

Capital taxes (Lecture P1472 – 10.36 minutes)

Late sale of commercial property

Summary – Having failed to negotiate a Time to Pay Arrangement with HMRC, the taxpayer did not have a reasonable excuse for paying his tax two months late

In 2021/22, Darren Wragg sold shares in Tiles Porcelain Limited and reported the gain in the same year. The share sale agreement stated that the proceeds could only be paid to Darren Wragg once the company had sold a commercial property, which due to compete on 31 January 2023. Unfortunately, due to various difficulties, completion was delayed until mid-March 2023, at which point Daniel Wragg settled the tax liability for 2021/22.

HMRC had been made aware of the reason for the delay but advised that this would not prevent interest or penalties applying. HMRC advised that Darren Wragg should consider entering into a Time-to-Pay arrangement, but his agent did not do this. In fact, on more than one occasion, Darren Wragg's agent was advised to contact HMRC's Debt Management department.

In March 2023, HMRC issued a penalty assessment calculated as 5% of the tax liability which remained unpaid.

Darren Wragg appealed, arguing that he had a reasonable excuse, and that as soon as he received the proceeds, he settled the tax owed without any unreasonable delay. He believed that he was "being punished for a problem which was beyond his control."

Decision

The First Tier Tribunal found that the terms of sale of Tiles Porcelain Limited were entirely within Darren Wragg's control. He could have declined to sell his shares on terms that left him without the funds to pay the relevant tax.

Where a taxpayer is aware that they might not have received the relevant funds to be able to settle their tax liability, a well-advised taxpayer would either seek to secure appropriate funding to meet the liability or to make suitable arrangements with HMRC. No evidence was provided to support either of these actions. Indeed, despite being advised to consider agreeing a Time to Pay arrangement, the taxpayer and his agent failed to do so.

The Tribunal stated that:

"If Mr Wragg (or his agent) had put forward a payment plan under which the tax would be paid over a number of instalments, this may well have been accepted by HMRC and provided Mr Wragg with sufficient time for him to obtain the funds. Even if HMRC had rejected a suggested arrangement, this could nonetheless form the basis of a reasonable excuse."

Darren Wragg did not have a reasonable excuse and the appeal was dismissed.

Darren Wragg v HMRC (TC09350)

BPR and furnished offices

Summary – The income generated from providing serviced furnished offices was found to be income derived from the making or holding of investments. Consequently, Business Property Relief (BPR) was not available.

When Keith Denis Lewis Beresford died on 18 September 2018, he owned shares in Fiveteam Limited, which in turn owned the entire issued share capital of Ninecourt Limited.

The main capital asset of Ninecourt Limited was a six-floor property in central London. The property was acquired some time ago and until 2008 had been occupied by another business operated by Keith Beresford, with some floors being let on commercial leases. As tenants left, the decision was made to rent the office space out as serviced furnished offices.

The total internal floor area was approximately 32,000 square feet. Since circa 2010 four out of six floors (amounting to approximately 21,000 square feet) of the property had been used for the purposes of providing serviced office facilities through the agency of Orega. The remainder of the property had been used for the purposes of commercial lettings, to tenants for shops and offices.

The income from the end clients was in the form of two separate fees:

- Facility fee: This entitled the client to use the office space and have additional standard services supplied. These included a premises receptionist, telephone answering service, heating, lighting and electrical power, cleaning, use of kitchen, sanitary facilities and photocopying areas.
- Contract services fee: This was charged by reference to specific additional services which included the provision of IT, couriers, meeting rooms and maintenance or reinstatement of offices.

Keith Beresford's executor claimed BPR on shares owned in Fiveteam Limited, arguing that they were "relevant business property".

More specifically, he claimed that Fiveteam Limited's business consisted wholly or mainly of being the holding company of a company called Ninecourt Limited whose business did not fall within s.105(3) IHTA 1984.

HMRC disagreed, stating that Ninecourt Limited's business did fall within s.105(3) IHTA 1984. The freehold property in central London meant that the business derived its income from the exploitation of land, which was 'the making or holding of investments'.

HMRC believed that the services provided were 'the minimum requirements for the use of an office and would be provided by any commercial landlord' or were incidental to the use of the office space. BPR was denied.

On appeal, both parties agreed that whether BPR was available would be largely found by considering the activities performed by Ninecourt Limited in relation to the 'facility fees'. The contract service fees, being trading income, were not significant to the final decision.

Decision

The First Tier Tribunal stated that the following were not relevant to their decision:

- The reason for the original purchase of the building;
- The motivation for carrying on a particular business, nor whether the people carrying it on considered it to be trading or otherwise.
- The circumstances in which Ninecourt Limited started to look at providing serviced offices.
- Anything that happened after the date of death.

The First Tier Tribunal stated that their starting point was that the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity.

