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## TAXline

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### **59. SELLING AN ASSET RATHER THAN PART OF A BUSINESS**

There has been much debate as to whether the sale of part of a farm qualifies for entrepreneurs' relief (ER). A recent First-tier Tribunal (FTT) case *WSG Russell* TC02239 looked at a portion of a farm sold for development.

In 1993, the taxpayer and his two brothers inherited farmland from their mother and farmed the land in a working partnership. In January 2009, the brothers sold 35% of the farmland, and retained the other 65%. The taxpayer claimed ER in respect of his share of the disposal of the farmland. He explained that the land had been sold for development. The partnership's farming profits had reduced as a result, ie. because there was less land to farm. Mr Russell had not sold any right to capital or profit. As such the sale represented a material disposal of a business asset. The farm business continued after the sale of the land as it had before; the only change was a reduction in profits. The sale of farmland is a clear example of the sale of a "mere asset" – it was not the disposal in full or part of the business as a going concern.

The FTT noted that in order to qualify for ER the disposal had to be a disposal of all or part of a business (ss169H–169S, TCGA 1992). The FTT referred to the decisions in *McGregor v Adcock* [1977] STC 206 and *Barrett v Powell* [1998] STC 283.

HMRC refused the claim for ER on the

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grounds that the disposal was a part disposal of an asset rather than a disposal of part of the business. The fact that this disposal was a material asset (35%) does not make it the disposal of part of a business.

The judge in the McGregor case said there was a "clear distinction between the business and the individual assets used" in a business and that the sale of farmland was not inevitably a disposal of part of the farm business, although it could be a determining factor, for example if a farm comprised 200 acres of which 190 were sold. This emphasised that a disposal can be material but still not the sale of a business.

In this case only 35% of the farmland was sold, not a distinct part of the share in the business.

The case is a clear example of the fact that disposal of a "mere" asset does not qualify for ER even if it is the disposal of a material asset. If the disposal of 35% of the farm had been a disposal of a distinct part of the business, eg if say the beef unit had been sold as a distinct separate part of the business with a separate enterprise account and business identity, then there could be stronger arguments to claim ER on the disposal.

**Contributed by Julie Butler, Butler & Co**