

# FINANCE ACT 2009

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 122: Extension of Agricultural Property and Woodlands Relief for Eea Land*

##### Summary

1. [Section 122](#) provides that the existing inheritance tax reliefs for agricultural property and woodlands are extended to property in the European Economic Area (EEA) when an event chargeable to inheritance tax (IHT) occurs. Property qualifying for this extended IHT relief will also qualify for capital gains tax (CGT) hold-over relief.
2. The extension of agricultural property relief (APR) and woodlands relief (WR) also applies where IHT was due or paid on or after 23 April 2003. CGT hold-over relief in respect of disposals of agricultural property located in a qualifying EEA state in the past will also be possible.

##### Details of the Section

3. Subsection (2) amends subsection (3) of section 115 of the Inheritance Tax Act 1984 (IHTA) to ensure relief continues to be limited to the agricultural value of agricultural property. Existing provisions limit relief by establishing agricultural value with reference to an assumed “perpetual covenant” that would prevent property being used for anything other than agricultural purposes under the terms of the Act. The amendment provides that an equivalent restriction must apply when establishing the agricultural value of the property (and therefore relief) outside the UK, Channel Islands and the Isle of Man. This is to ensure that relief is given on the same terms for property in other EEA states where the reference to a “perpetual covenant” may not have meaning.
4. Subsection (3) amends subsection (5) of section 115 of IHTA. The existing subsection allows relief in respect of agricultural property located in the UK, Channel Islands and the Isle of Man. Subsection (3) extends this so that relief is also applied to agricultural property located in states other than the UK, provided that the state in question is an EEA state (as defined by the Interpretation Act 1978) when a transfer of value under the terms of IHTA occurs. This change has a consequential effect on section 165 of the Taxation of Chargeable Gains Act 1992 (TCGA) as applied by virtue of paragraphs 1 and 3 of Schedule 7 to TCGA. The change to IHTA means that property which qualifies for APR under this section will also qualify for business asset ‘hold over’ relief where it is farmed by a person other than the owner (property farmed by the owner already qualifies for hold-over relief regardless of where it is situated).
5. Subsection (4) inserts a new subsection (7A) into section 116 of IHTA. This ensures that, where agricultural relief for property is dependent on provisions that are specific to (or have meaning only in respect of) the law of the UK, the relevant UK legislation is to be taken to refer to equivalent provisions in other EEA states. The amendment enables existing references to rights and obligations that are specific to the law of the UK to operate in the context of the law of a foreign jurisdiction.

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which received Royal Assent on 21 July 2009*

6. Subsection (5) amends subsection (1) of section 125 of IHTA, removing the words “in the United Kingdom”. The amendment removes the existing geographical restriction on the location of property qualifying for woodlands relief in accordance with section 125.
7. Subsection (6) introduces a new subsection (1A) into section 125 IHTA. This applies woodlands relief to land located in the UK or other EEA state at the time of the death of the person whose estate is chargeable to IHT.
8. Subsection (7) provides that the extension of relief against inheritance tax for qualifying agricultural and woodland property will take effect for transfers of value where tax would have been payable on or after 22 April 2009 and for similar events before that date where IHT on such property was due or paid on or after 23 April 2003.
9. Subsection (8) provides that IHT paid on or after 23 April 2003, together with any interest that was charged on such IHT, on property newly qualifying as agricultural and woodland property under this section, is repayable provided a claim for repayment is made. Such repayments (including interest) will attract interest under an existing IHTA provision. The deadline for making a claim to repayment will be six years after the date on which a qualifying payment was made (this is the normal time limit for claiming repayments of overpaid IHT) or, if later, 21 April 2010.
10. Subsection (9) provides that, in the case of property becoming entitled to relief as a result of this section, an election to obtain woodlands relief can be made within two years of the date of death giving rise to the IHT charge or, if later, 21 April 2010. Claims for repayment of IHT will be possible where IHT paid falls within the previous subsection.

