

Capital taxes update (Lecture P1462 – 14.40 minutes)

Stocked to managed wild fishery

Summary – The taxpayers' stocked fishery had become a managed wild fishery by death, which was denied Business Relief as the business consisted mainly of holding investments.

For 17 years since her husband's death, Mrs Pearce had owned and run a fisheries business, Kingsworthy Meadow Fisheries. The business was part owned personally by her and part owned by her as a life tenant in a will trust set up by her late husband.

Initially, customers wanting to fish from her stocked fishery had paid rod fees to gain permission to fish from the allocated part of the riverbank.

However, with the Environment Agency starting to discourage stocked fisheries by refusing to renew fish stocking licences, she changed so that the business became a managed wild fishery. With fishing now more difficult, it was less popular and income declined such that she barely made any money from the business.

Following her death, her executors claimed Agricultural Property Relief in respect of part of the property, and Business Relief in respect of other parts of the property which included:

- An office, client reception and rod room, as well as an outdoor toilet for client use;
- An outbuilding and garage that stored fishing and ground maintenance equipment;
- The river and the streams containing the fish and the managed banks from where the fisherman fished
- A car park for customer parking.

HMRC agreed the Agricultural Property Relief claim but denied the Business Relief on the basis that her business was simply exploiting the land to generate income and this was an investment activity. The business consisted mainly of holding investments and so relief was denied.

The taxpayers appealed.

Decision

The First Tier Tribunal confirmed that owning and holding land to obtain an income from is 'generally' an investment activity and that very active management of an investment does not prevent it from being an investment business. It was the 'nature' of the activities undertaken that mattered rather than the level of those activities.

The First Tribunal found that:

- taking bookings and providing basic refreshments and facilities were part of an investment activity;
- the upkeep of the riverbanks was simply maintaining that investment.

There were some non-investment activities but these were not enough. They included providing basic refreshments after a day's fishing as well as lending kit to clients and providing advice to fishermen. Many of the clients had become friends, sharing the family's love for fishing and conservation.

Had the business provided additional services such as tuition and sold or hired equipment for a fee or made available more substantial catering or a bar on site, the Tribunal's decision might have been different.

However, this was not the case and, on balance, the First Tier Tribunal found that the business was mainly a business of holding investments.

The appeal was dismissed.

Dimitrakis G Demetriou as executor of the estate of the late Mrs Pearce & Anor v HMRC (TC09288)

Fishing business or residential grounds?

Summary - The purchase of a six-acre property that included the rights to fish was liable to mixed-use (non-residential) rather than residential SDLT rates

Christopher Brzezicki bought a property consisting of a house and six acres of land. Two acres of the land bordered the River Meon and were separated from the rest of the property by a man-made carrier stream which facilitated the breeding of wild brown trout. There were two small bridges giving access across the stream.

Christopher Brzezicki purchased the property with the intention of establishing a fly-fishing business and did so in the months following the purchase.

He initially filed an SDLT return applying the residential rates, but subsequently amended the return on the basis of mixed use.

Following an enquiry, HMRC issued a closure notice indicating that the property was residential and the taxpayer appealed.

Decision

The issue before the First Tier Tribunal was whether the two-acre 'island' separated from the rest of the land by the stream formed part of the garden or grounds of the house.

The decision is an unusual one in which the non-judicial member of the tribunal issued a dissenting decision, indicating that he would have found the entire property to be residential. However, the presiding judge, using her casting vote, held it did not and so was not residential property. The factors considered by the judge included the following:

- For land to form part of the grounds it had to be adjacent to and contiguous to the house so 'very closely connected without a break'. Because the two acres in dispute formed an island separated from the rest of the land by the carrier stream it was not contiguous with the rest of the land. Although the bridges provided access, this was insufficient to make the island contiguous with the rest of the property.
- The carrier stream itself was a piece of plant, or factory, for the breeding of wild brown trout. It had not been created to provide a beautiful garden or grounds. Although some

repair was needed at completion, the stream remained a piece of plant at that time. On completion, the land came with fishing rights and although it was not then used on a commercial basis, this did not prevent the land being non-residential.

The judge accepted that the lack of information in the selling particulars about the carrier stream was not significant as it was the agent's job to sell the property and they would emphasise certain features and disregard others to sell it.

NOTE: The lay member of the tribunal disagreed with the decision, arguing that the property purchase should be charged using the residential SDLT rates. He believed that the island and stream formed part of the grounds of the property and on completion, was an overgrown stream, with no evidence of any commercial use as a farm.

Mr Christopher Brzezicki v HMRC (TC09294)

Adapted from the case summary in Tax Journal (4 October 2024)

Distributions in specie

Summary - No Stamp Duty Land Tax was due on distributions of the partnership and its properties following purchase of a JPUT holding structure

Brindleyplace Holdings S.À R.L. (BP Holdings) was a Luxembourg-incorporated company.

On 24 March 2015, the company:

- purchased a Jersey Property Unit Trust (JPUT) for total consideration of £59.6 million. The unit trust was a partner in BP ELP, which owned properties in Birmingham worth £130.7m.
- discharged BP ELP's £71.1m external bank debt, creating an intra-group debt.

