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REFORMS TO INHERITANCE TAX AGRICULTURAL PROPERTY RELIEF AND BUSINESS PROPERTY RELIEF: APPLICATION IN RELATION TO TRUSTS

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation document *Reforms to Inheritance Tax agricultural property relief and business property relief: application in relation to trusts* ('the Consultation') issued on 27 February 2025¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 While we always welcome the opportunity to consult on tax changes, it is disappointing that the consultation is restricted to technical matters, and the Government did not provide any opportunity to discuss or consult on the wider approach to amending or restricting the current reliefs on agricultural and business assets which will have a significant impact on those affected.
- 1.4 We think that the main areas of technical complexity with the proposals will arise from the anti-fragmentation rules which are intended to apply to all trusts from 30 October 2024. In addition to our responses to the questions in the consultation, we have made some points in section 2 about some practical valuation issues.
- 1.5 Together with other bodies, we met with HMRC on 10 April to discuss areas of uncertainty and have incorporated relevant points from that meeting into our response.

2 Practical issues with valuations

- 2.1 The introduction of a restriction on the amount of Agricultural Property Relief (APR) and Business Property Relief (BPR) allowed at 100% from 6 April 2026 will increase the number of occasions and the range of assets

¹ <https://www.gov.uk/government/consultations/reforms-to-inheritance-tax-reliefs-consultation-on-property-settled-into-trust/reforms-to-inheritance-tax-agricultural-property-relief-and-business-property-relief-application-in-relation-to-trusts>

that will need formal valuation. This will increase administration costs and time for settlors, estates and trusts. It will also increase costs and time for HMRC in checking those values once submitted.

- 2.2 While we would expect individuals, executors and trustees to routinely instruct valuers where land, property or shares are involved, where the actual value of the assets has no impact on the tax position because APR/BPR applies in full and valuations are not needed for Capital Gains Tax (CGT) purposes, it is not uncommon for either 'book values' (the value in the accounts) or estimates to be used.
- 2.3 For example, book values may be used when valuing the assets and liabilities of sole trader's business, or an individual's interest in a trading partnership. The value of assets such as machinery or stock in the accounts will not necessarily reflect the market value of these assets at the date of the transaction. In farm accounts, the value of animals held under the herd basis could be significantly understated compared to the market value. Significant additional valuation work will now be required to establish market values to confirm if the £1 million allowance has been breached.

3 **Question 1: Are the rules on the application of £1 million allowance for individuals sufficiently clear for transfers made on or after 6 April 2026? What are your views on this?**

- 3.1 We think that the rules on the application of the allowance for individuals are superficially clear, in that it appears the £1 million allowance will operate in a simple manner to the nil rate band (NRB). However, there may be some confusion because the new £1 million allowance does not share all the features of the NRB and it is necessary to take into account the operation of the proposed anti-fragmentation rules. Advisers and taxpayers will need to be familiar with the differences between the new allowance and the NRB.

3.2 **Lack of transferability**

The main difference between the £1 million allowance and the NRB is that, under current proposals, the £1m allowance is not transferable between married couples or civil partners. We think that the Government should reconsider this point for consistency with both the NRB and the Residential NRB (RNRB), and fairness when a spouse has died before 30 October 2024.

- 3.3 Couples often choose to leave assets from one spouse to the other before passing them down the generations. The NRB and the RNRB are both 'transferable' which assists with this, and it would be helpful if the £1 million allowance was also transferable. If the allowance is not transferable, some individuals will need to rewrite their wills to ensure that their £1m allowance is not wasted. This will not be possible where the individual has lost testamentary capacity since the current will was drafted. In those cases, a deed of variation may be needed after death, which requires additional work and planning and can create practical and emotional problems at a difficult time.
- 3.4 We acknowledge that the ability to transfer allowances will not necessarily be used as often as it is with the NRB or RNRB as some larger estates will prefer to use some or all of their £1 million allowance on first death, particularly where doing so helps to preserve RNRB in the estate of the survivor by keeping their assets under the £2 million limit. However, we still think it would be a useful addition for some estates and will reduce the need for these estates to re-write wills.
- 3.5 In addition to being transferable, for the purposes of fairness (and in line with the approach taken when the RNRB was introduced) when one spouse has already died, we think the survivor should be entitled to an uplift to their £1 million allowance if APR/BPR assets were transferred to them. We appreciate this will have a revenue cost and add some complexity.

3.6 Interaction with anti-fragmentation rules

In order to understand the operation of the £1 million allowance for individuals, it is important to consider the anti-fragmentation rules outlined in section 4. Again, the £1 million allowance does not follow the pattern of the NRB and this needs to be appreciated.

- 3.7 The NRB currently allows individuals to set up what is commonly called a 'NRB trust' – a trust with chargeable assets of £325,000 - every seven years without incurring IHT on the transfer. An individual's NRB 'refreshes' every seven years and allows for a pattern of gifting on a seven year cycle to use the allowance. In practice, only larger estates or those with significant foresight carry out this kind of planning, but it is possible. We assume the Government wishes to prevent a cycle of trust creation every seven years with £1 million of farm or business assets. While an individual could gift £1 million of qualifying assets into trust every seven years without incurring a personal IHT charge, the anti-fragmentation rules suggest that only the first trust of £1 million would be able to benefit from a £1 million allowance of its own on exits or at the 10 year anniversary. Subsequent trusts would receive 50% APR/BPR only. We have commented further below on some of the challenges of this approach.

