Guide to Business Relief

Business Relief (BR), formerly Business Property Relief (BPR), is an important but less well-known relief from Inheritance Tax (IHT).

BR allows you to claim relief on relevant business property that you own once the property has been held for a minimum of two years.

This time period compares favourably to exemption under other forms of IHT planning such as gifts and transfers to trusts.

BR planning is typically done in your own name and therefore there is no loss of control of the assets built up over many years.

What constitutes Relevant Business Property and the Relief available?

- A business or an interest in a business (100% relief)
- Unlisted shares including shares that are quoted on AIM (100% relief)
- A holding of shares or securities that give you control of a company that are fully listed on a recognised stock exchange (50% relief)
- Any land, buildings, machinery or plant used wholly or mainly for the purposes of the business carried on by a company or partnership {50% relief)
- Any land, buildings, machinery or plant used in the business and held in trust that you have the right to benefit from (50% relief)

The business has to be carried on by the relevant person, or the company or partnership carrying on the relevant business has to be controlled by the relevant person.

An investment in an Enterprise Investment Scheme (EIS) can also obtain relief from IHT under BR. The investor would benefit from the relief after holding the EIS investment for at least two years providing the scheme meets the BR trading criteria. An EIS also offers generous income tax and capital gains tax relief to investors.

BR is not available in respect of a business that:

- Is not carried on for gain (i.e. not for profit or not on a commercial basis);
- Is engaged wholly or mainly in dealing in securities, stocks or shares, land or buildings or in the making or holding of investments;
- 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; and
- Is being wound up, unless this is part of a process to allow the business to carry on.

In considering whether the business is wholly or mainly engaged to obtain the relief unfortunately no strict test applies. The courts will consider a number of factors including:

- The overall context of the business;
- The activities over a number of years;
- The turnover and profitability of all the different activities;
- The activities of the employees and how time is spent;
- The acreage or size of business units used;
- The capital values of land and property; and
- The level of cash in the business.

If IHT is due and the business property is not covered by Business Relief in full, you will be able to pay the liability to inheritance tax by instalments on:

- certain shares and securities;
- the net value of a business or an interest in a business, including a profession or vocation, carried on for gain (this does not include individual assets of a business, which are distinct from the business as a whole).

Qualifying Rules

- Money must be invested in relevant business property for two years to qualify;
- Any relevant business property sold from the portfolio must be replaced within three years; and
- The relevant business property must be held at the date of death for full relief from IHT.

BR is not restricted to businesses situated in the UK and therefore applies to business interests anywhere in the world.

What are the Conditions for Replacement Property within Business Relief?

Where the original relevant business property was disposed of before the transferor's death and the proceeds were used to buy replacement business property, the relief is not necessarily lost.

In order to still qualify for relief, the whole of the sale proceeds must have been used to purchase the replacement business property, and both the sale and purchase must have been arm's length transactions taking place within three years of each other.

The replacement property must also be of such a nature that, if it was transferred by the transferee immediately before the death of the transferor, it would, apart from the minimum period of ownership requirement, qualify for relief.

What is Business Asset Rollover Relief?

Business Asset Rollover Relief enables someone to defer any Capital Gains Tax liability arising from the disposal of a business or trading asset. If the proceeds are used to acquire other assets costing the same as, or more than, the amount received on a disposal of the old assets, the relief allows the individual to postpone paying tax until the disposal of those new assets. If new assets are acquired for less than the amount received on the disposal of the old assets, partial relief will be available.

You must acquire the new assets, or enter into an unconditional contract for the acquisition of the new assets, in the period twelve months before, and three years after the disposal of the old assets.

Why Use BR

Access and Control

The client retains access to their investment and it is made in the client's name. The holdings can be changed and clients can withdraw their money. However, it should be noted that any withdrawals will form part of the estate and liable for IHT.

Timely

Once the investment has been held for two years the capital and any profits will obtain 100% relief from IHT, unlike trust planning or gifts which generally take seven years before they achieve the same position.

A spousal transfer does not restart the two-year clock which enables investments to be passed with maximum efficiency.

Simplicity

BR opportunities are relatively simple compared to trust planning; there are no complex structures and they do not require notification to HMRC.

Further details on BR opportunities can be found on our website www.stellar-am.com or by telephoning 020 3195 3500.

Taxation

This document is based on Stellar Asset Management Limited's understanding of applicable legislation, law and current HM Revenue & Customs practice. It is provided solely for general consideration. The information regarding taxation is based on our understanding of current legislation, which may be altered and depends upon the individual financial circumstances of the investor.

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