From this, the First Tier Tribunal moved on to consider whether the nature of the activities that were carried out changed how the property should be viewed:

- concluding that what was being provided was “physical space in a building with some desirable additional services”;
- acknowledging that there was a significant premium paid for the serviced offices compared to the occupants of the two, commercially let floors. This would be to some degree down to the services provided but also to reflect that a smaller space than an entire floor was being rented, and that the notice period was considerably shorter

The frequency of the transactions was not enough to point to the activity being a trade; this was nothing like a hotel business.

The First Tier Tribunal concluded that the facility fee was income derived from the ‘making or holding of investments’ and the appeal was dismissed.

The Executors of Keith Denis Lewis Beresford (Deceased) v HMRC (TC09333)

Two annexe cases

Benjamin Packman and Miranda Wood v HMRC (TC09335)

In September 2021, Benjamin Packman and Miranda Wood bought a property, which they claimed comprised two separate dwellings at completion, a main house and an annexe qualifying for multiple dwellings relief.

The annexe:

- was a separate building, approximately 20 metres from the main house, that could be accessed through a covered passageway or through the main house;
- had a bedroom, living area, full kitchen, shower and toilet facilities;
- had a separate boiler with its own controls, a separate fuse box and internal water stop cock;
- did not its own mailing address or land registry title but was separately rated for council tax.

During the period of purchase it had a sitting, rent paying tenant who was unconnected to the occupants of the main house. The exchange of contracts was delayed until the tenant had vacated the annexe.

HMRC refused the claim on the basis that the property was a single dwelling at completion, and no relief was available. Benjamin Packman and Miranda Wood appealed.

The First Tier Tribunal concluded that the annexe was entirely suitable as a dwelling as a property that met basic domestic living needs to eat, sleep and attend to personal and hygiene needs, “with a degree of privacy, self-sufficiency and security consistent with the concept of a single dwelling.” Having to walk through the garden to reach the annex, did not impinge unacceptably on privacy from the house. The fact that the annexe could not be sold separately did not make it any less suitable as a dwelling for people generally. Indeed, during the purchase process, the annexe was actually rented out to an unconnected person.

The First Tier Tribunal concluded by saying:

“Standing back, having conducted the multi-factorial assessment objectively and at the time of completion we are satisfied that the Annexe is a dwelling within the meaning of the FA. It meets the basic domestic needs of occupiers generally with an appropriate degree of privacy and security”.

The appeal was allowed.

Thomas Yeomans v HMRC (TC09336)

On 31 March 2022 Thomas Yeoman and his wife jointly purchased a residential property in Kent for £895,000. The property was a detached, extended dormer style bungalow with front and rear gardens and neighbours either side. Overall, the impression from the front of the property was of a single house with two wings, each with separate and similar doors.

The door on the left gave access to the main accommodation referred to as “the Main House”, with an open plan living area, dining area and kitchen, utility room and toilet on the ground floor and three bedrooms, an ensuite shower room and bathroom on the first floor.

The door on the right gave access to the living room of an annexe that consisted of a living room, bathroom, bedroom and kitchen.

There was no interconnecting door between the main house and the annexe. They were listed separately for council tax purposes and had separate heating systems, although both boilers and fuse boxes were in the annexe.

The couple initially filed their SDLT return without Multiple Dwellings Relief but later, amended their return, reclaiming £10,000.

HMRC opened an enquiry and later issued a closure notice rejecting the Multiple Dwellings Relief claim. Thomas Yeoman appealed.

The First Tier Tribunal opened their ‘discussion’ by stating:

“In our view nearly all the features of the Property point towards there being separate dwellings”

The First Tier Tribunal rejected HMRC's argument that one of the tests for Multiple Dwellings Relief was whether a third party would buy one property separately from the other. There was nothing in the Upper Tribunal case of *Fiander and another v CRC* [2021] STC 1482 to support this requirement.

The First Tier Tribunal stated that the test to be applied was whether the property could be considered suitable for use as a dwelling, with a degree of permanence, by providing facilities for basic domestic living needs. Those needs included the need to sleep and to attend to personal and hygiene needs, all of which were satisfied.

The only real factor that pointed against the annexe being a separate dwelling was the access to the boiler and fuse box. However, the First tier Tribunal found that whilst this might be an issue for purchasers, it did not prevent the properties from being let on a short-term basis, with provision for access to the fuse box and boiler.

Applying the multi-factorial test in *Fiander*, and taking into account all the features described, the First Tier Tribunal found that the main house and the annexe were suitable for use as single dwellings. The taxpayer was entitled to multiple dwellings relief and the appeal was allowed.

Abolition of multiple dwellings relief

Although multiple dwellings relief has now been abolished for SDLT purposes, these cases are still of interest. It is still applicable in Scotland and Wales as a relief. In addition, there are situations involving the higher rate for purchase of multiple dwellings and the ability to pay non-residential rates where six or more dwellings are purchased, where the correct identification of multiple dwellings is important to the overall duty payable.