FIELD COURT TAX CHAMBERS

Sale of goodwill [1]

HMRC's views on goodwill and the sale of businesses were roundly rejected in a recent tribunal decision

Having regard to the extraordinary events of the summer, my eye was drawn to the recent Tribunal decision in *Leeds Cricket Football & Athletic Company Limited v HMRC* [2019] UKFTT 568 which concerned the capital gains tax implications of a sale of Headingly Stadium.

Not everybody will be aware of the significance of Headingly. It will probably mean little to the Ayoreo Tribe of the Amazon, and some of the inhabitants of Mars but for others, Headingly is revered as the location of astonishing sporting events – and the home of legends.

Anyway, leaving all that aside, the issue before the tribunal was whether a sale of the stadium gave rise to certain capital gains tax consequences.

The company owned the freehold of the property which it leased to Yorkshire County Cricket Club. In December 2005, the freehold was sold to the Cricket Club together with the commercial businesses.

The company had been carrying out three distinct activities: hospitality, catering and advertising. The question was whether these operations constituted a business carried on by the company prior to the sale.

The sale contract included a specific provision that the property and the goodwill of the businesses were to be sold, and the contract defined goodwill in great detail. There was also a deed of assignment of the goodwill pursuant to the contract.

HMRC argued that the sale was not the disposal of a business together with the associated goodwill but merely a transfer of land with attached income streams. This gave rise to rather different tax consequences. It said that the income streams were not capable of existence without the land and no business was carried on. Failing that, even if a business was carried on, no goodwill attached to that business.

These arguments were roundly rejected by the tribunal. It held that the company carried on a business. It was a serious undertaking which was earnestly pursued and was conducted in accordance with recognised business principles. Accordingly, the company did transfer the property and the business, including the goodwill associated with the business, and that the transaction was not merely a transfer of land with attached. The goodwill of the business was not subsumed into the value of the property.

These arguments that there was no business capable of transfer and that there was no goodwill in any event, are reminiscent of those in *R Villar v HMRC* [2019] UKFTT 117 (TC) relating to

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the goodwill of a professional practice which was heard earlier in the year. The tribunal rejected those arguments as well, holding that there was indeed goodwill and it was in fact transferred.

HMRC clearly has some independent views regarding goodwill and the sale of businesses and I doubt whether we have heard the last of them.

I think it would be interesting for HMRC to attend a meeting where somebody (I mean a real person) is trying to buy a business and let them see the reaction when the prospective purchaser refuses to pay anything for the goodwill on the grounds that no goodwill exists. They might be in for a surprise.

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