On 8 May 2015:

- BP Holdings subscribed for additional units in the unit trust, with funds used to discharge the intra-group debt;
- the unit trust's trustee distributed its interest in BP ELP in specie to BP Holdings, and the unit trust was wound up;
- BP ELP was itself wound up and the properties were distributed to BP Holdings, leaving it as sole legal and beneficial owner of the properties.

HMRC issued closure notices in respect of both distributions in specie, charging Stamp Duty Land Tax (SDLT) of:

- £2.8 million in respect of the distribution of the interest in BP ELP; and
- £5.2 million in respect of the interest in the properties.

The company appealed.

Decision

The First Tier Tribunal considered each distribution in turn.

Distribution of the interest in BP ELP

The question was whether it was a Type A transfer for the purpose of the SDLT legislation on transfers of interests in property-investment partnerships.

Using Finance Bill Explanatory Notes to aid its interpretation, the First Tier Tribunal decided that Parliament intended it to be a condition of a Type A transfer that the acquirer gives consideration under the arrangements for a partnership transfer. The First Tier Tribunal found that the only consideration given by BP Holdings was a sum for the subscription of additional units in the unit trust, but that was not for the acquisition of the partnership. Accordingly, the transfer was not a Type A transfer.

Distribution of the properties to BP Holdings

HMRC argued that group relief was restricted due to the arrangements' purposes. However, the First Tier Tribunal decided that this distribution was carried out for bona fide commercial purposes, to reduce complexity in the holding structure and reduce administrative costs.

The Tribunal also decided that the arrangements, including the initial choice of purchasing units in the unit trust, rather than the properties directly, did not involve tax avoidance. The parties were not using a tax relief for a purpose not intended by Parliament, nor were they failing to face the economic consequences of their choice. Accordingly, tax avoidance was not a main purpose of the arrangements.

Finally, the First Tier Tribunal considered the application of the s.75A FA SDLT anti-avoidance provision. It decided that the notional land transaction postulated by that provision was a transfer of the properties by the partners in BP ELP at the date of the actual transfer to BP Holdings, rather than by those who were the partners at the start of the chain of scheme transactions. The result was that the notional transfer was the same as the actual transfer, so it did not apply to increase the amount of SDLT payable.

Brindleyplace Holdings S.À R.L v HMRC (TC09282)

Adapted from the case summary in Tax journal (27 September 2024)

Invalid double assessment

Summary - Discovery assessments were found to be invalid as they assessed property transactions as liable to both Income Tax on trading transactions as well as Capital Gains Tax on the basis that the transactions were capital disposals.

This case related to a number of assessments raised by HMRC in respect of income or gains said to have been realised on certain property matters.

For 2007/08 and 2009/10, HMRC believed that Mark Wyatt realised profits from property development activities and that the property developments were of a trading nature, or alternatively they were capital disposals.

HMRC wrote to the taxpayer confirming that the relevant disposals were part of a trading venture and that assessments were to be raised on that basis. HMRC went on to state:

“... in the event that we are unable to reach agreement and if the subsequent appeals are listed for Hearing, I feel that it would be prudent to arrange for assessments to be

issued on the alternative basis i.e. to include property disposals as both, on trading account and on capital account.

However, when the Relevant Assessments were raised, they did not set out alternative separate assessments but instead contained a single figure for each tax year, being the sum of the amount that would be due on a trading transaction and the amount that would be due on a capital disposal. The assessments effectively taxed the same disposal proceeds twice:

- For 2007/08, the assessment was for £184,586.98, when an assessment purely on the basis of a trading disposal would be for £90,360.18;
- For 2009/10, the assessment was for £228,544.05, when an assessment purely on the basis of a trading disposal would be for £123,595.22.

Mark Wyatt appealed.

Nine days before the date of the present hearing, HMRC acknowledged the issue and issued a fresh assessment for each of the two years of the Relevant Assessments, based on the trading figure only.

Decision

The First Tier Tribunal stated that, having noticed the potential issue, HMRC quite rightly invited the Tribunal to express a view as to whether the Relevant Assessments were validly issued, which they did as a preliminary matter.

The First Tier Tribunal found that s.29 TMA 1970 allows an HMRC officer to issue an assessment for an amount which 'in his opinion' is to be charged to make good to the Crown a loss of tax, which in this case was, at most, the amount due on the basis of a trading transaction. Clearly, by including the CGT, the assessments raised exceeded that figure., and so fell outside the boundaries of the assessment power.

The Tribunal stated that by making an assessment that exceeds the amount that the officer actually believes to be due, HMRC effectively deprived the taxpayer of the option to simply accept the assessed figure.

Instead, the taxpayer was forced to enter into an appeals process, even if they agree with the officer's view. Consequently, the Tribunal found that s.29 TMA 1970 should be read as constraining the power of an officer to raise an assessment to be no more than the maximum amount which in their opinion needs to be charged to make good the loss of tax. The assessments were not validly made and was struck out.

Having struck out the assessments, the Tribunal considered that the best course of action to allow a period of time for the necessary procedural steps to be completed to join any appeal against the new assessments to the present appeals under consideration.

Mark Stewart Wyatt v HMRC TC09297