JUMPING THE INVISIBLE LINE

Julie Butler considers the Vigne case on business property relief

The successful result for the taxpayer at the Upper Tribunal (UT) in the *Vigne* case has highlighted that detailed preparation and careful presentation of a compelling case can be very positive in achieving business property relief (BPR) for inheritance tax (IHT).

The case of *HMRC v The Personal Representative of Maureen Vigne (Deceased)* [2018] UKUT 0357 turned on whether a livery stables was a business (thus qualifying for BPR) or consisted "wholly or mainly of ... making or holding investments" (s105(3), Inheritance Tax Act 1984).

HMRC was of the view that Mrs Vigne's livery business was nothing more than the letting or licensing of land for the use of others and was therefore an investment business. However, the taxpayer had convinced the First-tier Tribunal (FTT) that no properly informed observer could have concluded that the livery business was wholly or mainly a business of holding investments. The UT confirmed that the correct test had been applied to the case by the FTT and emphasised that HMRC's view - that there was a presumption that land constituted an investment unless it was proved otherwise - was incorrect. The open-minded starting point advocated by the FTT in its decision was held to be correct. In addition, the intention of the business owner was deemed to be useful as an indicator where cases fall within the grey area on the spectrum of holding investments or qualifying for BPR.

The *Vigne* case follows swiftly after the case of *The Personal Representative of Grace Joyce Graham (Deceased) v HMRC* [2018] UKFTT 306 (TC), which involved the letting of holiday accommodation and the provision of a multitude of well-documented services, and both cases give some guidance regarding a thorough approach to recording the evidence of the work undertaken. In *Graham* the FTT stated that the provision of "the sauna, the pool, the bikes and especially the personal care bestowed to the guests by Louise Graham" distinguished it from a second home let out in the holidays.

The UT in *Vigne* confirmed that the provision of enhanced livery, or 'DIY plus' as it has been termed, services to clients was enough for BPR to be applied. It is interesting to note that the UT had no position to overturn the FTT's decision unless the UT could be satisfied that the FTT had either:

- not applied the correct test; or
- reached a decision that was incorrect on the consideration of the facts of the case and the tax law.

For HMRC to win on the correct test point, the UT would have had to find that the FTT had misdirected itself as to what the law is. The UT found that the tax law is clear and the understanding that HMRC argued for - that there is a presumption that any property-based business is one of managing an investment - could not be agreed.

Many advisers to farmers who are diversifying and to the equine industry see this UT decision as a real positive, but in order to achieve the relief it is key for the taxpayer to provide the services and evidence such work.

The case brought focus as to the nature of the extra services, as well as the intention of the business owner or landowner. However, many argue that the decision has not made satisfying the BPR test of s105(3), IHTA 1984 any clearer. There is a spectrum of land exploitation with clear investment and clear trade at either end, and this is referred to by the tribunals. In both *Vigne* and *Graham* the business owners have jumped over the 'investment line' successfully as a result of the hard work of both providing the services and the dedication in presenting this to the tribunals.

The short-term advice to protect BPR in grey or marginal areas on property-based businesses appears to be to increase the services and their quality, and record such work clearly and in detail. In the medium-term we can only hope that the line between running a business that qualifies for BPR and the mere holding of an investment is made clearer by HMRC. ●

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