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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, albeit that the scope of relief will be restricted from 6 April 2026. An individual's Will can be carefully drafted to make the most effective use of the reliefs available, while achieving the succession objectives.

Summary

A person's death may trigger inheritance tax, depending on the estate's value and type of assets, past gifts, interests in any relevant trusts and the identity of the beneficiaries.

However, there are various allowances, exemptions and reliefs which, if used appropriately, can minimise the exposure to inheritance tax.

Business Relief (BR) and Agricultural Relief (AR) continue to be extremely valuable for many individuals. Where the conditions are met, the relief reduces the value of the transfer on death, for the purposes of calculating any inheritance tax due.

A Will can be structured to use allowance, exemptions and reliefs in different ways and can set the scene for further succession planning. It is often not possible to foresee (at the point when the Will is signed) what planning will be the most advantageous at the relevant future date, so flexibility is key.

When deciding on the value of BR and AR on a death, there are several steps to consider:

- do the relevant assets qualify for BR or AR; and
- if so, what rate of relief is applicable.

The applicable rate of relief depends on several factors including, from 6 April 2026, whether the value of the assets fall within the available £1 million allowance (thus qualifying for a higher rate).

£1 million allowance

From 6 April 2026 everyone will have a £1 million allowance applicable to transfers of qualifying business or agricultural property, for inheritance tax purposes.

This allowance will determine the rate of relief available on the transfer of relievable assets.

It will apply to;

- lifetime gifts of business and agricultural property into most formal trusts (renewing on a seven-year basis); and
- on death, taking into account the value of gifts of business and agricultural property to individuals or trusts made within the seven years prior to death (using up the allowance in date order), assets owned by the deceased at their death and any relevant interests the deceased had in formal trusts.

Where there are both qualifying business and agricultural property in an estate, the £1 million allowance will be shared proportionally between them. Likewise, if the individual has both relievable assets in their own name and a relevant interest in a trust holding such assets, the allowance will, again, be shared proportionally.

Unlike the current rules, the allowance will not be transferable to a surviving spouse or civil partner if it is not used on an individual's death.

The amount of £1 million allowance on a particular transfer will depend on how much of it has been 'used up' by previous transfers made by the individual.

Inheritance tax planning

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

- the scope of assets which qualify as relievable property for BR;
- the scope of assets which qualify as relievable property for AR;
- the amount of £1 million allowance available to the individual at the relevant time;
- the proportion of relievable assets which will be within the available £1 million allowance and the proportion which will be outside the scope of the allowance;
- the available Nil Rate Band Allowance;
- long-term plans for the succession or sale of the relievable assets and the nature of any relievable assets already owned by a surviving spouse or civil partner.

Business relief

To qualify for BR at any level, the property must be 'relevant business property' ("**RBP**"). An individual may own assets where there is some uncertainty over whether this is the case, particularly if the assets change frequently in nature. This can affect the Will planning adopted.

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.

For deaths after 6 April 2026, the relevant rates of RBP are as follows:

- 50% relief on transfers of qualifying quoted shares or shares listed on AIM or another non-recognised exchange, securities and relevant land, buildings, machinery, or plant – "**Partly Relievable BR**";
- a default rate of 50% relief on transfers of a business or interest in a business and unquoted company shares or securities that fall outside the available £1 million allowance – "***Default Fully Relievable BR***"; and
- a special rate of 100% relief on transfers of a business or an interest in a business and unquoted company shares or securities, the value of which fall within the available £1 million allowance "***Special Fully Relievable BR***".

For deaths before 6 April 2026, the 50% rate applies only to qualifying quoted shares, securities and relevant land, buildings, machinery or plant, with 100% relief applying to all other RBP.

Agricultural relief

To qualify for AR at any level, the property must be 'relevant agricultural property' ("**RAP**").

Agricultural Relief is given on the agricultural value of agricultural property (including environmental land management schemes) situated in the UK, which has been occupied or owned by the transferor for the required period for agricultural purposes.

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.

The assets could qualify for fully relievable AR (at the relevant rate) 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. These are 'fully relievable assets'.

From 6 April 2026, there are the following rates of agricultural relief on RAP:

- a default rate of 50% relief on fully relievable assets which are outside the available £1 million allowance. – "***Default Fully Relievable AR***";

- a special rate of 100% relief on fully relievable assets, the value of which falls within the available £1 million allowance "***Special 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.

Therefore, if a transfer of RBP or RAP would otherwise generate an inheritance tax charge because the relief applicable is less than 100%, such of this value as falls within the available nil rate band allowance would be free from inheritance tax.

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.

The value of the property will then be in the spouse/civil partner's estate (whether absolutely or through a trust) where it will either be:

- subject to opportunities for further lifetime planning opportunities (considering life expectancy and any capacity issues); or
- assessed for inheritance tax on their subsequent death.

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

- it does not make use of the available £1 million allowance of the first to die (note that this allowance isn't transferable, so if it isn't used, it's lost);

- the individual may wish to direct the assets to a non-exempt beneficiary at an earlier stage of the succession process. This will be particularly attractive if the qualifying property is likely to be sold after the first death, if the surviving spouse is unlikely to live for seven years (securing tax-free status for a lifetime gift) or if there is a chance that relief might be lost. Securing relief at either the higher or the lower rate (and perhaps paying some inheritance tax) might be more advantageous than getting no relief on the second death;

- the rules on BR and AR might change again 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 individual's full £1 million allowance is utilised;
- the relief (at either rate) is secured and the property is kept out of the estate of the surviving spouse/civil partner (where the assets might qualify for BR or AR at the same rate but equally might potentially have lost the benefit of the reliefs altogether);
- 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;
- there may be options for further tax planning, following the first death, as appropriate.

The tricky question is how much of the relievable property to direct into a discretionary trust, given that some of it may only qualify for relief at 50%, leading to an immediate inheritance tax charge.

It is challenging to second-guess the correct answer to this question until the position at death is ascertained. Therefore, it is often advantageous to put in place a Will directing all RBP and RAP into a flexible discretionary trust and appreciate that further planning may be appropriate to achieve the best position after death. This decision will be made depending on your personal circumstances and taking into account prevailing tax legislation at the date of death.

Key to this ability to reorganise the position post death is the existence of a legal provision that allows discretionary Will Trusts to be changed within two years of death, and the changes to be written back to the date of death for inheritance tax purposes.

This means that if there is a gift of RBP and RAP to a discretionary trust on the individual's death there is the potential to:

1. Keep it in the trust and pay any inheritance tax.
2. Appoint it to the surviving spouse and reclaim the inheritance tax.
3. Appoint it to a non-exempt beneficiary and pay the inheritance tax but keep it out of the estate of the surviving spouse.

In addition to the 'redirection' post death planning, there are also further options for making full use of the available reliefs.

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 (whether at the default or special rates), 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 £1 million allowance and 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 or agricultural 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 enables 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 are also protected by the trust using this model.

This purchase of relievable assets by the surviving spouse is particularly attractive if they do not already have enough relievable assets in their name to take advantage of their own £1 million allowance.

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 a significant number of 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).