IHT alert: are you in HMRC's crosshairs?

Danielle Ford explains the raft of recent changes to the inheritance tax regime, set to be rolled out in the coming months and years

HMRC have shifted their sights to inheritance tax (IHT) to help close the tax gap. Despite the publicity generated by a former Top Gear presenter, it is not only farmers who are affected.

In addition to farmers, who will face restrictions to Agricultural Property Relief (APR), the changes in the Budget also impact business owners to a greater degree by restricting Business Property Relief (BPR), which is claimed by more estates than APR.

What are the rules?

Currently, APR and BPR provide relief at 50% or 100% on qualifying assets, with no cap or maximum value. Thus, in many cases where 100% APR or BPR is available, no IHT is payable on the deceased's estate.

So what are the headline changes from the Autumn Budget 2024?

IHT reforms

From 6 April 2026:

- A cap of £1 million for both APR and BPR qualifying assets (£1 million combined), 100% relief.
- Any excess amount will receive APR or BPR at a rate of 50%.
- AIM or similar markets will receive BPR at 50%.

From April 2027:

- Pensions will be subject to Inheritance Tax (IHT).

Abolition of the non-dom regime from 6 April 2025:

- IHT will apply to worldwide assets for individuals who have been UK residents for 10 out of the past 20 years.
- There will be a 10-year tail-off period for IHT for those leaving the UK.
- Excluded Property Trusts will be within the IHT net if the settlor is a long-term UK resident.

Anti-avoidance rules

On the announcement of the 2024 Budget, anti-avoidance measures were introduced to prevent the avoidance of inheritance tax (IHT) in the UK. It is imperative that these rules are reviewed before any tax planning is undertaken.

What planning are people undertaking?

Direct gifts: Potentially exempt transfers (PETs) provide that if the donor survives seven years following the gift, the gift falls out of the estate. Should the donor die within seven years, the gift will form part of the deceased's estate, in full up to three years following the gift, and gifts between four and seven years are taxed subject to taper relief. Let's not to forget the rules that have been in existence for many years:

- Will Capital Gains Tax be payable on the gift? Yes, a double tax charge could arise.
- The Pre-Owned Assets Tax (POAT) and Gifts with Reservation of Benefit (GWROB) rules are distinct but interconnected regimes designed to address inheritance tax (IHT) avoidance.

Trust settlements: Prior to the announcement of the Budget it was possible to transfer BPR and APR assets into and out of trusts without any charge to IHT, nor was there a 10-year IHT charge payable. Chargeable Lifetime Transfers (CLTs) can be made under the current rules before 6 April 2026. However, there are anti-avoidance provisions, and CLTs made after 30 October

2024, should the donor die after 5 April 2026 and within seven years of the transfer, IHT will be calculated under the new rules.

However, the £1m 100% BPR allowance will reset every seven years, so over a period of time value can be transferred into trusts IHT free.

Family Investment Companies (FICs): Transferring assets out of the shareholder's estate into a FIC helps reduce the IHT liability while allowing founders to retain control. FICs offer a flexible and familiar structure, making them an alternative to trusts in some cases.

Family Limited Partnerships (FLPs): Following the changes in Finance Act 2006 impacting the use of trusts for IHT planning, FLPs have become an increasingly popular family wealth planning structure, separating control and economic ownership of assets. Limited Partners, as opposed to beneficiaries of Trusts, have an interest in the income or capital of the FLP as determined in the Partnership Agreement, which will be drafted to meet the needs of the individual family. As with the Trustees of a discretionary trust, the General Partner will be able to exercise side discretion on the management of the assets, as well as enjoying effective protection against creditors. As with FLCs, it is essential to exercise care and seek specialist advice before structuring a FLP.

Insurance: Insuring against the liabilities so the executors of an estate do not have the worry of funding the IHT.

Gifts out of income: Regular gifts of excess income are IHT free and not subject to the seven-year clawback rule on death if structured correctly. Particularly in relation to the pensions that will now be in the IHT net, this can be used to avoid the potential double charge of IHT and then income tax when drawn by the beneficiaries.

What to look out for

Valuations: Under the new rules, estates qualifying for APR and BPR must be valued at the time of death. Additionally, APR and BPR assets held within trusts will require valuation on their 10-year anniversaries. It is crucial to ensure that these valuations are conducted by experienced professional advisers, as HMRC is likely to scrutinise this area closely. Given the complexities of the assets involved, valuation enquiries can be lengthy and intricate.

IHT exposure within corporate vehicles: Transfers of shares from company A to company B at an undervalue would in the past have been covered by BPR relief; now there will be an immediate charge to IHT.

Family Investment Companies (FICs): It is essential to exercise care and seek specialist advice when structuring FICs. HMRC closely monitors FICs, and incorrect structuring can lead to significant financial implications for the founder.

Non-doms and offshore trusts: It is crucial to review all structures, as many are no longer effective. With HMRC's enhanced information-sharing powers with other jurisdictions, and the increased quantity and quality of information being provided, we are already seeing HMRC issuing nudge letters and enquiries. However, with the recent legislative changes, we can expect significantly more activity in this area.

Marketed tax avoidance schemes and arrangements: Due to the one-off nature of the death event and the substantial sums of inheritance tax (IHT) involved, we anticipate an increase in marketed tax avoidance schemes and arrangements.

However, it is important to note that those who implement tax avoidance schemes often end up worse off overall compared with those who take no action. HMRC has a dedicated directorate focused on tackling tax avoidance, and individuals who have used such schemes will be challenged. In the past, those who used defeated schemes have reached settlements with HMRC, which, in addition to the tax, involve the payment of late-payment interest and, in some cases, penalties. Furthermore, fees for the original advice and implementation of the scheme would have been paid, and unlike other forms of avoidance, the subscriber will not be around to deal with the fallout; this responsibility will unfortunately fall to their loved ones when handling the deceased's estate.

Our key message is: if it sounds too good to be true, it probably is. Another rule of thumb is that if a professional firm appears to have more salespeople than technical specialists, their advice should be treated with scrutiny. If in doubt, do not hesitate to seek a second professional opinion.

Rumours of more changes

Following the conclusion of the recent consultation and the research showing the damaging impact these changes will have, there are rumours that the government will soften its stance on the restrictions. This could be as simple as increasing the £1m limit or could go further. With this in mind, more changes are likely to come.

We strongly advise clients to seek specialist professional advice to understand how the new rules will impact their affairs and to explore the available tax planning options.

• Danielle Ford, Partner and Head of Tax Disputes & Resolutions at HaysMac