

Relief for relevant business property

(Lecture P1105 – 25.07 minutes)

The Courts have consistently held that the letting of property represents an investment business, regardless of the extent to which the landlord provides additional services for his tenants. HMRC argue that business relief for IHT cannot apply, since S105(3) IHTA 1984 excludes entitlement to this important relief where the business 'consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments'.

Last year's case of *Ross v HMRC* (2017) involved let holiday cottages where an impressive list of services was provided for the owners' holidaymaker guests. The First-Tier Tribunal acknowledged that a very high level of services was offered and that these were significantly more extensive than those considered in any earlier hearing. However, all this was irrelevant because, in the First-Tier Tribunal's view, the relief would not be available 'however high the standard of services which were provided and whatever the level of expenditure incurred on those services'. The fact that the letting activities were run on sound business lines, and with considerable effort on the part of the owners, was irrelevant.

This decision, together with those in cases like *HMRC v Pawson* (2013) and *Zetland v HMRC* (2013), 'looked like the end of the road with this argument', as one eminent tax commentator put it. Well, as we shall see, possibly not.

In 2017, HMRC took the same view with regard to a livery stable business (which of course necessarily involves the use of land and buildings), saying that the business was nothing more than the letting or licensing of land for the use of others and was therefore an investment business. This was the *Vigne* case. However, the First-Tier Tribunal decided that no properly informed observer could have concluded that the livery stable business was wholly or mainly a business of holding investments. It was asserted that the Upper Tribunal judge in the *Pawson* case (Henderson J, as he then was) was mistaken in beginning with the preconceived idea that the business was wholly or mainly one of making or holding investments and then asking whether there were any factors which might indicate to the contrary. The First-Tier Tribunal argued that the proper starting-point is to make no assumption one way or the other, to establish the facts and only then to determine whether or not the business is wholly or mainly one of making or holding investments.

This approach has now been supported by the case of *Graham v HMRC* (2018) which involved the letting of holiday accommodation – four flats in a property known as 'Carnwethers' – on the Isles of Scilly and the provision of various services. The lady who owned the business (Mrs Joyce Graham) died in 2012 and for the last few years of her life she was assisted by her daughter (Louise) who returned to the Isles of Scilly in 2008 to work with her mother following the death of her father a year earlier.

Louise herself acted on behalf of the mother's estate and her impressive advocacy persuaded the First-Tier Tribunal that the services provided were of such importance that the business should not be regarded as wholly or mainly an investment business. The judges said that the provision of many of the facilities ('the pool, the sauna, the bikes and in particular the personal care lavished upon guests by Louise') distinguished it from other more mainstream actively managed holiday letting businesses.

As they pointed out, 'the services provided in the package more than balanced the mere provision of a place to stay'. They went on:

'An intelligent businessman would in our view regard it as more like a family-run hotel than a second home let out in the holidays.'

Interestingly, it does not seem that the services provided in this case differed very much from those in *Ross v HMRC* (2017), where the estate was unsuccessful in its claim for business relief, and so Louise's win here is even more commendable.

An important observation in the judgment, which clients and their advisers would do well to note, is the following:

'We have accepted that the rent which could be obtained for a shorthold tenancy of Carnwethers was £27,500 per annum. The average income from guests was about £60,000 over a 25-week season. Together those figures may suggest that the value of the additional services provided by the business is just over half the total value. However, a more relevant comparison would have been between the total rent which could have been expected from an austere but well maintained set of cottages let without any assistance, without any cleaning or tending of the pool, with minimal garden attention, no linen or food, with receipts at Carnwethers.'

Why has such a line of argument not been used on previous occasions?

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