FIELD COURT TAX CHAMBERS

IHT business property relief [1]

Are there circumstances when a letting property can qualify for business property relief?

The tribunals have consistently held that letting property is an investment business, no matter how extensive the services are provided. Business property relief cannot therefore apply because IHTA 1984 s 105(3) excludes entitlement to the relief if 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."

The recent case of *Executors of Marjorie Ross v HMRC* [2017] UKFTT 507 involved holiday cottages which were let, and where many services were provided to the guests. The tribunal acknowledged that a high level of services was provided to guests and these services were more extensive that those considered in any previous decision. However, it was irrelevant because, in the view of the tribunal, the business property 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 business was run on sound business lines and with considerable effort was not relevant. This decision, particularly having regard to the cases of *Pawson v HMRC* [2013] UKUT 50 and *Zetland v HMRC* [2013] UKFTT 284 and many others, looked like the end of the road with this argument.

In the case of *Estate of M Vignes v HMRC* [2017] UKFTT 632, HMRC took the same view with regard to a livery business (which, of course, necessarily involves the use of land and buildings – or at least structures). It said that the business was nothing more than the letting or licensing of land for the use of others and was therefore an investment business – being the making or holding of investments.

However, the FTT concluded that no properly informed observer could have concluded that the livery business was wholly or mainly a business of holding investments. It said that the Upper Tribunal in *Pawson* had started from the preconceived idea that the business is wholly or mainly one of making or holding investments, and then asked whether there were factors indicating to the contrary. The tribunal said that the proper starting point is to make no assumption one way or the other but to establish the facts and 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 *Executors of G Joyce Graham (Deceased) v HMRC* [2018] UKFTT 306, which also involved the letting of holiday accommodation and the provision of various services. The taxpayer represented herself and her impressive advocacy persuaded the tribunal that the services she provided were sufficiently extensive that the business should not be regarded as wholly or mainly an investment business. The tribunal said that the provision of 'the pool, the sauna, the bikes and in particular the personal care

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lavished upon guests by Louise Graham' distinguished it from a second home let out in the holidays.

It does not seem that the services provided in this case differ very much from those in *Ross* (or *Pawson* or *Zetland)*, all of which were unsuccessful in their claims for business property relief; so Louise Graham's success is even more impressive.

The conclusion must be that letting property can represent a business qualifying for business property relief, being more than merely the holding of an investment – and that the nature and quality of the services provided is what makes the difference. After all, that is why a hotel qualifies for relief. There is clearly a line – the tribunals refer to it, but we do not yet know where the line is. Maybe it will become visible in due course.

Peter Vaines

Field Court Tax Chambers