



## FIELD COURT TAX CHAMBERS

### ***Vigne* and IHT business property relief<sup>1</sup>**

*A recent tribunal decision provides helpful insight on the ‘wholly or mainly of making or holding investments’ test*

Most readers will be familiar with business property relief (BPR) under IHTA 1984 s 105 which can represent an effective exemption from inheritance tax. There are terms and conditions of course; one of these is that the relief will not apply 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.”

Things are not looking good when it comes to the business of letting property. The tribunals have consistently held that letting property is an investment business, no matter how extensive the services which are provided. Obtaining business property relief for such a business is now a seriously uphill struggle.

The recent case of the *Executors of M Ross v HMRC* [2017] UKFTT 507 seems almost to conclude the issue. Mrs Ross was a partner in a partnership which operated some holiday cottages; the cottages were let and loads of 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 than those considered in any previous decision. That sounded encouraging.

However, it was irrelevant because, in the view of the tribunal, 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 tribunal denied relief on the grounds that the business of the partnership consisted mainly of investment in property. The fact that the business was run on sound business lines and with much effort, was not relevant. I thought it would be significant that the tribunal (and HMRC) accepted that the business was operated in partnership. The mere ownership of properties jointly is not a partnership under the Partnership Act 1890, so they must have been carrying on a genuine business – but that did not make any difference either.

Interestingly, within a few weeks there was another case on the same point concerning a livery business, which provides a bit of encouraging light at the end of this tunnel: *Executors of M Vigne v HMRC* [2017] UKFTT 632. Naturally, land and buildings are an important part of any livery business and as discussed above, where land is involved, HMRC is reluctant to allow the relief. The tribunals take the view that the letting of property is a business which consists wholly or mainly in the making or holding of investments, no matter how extensive the services provided.

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In the case of the livery business in this case, HMRC said that the business was nothing more than the letting or licensing of land for the use of others and therefore was an investment business – being the making or holding of investments.

However, the FTT rejected all the arguments of HMRC saying that no properly informed observer could have concluded that the business was that of holding investments. The FTT described the view of HMRC as a wholly artificial analysis. It is difficult to resist the observation that HMRC chose to advance a wholly artificial analysis in an attempt to win their case; something which they regard as absolutely unacceptable and deserving of seriously penal sanctions – if done by anybody else.

Inevitably cases on business property relief are heavily dependent on their facts, but one important issue emerged in this case which may be of wide application.

Where land is involved, HMRC is pretty keen on the following passage from the Upper Tribunal decision in *HMRC v Pawson* [2013] UKUT 50:

“The critical question, however, is whether these services were of such a nature and extent that they prevented the business from being mainly one of holding Fairhaven as an investment.”

The FTT in *Vigne* said that this was the wrong test. It started from the pre-conceived idea that the business is wholly or mainly one of making or holding investments and then to ask whether there are factors indicating to the contrary. The FTT explained that the proper starting point is to make no assumption one way or the other but to establish the facts and determine whether the business is wholly or mainly one of making or holding investments.

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