### **Background Note**

11. Agricultural property relief (APR) is set out at sections 115 to 124C of IHTA. The relief reduces, either entirely or partially, the agricultural value of agricultural property for the purposes of calculating a charge to IHT.
12. Agricultural property includes:
  - agricultural land or pasture;
  - farmhouses, cottages or buildings that are used for agricultural purposes and are proportionate in size to the nature and size of the farming activity;
  - woodland and buildings used for intensive rearing of livestock or fish;
  - growing crops transferred with the land;
  - stud farms that are breeding and rearing horses, and the land that the horses graze on;
  - short rotation coppice – trees that are planted and harvested at least every ten years;
  - land that is actively not being farmed to help preserve the countryside and habitat for wild animals and birds under the Habitat Scheme;
  - the value of land where the value includes the benefit of a milk quota; and
  - some agricultural shares and securities.
13. APR is normally given at a rate of 100 per cent of the agricultural value of land. However property rented out since before 1 September 1995 usually only qualifies for relief at a rate of 50 per cent of the agricultural value.
14. Prior to 22 April 2009, for agricultural property to qualify for APR, it must have been located in the UK, the Channel Islands or the Isle of Man. The extension of APR to property in any EEA state will have effect for all occasions on or after 22 April 2009

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chargeable to IHT. This extension will also have effect for earlier chargeable occasions where IHT in respect of the occasion was due or paid on or after 23 April 2003. The amendments ensure that relief will apply in respect of qualifying property located in either the UK, Channel Islands or Isle of Man or in an EEA state when a transfer of value under the terms of IHTA occurs.

15. The existing statutory regime for APR contains certain eligibility conditions for relief; for example, there is a minimum length of time for which the property must be owned. This section extends APR to qualifying property in other EEA states but otherwise leaves APR unchanged. So the existing qualifications for relief will continue to apply to agricultural property on and after the date of extension.
16. Where APR is dependent on terms and restrictions which have meaning in the UK, this section ensures that property in newly included EEA states will only qualify for relief to the extent that equivalent terms and restrictions are applied. For example APR at 100 per cent is dependent on the transferor having vacant possession of the land in question, or the right to obtain it within 12 months of the transferor. This new provision will ensure that the relief will work satisfactorily in other EEA states where a right to obtain something equivalent to vacant possession exists.
17. Extension of APR under this section applies (but is not solely restricted) to relief against any chargeable events associated with settled property (i.e. property placed into a trust). Thus the extension will apply to periodic or exit charges associated with such settlements arising on or after 22 April 2009 and to similar charges arising before that date where the IHT was due or paid on or after 23 April 2003.
18. Extension of agricultural relief under this section also applies (but is not solely restricted) to transfers of value which are, or are treated as being, Potentially Exempt Transfers (PETs) under section 3A of IHTA (provided those PETs result in an IHT being due or paid on or after 23 April 2003 and are in respect of qualifying property).
19. This section also extends the availability of existing relief against IHT for trees or underwood comprised in estates (woodlands relief).
20. Woodlands relief (WR) gives relief, providing an election is made by the person liable for the IHT that would otherwise be due, by excluding the full value of trees or underwood on qualifying land from the calculation of the death estate for IHT purposes. When the timber is sold an IHT liability may then arise on the original beneficiaries.
21. WR could only previously apply in respect of trees or underwood growing on land located in the UK. This section extends the relief to trees or underwood growing on land located in other qualifying EEA states. The amendments restrict the extension of relief to circumstances where the land in question is located in a qualifying EEA state at the time of death. The relief is otherwise left unchanged.
22. Business asset hold-over relief allows deferral of a capital gains tax charge (on a gift or sale at undervalue of a business asset) until the asset is disposed of by the recipient. Claims for hold-over relief are possible in respect of agricultural property that is not farmed by the person claiming the relief.
23. This section will have the effect of extending, from 22 April 2009, hold-over relief to agricultural property in other qualifying EEA states. Other conditions for the relief are unchanged.
24. Hold-over relief in respect of disposals of agricultural property located in a qualifying EEA state in the past will also become eligible for relief. Claims in respect of gifts or sales at undervalue on or after 23 April 2003 will be possible within existing statutory provisions for claims and amended returns. The time limit for claiming hold over relief is five years from 31 January following the tax year to which the claim relates. Claims to relief in respect of the tax year 2003-04 can therefore be made until 31 January 2010.