4 Question 2: Are the rules on the application of the £1 million allowance for 10-year anniversary charges and exit charges sufficiently clear for property settled on or after 6 April 2026? What are your views on this?

- 4.1 We think that the anti-fragmentation rules in part 4 of the consultation need to be included when answering this question. Apart from the effect of these rules, we are otherwise assuming that the £1 million allowance will operate like the NRB.
- 4.2 At the first ten year charge, the NRB available to a trust is reduced by both the cumulative value of transfers by the settlor in the seven years prior to the date of commencement of the trust and the value of any property which has exited the trust. The operation of the NRB effectively allows an individual to set up a trust with chargeable assets within the NRB after every seven years without an upfront IHT charge. Assuming there are no other chargeable lifetime transfers, the trust then effectively has a full NRB of its own for the purposes of exit and principal charges. Ongoing IHT charges only then apply to the extent the trust increases in value above the NRB. This approach is attractive to settlors who can feel that their initial capital has been sheltered from IHT and are prepared to accept IHT on growth.
- 4.3 In contrast, from 30 October 2024, our understanding of the anti-fragmentation rule is that the £1 million allowance used in calculations of exit/principal charges in the trust is reduced by the cumulative value of transfers of relievable APR/BPR property by the settlor into *any* trust from 30 October 2024 to the date of the settlement. Interestingly it appears that any transfers of 100% APR/BPR property into a trust created prior to 30 October 2024 are not included in this total and we have made further comments below under question 6. The main complications with the measure will come from the anti-fragmentation approach.

5 Question 3: What are your views on the proposal to standardise the calculation of Inheritance Tax exit charges, so that all exit charges are calculated based on unrelieved values regardless of whether the exit takes place before or after the first 10-year anniversary?

- 5.1 While this arguably simplifies the position in terms of having a set method for exit charges regardless of timing, we understand from discussions with HMRC that the position will not change for the calculation at

the 10 year anniversary point so there will be no net simplification. Trustees will need to prepare two calculations at each ten year point. The first calculation will take any APR/BPR into account (subject to available £1 million allowance) and determine the ten year rate to apply to assets in the trust at that point, and a second calculation will also be needed which will not take APR/BPR into account for calculating the rate to use if there are future exits from the trust.

- 5.2 The changes, combined with the restrictions on APR/BPR, are likely to increase the costs of exiting the trust.

6 Question 4: What are your views on the proposed transitional provisions for qualifying agricultural and business property settled into a relevant property trust before 30 October 2024?

- 6.1 The current proposals allow for a window in which existing trusts which are able to make appointments may be able to exit assets from the trust. We think this is a helpful provision to allow existing trusts who are able to, to take steps to try and manage the unexpected IHT liabilities these changes will bring.

7 Question 5: What are your views on the proposed transitional provisions for qualifying agricultural and business property settled into a relevant property trust during the transitional period?

- 7.1 We have no specific comments to this question.

8 Question 6: What are your views on introducing a single £1 million allowance for 10-year anniversary charges and exit charges where a settlor has transferred property into multiple trusts on or after 30 October 2024?

- 8.1 Please see our comments in response to question 2 and 3 above. The anti-fragmentation rule introduces a significant difference between the operation of the NRB and the £1 million allowance and will be the source of greatest complexity in these measures. It will need careful drafting to avoid unintended consequences. We presume that the Government's view is this complexity is balanced by a desire by to minimise loss of revenue. While it is not very common for individuals to set up trusts with assets up to value of the NRB every seven years to maximise use of their NRB, it is possible, and such long-term planning would likely be attractive for agricultural or business assets. Cyclical planning with £1 million of value into a trust every seven years effectively means only incurring IHT on future growth. We presume the purpose of the restriction is to minimise this revenue loss.
- 8.2 In the examples where anti-fragmentation rules are applied, the £1 million allowance is allocated over multiple trusts based on the initial property placed into trust from April 2026. What would the position be if a trust is started with non-relievable assets which, after a period of time the trustees invest in relievable assets? Would the trust be entitled to some or all of the £1 million allowance at the ten year point – which might affect the allocation of the allowance to any subsequent trusts – or would it get nothing because the allocation only applies if assets eligible for APR/BPR are transferred at the outset?
- 8.3 For example, an individual sets up trust A with £500k of cash. They subsequently set up trust B with £600k of relievable assets. If trust A then uses the cash to purchase relievable assets, can it use the remaining £400k of the individual's allowance, or is the availability of the allowance set by the initial choice of assets which are transferred? Or does it instead have a full £1 million allowance because each trust gets a £1 million allowance subject to a reduction for any transfers of APR/BPR assets made from 30 October 2024 to the date of the settlement? (A similar mechanism to how the NRB is restricted.) We presume this is not intended, as

otherwise it would be advantageous to set up a trust with cash first, and then one with APR/BPR assets, and then use the cash to buy further qualifying assets.

