

BADR and life interest trusts (Lecture P1424 – 19.51 minutes)

The First Tier Tribunal case of *The Peter Buckley Settlement v HMRC (2024)* highlights an important point about entrepreneurs' relief (now business asset disposal relief or BADR) and life interest trusts.

The 2015/16 Self Assessment tax return for The Peter Buckley Settlement contained a claim for entrepreneurs' relief in connection with the sale of a single share in an unquoted trading company called Peter Buckley Clitheroe Ltd (PBCL).

The trust had been created by Peter Buckley as an interest in possession settlement in March 1999, with the settlor as the principal beneficiary. Subsequently, the settlor replaced one of the original trustees when the latter retired. He was therefore:

- i. the settlor of the trust;
- ii. a trustee of the trust; and
- iii. the sole life tenant of the trust.

PBCL only had one ordinary voting share which had been issued to Peter Buckley and which he later transferred to the trust in September 2012. The trustees sold this share to a company called Progrezion (UK) Ltd in November 2015 for just under £1,500,000, realising a substantial capital gain.

In addition, Peter Buckley had been a director of PBCL for several years up to the time of the share's disposal.

It should be noted that Peter Buckley did not own any shares in PBCL in a personal capacity.

In order for shares to qualify for entrepreneurs' relief (and business asset disposal relief) on a sale by trustees, the following conditions, which are set out in S169J TCGA 1992, must be satisfied:

- i. the shares must be held by a life interest trust;
- ii. the company to which the shares relate must have been a trading company;
- iii. the life tenant must have been an officer or employee of the company; and
- iv. the life tenant must have personally met the various 5% tests (in 2015/16, the relevant tests were owning at least 5% of the company's ordinary share capital and holding at least 5% of the company's voting rights).

These requirements had to be met – for pre-6 April 2019 disposals – throughout a period of one year ended in the three years up to the date of the share sale.

Where all these conditions are satisfied and where the life tenant is willing to assign the relevant part of his lifetime limit to the trustees, the trustees can claim relief of up to the appropriate limit (£10,000,000 in 2015/16) so that their gain would only be chargeable at 10%.

Unfortunately, although the conditions in (i) – (iii) above were satisfied, the (iv) requirement was not met, given that Peter Buckley held no shares personally, and so the trustees' disposal did not attract relief.

The trust's tax adviser tried hard to argue that Peter Buckley's role as one of the trustees of the interest in possession settlement gave him the necessary level of ownership (particularly as he was also the sole director of PBCL). And he even invoked the celebrated *dictum* of Lord Tomlin in *Duke of Westminster v CIR (1935)* to the effect that everyone is entitled to order their affairs so that the tax payable is less than it otherwise would be, in an effort to prove that the First Tier Tribunal was allowed to 'ignore the legal position and regard what is the substance of the matter'. But all in vain. The judges found that the legislation was clear and unambiguous and the conditions for the CGT relief were simply not satisfied. The trustees lost their case.

Interestingly, one commentator added this remark in conclusion:

'One wonders whether something went wrong when this trust arrangement was set up and that the conditions for relief were inadvertently overlooked. If it was an error, it was an expensive one because the additional tax payable as a result of the relief being unavailable was in excess of £250,000.'

It should be pointed out that, if the trust share had been appointed to Peter Buckley absolutely and held by him for the required amount of time, relief could have been claimed. However, this was not the case.

Contributed by Robert Jamieson