EARL OF BALFOUR

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"Overall, mainly a trading activity" – shows the greater need for IHT protection, not less on a mixed estate. Does the Balfour case suggest more protection is needed with regard to IHT relief for the mixed farming Estate or less?

The judgement of the *Earl of Balfour* case was delivered on 14th May 2009. The case recorded a successful Business Property relief (BPR) claim for a mixed agricultural Estate in Scotland. The First Tier Tax Tribunal (which has replaced the Special Commissioners) ruled that the business in question was not "wholly or mainly making or holding investments" under the interpretation of IHTA 1984 s.105 (3). This is seen as great news for the farming world and it is considered that the case strengthens the decisions of *Farmer and George*. However, does this now create an over optimistic approach? It is noted that HMRC are planning to appeal.

Failure to achieve BPR is absolute – so what protection is there?

For all those advisors of mixed agricultural estates who are taking comfort from this case there are arguments to support the view that they should consider actually taking more protective action around IHT safeguards now than before the decision. The only time the "investment business" question is actually tested is death. Failure to achieve BPR is absolute. The *Balfour* case shows that the landowner can shelter a lot of what might be considered to be non-qualifying business activity within a qualifying business, and potentially claim BPR on the whole business. By integrating the non-qualifying property within the overall Estate, everything qualified for BPR.

Integration of non-qualifying activity

For the mixed Estate, how far can this integration go in order to protect the non-qualifying elements, and how much non-qualifying activity can be included? The property letting side was a major part of the Estate, bringing in nearly half the total turnover of the Estate. But how far can this integration extend? Another key point arising from the case is the strength of involvement by the deceased in managing the business.

The Joint Impact of Balfour and Dance

The removal of the surplus investment assets has been considered by many to be "franked" by the 2009 *Nelson Dance* case. *HMRC v Trustees of Nelson Dance Family settlement v HMRC (2008) spc682.* In this case the taxpayer's appeal was successful and endorsed by the Court of Appeal.

The Special Commissioner held that when considering a BPR claim what mattered was the loss in value to the transferor's estate, and what that loss to the estate was attributable to, not what the transferee received.

Removing non-trading assets surplus to requirements

There is a risk of actively sheltering too many non-qualifying business assets within a qualifying business; claiming BPR thereon and then experiencing "absolute" failure.

On the basis that the *Balfour* case gives hope for the mixed estate is the answer to remove the surplus non-trading assets following the ruling in *Dance* and then create a robust "overall, mainly a trading activity"? It is essential to:

• establish what the 'preponderance of business activity is'.

• look at 'a variety of relevant factors in an attempt to create an overall picture'.

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