing funds. Can get emergency Grant of Probate.
- **Almost as bad** →
  - farmer dies
  - no will
  - litigation for 7 years
  - cow milked by lawyers



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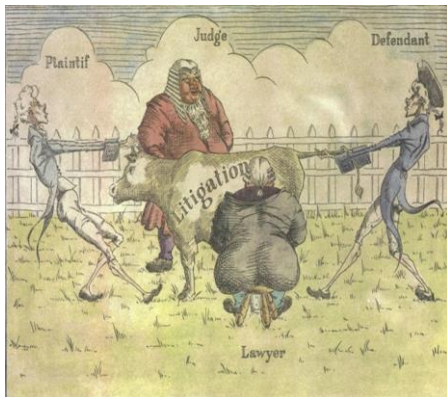
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- Good claim by son/partner who acted to their detriment i.e. worked for nothing on a promise (i.e. one day all of this will be yours)
- Could be a claim before death.




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It is what it is.

- What is the current IHT position?
  - Make a will
  - Interim - "better than nothing"
- Can anything be improved?
  - Land with hope value gifted
  - Cottage let to farm worker
  - Change location of farm computer?




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Nil Rate Band (NRB)

- Every one has
- £325,000
- Taxed at 0%
- Normal rate of tax 40%
- Applies to any property passing on death together with any taxable gifts made within the 7 years before death.
  - Chargeable life time transfers Trust.




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## Transferable NRB (TNRB)

- IHT 402
  - Spouse Exemption
  - Assets to Spouse – Spouse exemption
- No limit if spouse domiciled in UK
- Any unused NRB can be used by second spouse on death.
  - 15% i.e. 100% transferrable NRB
  - £650,000 (£325,000 x 100%)
- Need to be married/civil partnership
  - Second spouse dies after 9<sup>th</sup> October 2007
  - Married at date of death (Divorce)
  - Claimed within 24 months of second spouse's death
  - Multiple marriages – only 100%
  - When did first spouse die? (Pre 1972, 1973, 1974 – Post 1974)




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## Residential Nil Rate Band (RNRB)

- From 6<sup>th</sup> April 2017 – over 4 years.
  - 2017/18     £100,000
  - 2018/19     £125,000
  - 2019/20     £150,000
  - 2020/21     £175,000
- After – will increase in line with Consumer Prices Index

• £325,000	x	2	=	£650,000
• £175,000	x	2	=	£350,000
		Total	=	£1,000,000




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## Closely Inherited

- a) A lineal descendant – includes step child, adopted child, foster child or child under guardianship and grandchildren
- b) Spouses of above
- c) Widows, widowers, surviving civil partners of
  - a) provided they have not married as at the date of death of the deceased




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## Inherited

- Receive it, become entitled to an Interest in possession
- Discretionary Trust – No. Not even when only beneficial objects are children and grandchildren
- Can you appoint out within 2 years?
- A lifetime gift – reservation of benefit rules – Donee is treated as having inherited




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## Qualifying Residential Interest

- Where someone dies with 'residential property interests' in more than one house PRs can nominate one to be "Qualifying Residential Interest" – Chose right one
- Dwelling house includes any land i.e. garden, grounds
- No requirement residence immediately before death- but must have been residence.
- No need to have been residence all time owned/no minimum period.
  - i.e. could have been residence and then let as in care home.
- Residence? CGT case law
- Does not have to be in the UK.
- Special downsize regulations – 7/7/2015
- Keep records




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## Agricultural Relief IHTA 1984 s.115 (2)

- DEFINITION – "Agricultural land and pasture and includes certain land and building occupied *in association with it* including such farm-houses, farm buildings and cottages as are of character appropriate to the property"
- This includes land or pasture that is used to grow crops or to rear animals intensively; including growing crops, stud farms, short rotation coppice, land NOT being farmed under a crop rotation scheme, some agricultural shares and securities, farm buildings, farm cottages and farm houses.
- Does not qualify; farm equipment and machinery, derelict buildings, harvested crops, livestock and property subject to a binding contract for sale




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## Ownership of Occupation S117 IHTA 1984

- Transferor must have occupied the land for the purpose of agriculture “throughout the period of two years ending with the date of the transfer”
- It must have been owned throughout the period of seven years for the purpose of agriculture
- Any break in ownership or occupation can change which relief are available