- 8.4 We also wonder how the rules are intended to work where the assets increase in value. Presumably the anti-fragmentation rules will only apply where there are multiple trusts. So for example, an individual sets up a trust with £600k of qualifying assets after April 2026, and then sets up no further trusts. At the first ten-year point, the assets are worth £800k. We presume the anti-fragmentation rules would not apply here and the trust would have a full £1 million allowance available to it which would cover both the initial transfer and the growth in value.
- 8.5 However, if a second trust is then set up with £300k of qualifying assets, how will the £1 million allowance be split? Does the split occur at the time of creation of the second trust? Is the intention that the first trust only gets £600k based on the initial transfer of value? Does the second get £300k (as its initial receipt of APR/BPR property) or does the second trust get £400k, being what is left unallocated of the £1 million allowance at that point? Assuming splits are made on the basis of initial values then individuals who set up multiple trusts but don't use the full £1 million amount may then have trusts which, together, cannot access the full allowance.
- 8.6 Continuing the example, if the first trust is wound up, presumably the allowance for the second trust remains unchanged at £300k – and the remaining £100k could only be accessed if a third trust was set up.
- 8.7 We are unclear on the position regarding additions to trusts created prior to 30 October 2024 which already have qualifying agricultural or business property in them and will benefit from the £1 million allowance. The consultation says that these will each benefit from a £1 million allowance even if further property is transferred. At what point would pre-existing trusts need to have APR/BPR property in them for this to apply – on creation, or on 30 October 2024? What is the position for pilot trusts set up with £10 (say) which were intended to receive APR/BPR property? Will these be entitled to any allowance? Or will all pre-existing trusts have a £1 million allowance regardless of their assets?
- 8.8 Does the addition of further APR/BPR property to pre-30 October 2024 trusts affect the amount of the £1 million allowance available to a new trust? We presume that such transfers would still be taken into account otherwise there could be an advantage to those who have already carried out some specific planning. For example, an individual with a trust of £400,000 of agricultural land formed in April 2020 might wish to be able to settle an additional £600,000 after April 2026 into this trust. Would they still be able to set up another trust with £1 million of APR/BPR assets which had its own allowance, or would this be reduced because of the £600k transfer to the pre-existing trust as part of anti-fragmentation measures? In contrast, an individual who had not previously carried out any trust planning – or who had only settled £10 cash on a pilot trust prior to 30 October 2024, would only be able to add £1 million of qualifying assets into one or more trusts before any further trusts would not be eligible for the allowance.

9 Question 7: What are your views on introducing rules similar to the existing 'related' property provisions for Inheritance Tax, so that multiple holdings by the same settlor across multiple trusts can be connected for valuation purposes?

- 9.1 As it currently stands, the proposals appear to be targeted at a subset of assets within the trust and we think this risks becoming confusing. For example, where a trust contains assets which are eligible for both 50% BPR and 100% BPR then it will be necessary to calculate the values differently for those assets if there is a settlement containing related property.

- 9.2 There may be some practical issues in sharing information between trusts where the settlor has set up trusts with different trustees for different branches of the family.
- 9.3 We note that extending the related property provisions to trusts will increase the number of occasions where IHT is paid on a value above that of the actual market value of the asset held. Where for example a trust holds a small percentage shareholding, and the settlor holds the rest of the shares, the market value will be much less than a strict 5% of the entire holding.

10 Question 8: What are your views on the application of the £1 million allowance to special trusts, age 18 to 25 trusts and QIIP trusts?

- 10.1 In respect of 18-25 trusts, we think that refreshing the £1m allowance for each child is a welcome proposal to keep the treatment for each child as equal as possible. Any increase in available allowances over other trusts is likely to have little Exchequer impact.
- 10.2 The consultation outlines the IHT position for the estate of an individual who is the beneficiary of a Qualifying Interest in Possession (QIIP), with the assets in the QIIP receiving a proportionate share of the individual's £1 million allowance. If the QIIP continues as a Relevant Property Trust after the death of the life tenant, who will be considered the settlor for the purposes of establishing the amount of available £1 million allowance on occasions of future charge?
- 10.3 Where the settlement was created on death for a surviving spouse, if the trust continues after the death of the surviving spouse will they be considered the settlor for the purposes of establishing the amount of available £1 million allowance in line with s80 IHTA 1984?

11 Question 9: Do you have any further views on the application of the £1 million allowance to property which has been settled into trust?

- 11.1 We presume that, based on the examples, when qualifying property is added into trust, any available £1 million allowance is applied to that property in preference to any available NRB, but would be grateful for confirmation.
- 11.2 Where a trust has more than one settlor, we presume it would be possible for more than one, £1 million allowance to apply, as is the case for the NRB.

12 Contact details

- 12.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact us at atttechnical@att.org.uk.

22 April 2025

The Association of Taxation Technicians

13 Note

- 13.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.