Business property and private accommodation

Julie Butler looks at an interesting recent case before the Special Commissioners on the availability of Business Property Relief in respect of a property that was used partly for business and partly for residential purposes

This recent case *Marquess of Hertford* (Dec'd) SpC 444, decided on 11 November 2004, has brought more hope for claims for business property relief (BPR) on 'in-hand' farms and their farmhouses. This case looked at whether the whole of Ragley Hall qualified for BPR, notwithstanding part of the interior in private occupation. This case looked very closely at s 110, IHTA 1984 – the value of a business (or an interest in a business) shall be taken to be its net value and for this purpose and 'no regard shall be had to assets or liabilities other than those by reference to which the net value of the entire business would fall to be ascertained'. One of the key words here is 'entire'.

Oliver LJ in the earlier *Finch* case (in the Court of Appeal it became *Fetherstonaugh and others v IRC* [1984] STC 261) said when looking at the overall picture it is not the net value of some interest less than the whole, but the value of 'the business'. In such a case there is no such thing as an asset of the business. All the assets of the estate, to the value of which the tax is attributable are assets 'of the decedent'. There is only one practicable test – were they assets which were 'used in the business'? The question was whether the building was wholly or mainly used for business. There was no provision for apportionments and the fact that the building was a vital backdrop to the business was a key facor in the taxpayers favour.

So what are the facts?

On 18 November 1991 the 8th Marquess transferred by way of gift to his son (now the 9th Marquess) a business of opening an historic house to the public. This business was referred to as the 'Ragley Hall Opening'. This gift was made by various Deeds of Gift of which one dealt with the transfer of land and buildings known as Ragley Hall, another with the contents of the house and a third with the goodwill of the Ragley House 'Opening Business', eg copyright in the catalogues/brochures, book debts, cash in hand and at bank, benefit of contracts, motor vehicles, foodstuffs, beverages and all other chattels used in the business and not already given.

Ragley Hall is an historic grade I listed house and prior to the transfer to the 9th Marquess the freehold was vested in the 8th Marquess. Both before and after the transfer the same parts of the interior of Ragley Hall were open for the public. There was consistency throughout.

The value transferred in 1991, to the extent that it was attributed to the business of the 8th Marquess, was eligible for BPR under s 104, IHTA 1984. The value transferred to that extent fell to be treated as reduced by 100 per cent as a consequence of the effect of s 105 (1)(a). It was accepted that:

- The 8th Marquess had owned the business for at least two years prior to the transfer in 1991, so that the required period of ownership before business property relief is available in respect of any transfer of business property (s 106, IHTA 1984) was satisfied.

- Section 113A(3), IHTA 1984 was satisfied by the fact that the 9th Marquess carried on the business from and after the transfer until the death of the 8th Marquess as required for business property relief to be available.

- The exterior was accessible to the public to view as a whole. Only a part consisting by volume of some 78 per cent was open to the public. Part of the interior consisting by volume of 22 per cent was not open to the public. This area was occupied by the 8th Marquess and the 9th Marquess (then the Earl of Yarmouth) and their families as their living quarters prior to the gift and part was let at a rent of £10,000 per annum to the 8th Marquess after the gift on 18 November 1991.

The appellants (the executors of the 8th Marquess of Hertford) contended that so far as the value transferred by the transfer of value in 1991 was attributed to the value of the freehold of Ragley Hall, the value transferred is eligible for 100 per cent relief under s 104. The

respondent (the Commissioners of the Inland Revenue) contended that, so far as that value is attributed to 78 per cent of the value of Ragley Hall, the value transferred is eligible for 100 per cent relief, but that so far as it is attributed to 22 per cent of the value of the freehold, it is ineligible for relief, ie the only element that would achieve IHT relief would be the part of Ragley Hall open to the public.

The issue was whether s 110, IHTA 1984 applies where the whole of the exterior of the single building is open for viewing by the public in the course of the 'house opening business', but only parts of the interior of the house are open to the public and parts are not so used?

So what arguments were put forward by both sides?

The Commissioners of the Inland Revenue contended that the building as a whole is not one of the 'assets used in the business' and only that part of the building used by the owner for the purpose of his or her business is one of the assets used in the business. The executers of the 8th Marquess contended that the building as a whole is one of the assets used in the business, and its value is an ingredient of the 'net value of [the] business' within section 110(b), IHTA 1984 (unless its use is such that it is an 'expected asset' within s 112, IHTA 1984 which it was agreed was not the case in this instance).

It was agreed that, if the Respondent's contention is correct, 78 per cent of the value transferred in 1991 and attributed to Ragley Hall will be reduced to nil under s 104, IHTA 1984 and, if the appellants are correct, 100 per cent of that value will be reduced to nil, ie would 78 per cent or 100 per cent of Ragley Hall achieve 100 per cent IHT relief?

The main submission for the Executors was that, where an asset is used mainly (though not wholly) for the purposes of a business, its value is treated as reduced by 100 per cent relief, there being no provision for apportionment in the legislation. The lack of any statutory provisions for apportionment is in contrast to other types of capital tax relief where relief is apportioned according to business/non-business use. Reference was made by way of example, to s 115(5), CGTA 1979 and s 152(6), TCGA 1992 and Sch A1 of para 9 to the TCGA 1992.

In contrast Mr Twiddy for the Commisioners said that it is incorrect to start from the basis that the whole physical entity, Ragley Hall, is an asset used in the business when it is a fact physically the whole was not so used. It is relevant that, immediately before the death of the 8th Marquess, a part of Ragley Hall was subject to a lease in his favour. If BPR is to be available in the case of a lifetime transfer which becomes chargeable as a result of the transferor's death, the BPR conditions must be satisfied at the time of the transfer and, again, as if there had been a transfer of value by the transferee immediately before the death (s 113(3), IHTA 1984). It is only when the conditions are satisfied at both times (time of transfer and time of death) that relief is available. The Respondents submitted that, at the time of the death of the 8th Marquess, a part of the Hall could not be used without his consent as lessee and he was not connected with the business. The business was then being conducted by the 9th Marquess (then Lord Yarmouth). The Respondents submission is that the areas to which the public had access under or under contract for a particular purpose are the areas that constitute the asset of the business within the meaning of that term for the purposes of s 110, IHTA 1984.

The final decision was influenced by the nature of the business and the part that the physical structure of the Hall played in it. The whole of the exterior is essential to the business. Ragley Hall is plainly important as a single structure and the whole business is a vital backdrop to the business carried on at the Hall.

Can this same principle be applied to farmhouses? Can this also be used for other areas of farm activity where the business activity is integrated into a way of life? It is certain that the finding of the case can only strengthen the argument.

Julie Butler FCA is the author of Tax Planning for Farm and Land Diversification (2nd edition ISBN: 0754522180 and Equine Tax Planning ISBN: 0406966540). To order copies call Tottel Publishing on 01444 416119. Julie is senior partner of Butler & Co and can be contacted at Bowland House, West Street, Alresford, Hampshire, SO24 9AT. Tel: 01962 735544. Email: j.butler@butler-co.co.uk