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- Buildings must be of a nature and size appropriate to the farming activity that is taking place. The property is valued as if it could only be used for agricultural purposes. Any value over and above this ‘agricultural value’, such as the market price of a country residence. Does not qualify for Agricultural Relief.
- A cottage or farmhouse must be occupied by someone employed on the farm or concession for:
  - a retired farm employee
  - the spouse or civil partner of a deceased farm employee




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- Character Appropriate test

## What is a farm house?

- Battleground between HMRC and tax payers
- There have been a number of cases where they have been denied the relief because they have not been occupied for the set period or not been occupied with the land
  - Atkinson v RCC (2011) – refused when farmer was taken into care home for 4 years
  - Starke v IRC (1995) – refused as house was situated with some substantial outbuildings and small areas of land
  - Harrold v IRC (1996) – refused as farm house was so dilapidated that essential work needed to be carried out – he was classed as not in occupation until he actually moved in




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### Examples

- Farmer buys his own farm and owns it for over 2 years = 100% relief
- Person buys a farm and puts a tenant in it for over 7+ years = 50% relief
- Tenant who purchases a farm having been in occupation for over 2 years = 100% relief

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### Eligible for 100% Relief

- This is where the transferor has the right to vacant possession immediately before the transfer or the right to obtain it within 12 months after the transfer (extended to 24 months by concession)
- If the person who owned the land farmed it themselves, or the land was used by someone else on a short-term grazing license, or if it was let on a tenancy that began on or after 1 September 1995.
- A property that was owned since before 10 March 1981 in certain cases but there is an upper limit of £250,000 of the value which can be reduced by 100%
  - Any OTHER cases agricultural relief – 50%

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# Special Rules

- Farmer moves from one farm to another (s.118)
- Farm owned by the spouse of a former owner
- A transfer within 2 years of a previous transfer, provided one transfer is on death (s.120)
- Shares in a company which owns agricultural property eligible value = agricultural provided share holder in control of a company (s.119)



# IHT MANUAL

**GOV.UK**  
Inheritance Tax Manual

**Overview of agricultural relief information sources**

1. Agricultural relief (AR) is available for agricultural property (AR property) which is situated in the United Kingdom and is used for agriculture. It is available for agricultural property which is situated in the United Kingdom and is used for agriculture.

**GOV.UK**  
Inheritance Tax Manual

**Overview of agricultural relief: outline of the relief**

The relief is available for agricultural property which is situated in the United Kingdom and is used for agriculture. It is available for agricultural property which is situated in the United Kingdom and is used for agriculture.

**GOV.UK**  
Inheritance Tax Manual

**Replacement property: Limitation of the relief**

The relief is available for agricultural property which is situated in the United Kingdom and is used for agriculture. It is available for agricultural property which is situated in the United Kingdom and is used for agriculture.



# IHT MANUAL

**GOV.UK**  
Inheritance Tax Manual

**Occupation: The occupation condition**

The relief is available for agricultural property which is situated in the United Kingdom and is used for agriculture. It is available for agricultural property which is situated in the United Kingdom and is used for agriculture.

**GOV.UK**  
Inheritance Tax Manual

**Replacement property: Application of s.144(2)(b)**

The relief is available for agricultural property which is situated in the United Kingdom and is used for agriculture. It is available for agricultural property which is situated in the United Kingdom and is used for agriculture.

**GOV.UK**  
Inheritance Tax Manual

**Agricultural property: Farm cottages**

The relief is available for agricultural property which is situated in the United Kingdom and is used for agriculture. It is available for agricultural property which is situated in the United Kingdom and is used for agriculture.





## Business Property Relief IHTA 1984 s104

- Available in respect of “Relevant Business Property”
- 6 categories – Deceased **MUST** have owned the business or asset for 2+ years

100% Relief	50% Relief
A business or interest in a business	Shares controlling more than 50% of the voting rights in a listed company
Shares in an unlisted company	Land, building or machinery owned by the deceased and used in a business they were a partner in or controlled
Unquoted Securities which alone or with other shares owned by the transferor or with related property gave the transferor control of the company	Land, buildings or machinery used in the business and held in a trust that it has the right to benefit from

- If farming business is not eligible for Agricultural Relief, Business Relief may be claimed if the conditions are met



## Non- Qualifying Companies

- Business consisting of wholly or mainly of dealing in securities, stocks, shares, land or building or of holding of investments are excluded
- Businesses which have a range of mixed activities can lose potential relief if they become mainly based on one of the forbidden activities above.
- a not-for-profit organisation
- is being sold, unless the sale is to a company that will carry on the business and the estate will be paid mainly in shares of that company
- is being wound up, unless this is part of a process to allow the business of the company carry on



## ALL OR NOTHING

If 50% or more is in non investment activities BPR is available in full

X Ltd is a stand alone trading company. Generated surplus cash in recent years which it has used to buy a number of rental properties

Value of properties 40% of total business – 100% relief

Value of properties 60% of total business – 0% relief



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## Woodlands

- BPR
  - Managed on a commercial basis
  - Owned for 2 years
- APR
  - If occupied with agricultural land
- “Woodland Relief”
  - May defer tax on growing timber.



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## Horses

- Land can qualify for APR
  - Stud farming activity and grazing connected (HRMC review facts)
  - Horses working farm animals
  - Horses bred for horse meat.
- Otherwise BPR?
  - Recreational horses kept on farm
    - Keep on small, defined, low value area.



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## A lot is about priorities

- What is more important?
  - Concern son will divorce or go off the rails
  - Income tax
  - Subsidies, quotas, grants
  - Inheritance tax
  - Keeping control
  - Maintaining beneficiary enthusiasm




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## Discretionary Trust

- i.e. in will, for farm
- 125 years
- Income tax at 50%
- Can be claimed back by non tax payers
  - i.e. minor beneficiaries
- Who would you appoint as Trustee?
  - Could be good option
    - » Young children
    - » Teenagers
    - » Good option as Trustee (mother and/or uncle)
  - Where you need to “wait and see”




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## Is there anything you don't want or need?

- i.e. Holiday cottage by the sea, can pay market rent to stay instead of repairs.
  - Not if it is your retirement plan.
- Money in bank
- Gift / Financial planning investment.




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## Development Land

- Edge of the village
- No intention to develop now
- Could roll into Discretionary Trust. Hold over relief for CGT
- Any income to non tax payers – grandchildren i.e. rent back to farm at market rent
- Roll out to as many beneficiaries as possible?



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## Care Home Fees (Care at Home fees)

- £80,000 2 years - £28,800 a year
- Hard to value half
- Impaired life annuity
  
- Old people – or accident, illness



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## Divorce

- Starting point for divorce 50/50
- Child maintenance
- A risk for self-employed people - bankruptcy
- Might be the person paying you – abattoir, livestock market



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### Everyone Involved – Review Your Will

- Son is gifted farm – what if he predeceases?
- Does his current Will (or lack of Will) leave everything to his wife?
- Parents still own bungalow – farm around sold, maybe to neighbour – widowed daughter in law’s new husband
- Daughter may not be so keen to take in




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### Make an LPA

- Doesn’t help with IHT planning
- Everyone needs an LPA – including young partners
- What is a business LPA?
- Lost capacity – deputyship
- Statutory Will – very expensive, slow, do recognise IHT planning




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### Deed of Variation

- What one is?
- How it might help
- Non-agricultural property to exempt beneficiary i.e. widow, charity, political party
- Agricultural property to non-exempt beneficiary i.e. adult child
- All to spouse – gift, live 7 years




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## Review Business Structures

- Make sure you know what you are dealing with.
- Is there a partnership agreement?
- Where is it?
- Does it need to be reviewed?
- If lost or doesn't exist, should be reviewed?
- Accountants opinion




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## Too late to plan?

- If assets pass on death, there is a base cost uplift for CGT.
  - Avoid late gifts of assets pregnant with gains.
  - Could transfer from spouse or civil partner gift back in Will.
- Can estate be reduced to retain RNRB?
- Can annual exemption and small gifts exemption be used?
  - £3000 per year, £250 per person
    - Useful when several grand children.
    - Dispositions for maintenance, education or training of




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- Transfer accounts into joint names.
  - (Getting money quickly)
- Conversion of assets to get relief
  - i.e. AIM shares, BPR, APR
  - Hold for 2 years
  - Could an investment company be converted to a trading company?
    - CGT – s.165 hold over/ SDLT




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### To Do List

- Contented farmer
- Dead donkey
- Make an LPA (Health and Welfare)



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### What does the future hold?



Any Questions?

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Any Questions?

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