Wedding plans

Fred Butler and Julie Butler examine a recent First-tier Tribunal decision which demonstrates why it is important to maintain trading and analyse structure for business property relief.


© Getty Images/iStockphoto

A new case on business property relief (BPR) and the 'investment exclusion' in IHTA 1984, s 105(3) highlights how important it is for farming businesses to pay careful attention to the tax consequences of diversifying. In *Eva Mary Butler and others* (TC8949) the focus was on a barn converted to a wedding venue. Better planning might have allowed the diversified business to obtain BPR. As it was, Mrs Butler's estate had to pay more than £1.6m inheritance tax.

This successful wedding venue – one experienced and enjoyed by several members of our tax team – seemed to be an extensive business with several employees, not merely renting out a barn as an investment. The tribunal's decision to deny BPR may therefore seem harsh to many, particularly in the sad circumstances explained below.

Delegating the management function

The case concerned the estate of Mary Helen Butler (of no relation to the authors) who died on 15 May 2015 and in many ways is a story of ill health. The dispute related to eligibility for BPR and the question of whether a wedding barn was an investment business. Unfortunately, it would seem that delegating most management functions so close to death meant that Mrs Butler's estate was liable for an additional £1,671,235 inheritance tax. This somewhat staggering liability is in part due to the high farm values we are now seeing and is something all successfully diversified businesses must be mindful of when undertaking succession planning.

The historic detail was that Tufton Warren Farm in Hampshire was acquired by Clock Barn Limited in 1997. In 2005 the assets of Clock Barn, including the farm, were transferred in a reorganisation and became owned by a limited liability partnership (LLP). The LLP's activities fell into three categories:

- farming;
- commercial lettings; and
- a wedding venue business operating from an historic barn on the farm, called Clock Barn.

It was not disputed that the LLP was carrying on a business. The dispute concerned whether on 15 May 2015, the date of Helen Butler's death, its activities consisted of 'wholly or mainly of ... holding investments' within the meaning of IHTA 1984, s 105(3), the 'investment exclusion'. Given that the wedding business was the most significant part of the LLP's activities, this was to be the determining factor.

> "It would seem that delegating most management functions so close to death meant that Mrs Butler's estate was liable for an additional £1.6m inheritance tax."

Having started hosting weddings in 2005, the growth of the business and issues with the current designated caterer led to Mrs Butler signing an agreement in June 2013 with another external caterer Galloping Gourmet (GG), a subsidiary of Country House Wedding Venues (CHWV) with whom they had been working since the business's inception. This made GG the exclusive caterer and marketing agent respectively for the period ending 24 June 2014 and meant that GG in effect became responsible for managing wedding days and providing a venue manager.

Wedding customers paid the LLP a hire fee for the facility, but all other bills were paid directly to GG. As the tribunal judge put it 'there was a fundamental change in the nature of the business when GG were engaged as caterers, and GG took over many of the functions that had hitherto been undertaken

Key points

- A dispute arose as to whether on the date of Mrs Butler's death, the business's activities consisted of the holding investments (IHTA 1984, s 105(3)).
- A third party had been appointed to manage wedding days and provide catering.
- The case shows that farmers need to be careful when subletting out the management of any operation.
- Business property relief is an 'all or nothing' relief and there are some businesses that just fall on the investment-end of the business spectrum.

by the LLP team'. These changes happened to coincide with the diagnosis of Mrs Butler's terminal brain tumour and arguably, with tax advice from the start of the illness (see Julie's article 'Starting well', *Taxation,* 16 March 2023) it would have been possible to put a different structure in place.

Matter of timing?

When applying the 'wholly or mainly' test, the business should be looked at over a reasonable period of time before the date of death/transfer to allow for the natural fluctuations that befall a business.

Often, the default is the two years prior, reflecting the two-year ownership rule for BPR, but previous cases such as *Martin and another (Moore's executors)* SpC 2 and *Trustees of David Zetland Settlement* (TC2690) agreed three and five years respectively, reflecting the terms of their lettings.

In this instance, the timing of GG's involvement is significant because of the date of Mrs Butler's death. Before that involvement, the work that Mrs Butler and her team were carrying out might not have been deemed investment so that the whole partnership business might have qualified for BPR.

> "In this instance, the timing of GG's involvement is significant because of the date of Mrs Butler's death."

Details of the business

In order to understand the tribunal's decision, it is important to look at specific findings from the judgment. At paragraph 16, the report states:

> 'Until 2005, Clock Barn was just a bare empty barn. Everything required for a wedding had to be hired by the customer – such as toilets, dance floor, tables, chairs, and caterers. As more weddings took place at Clock Barn, Mrs Butler gained knowledge about managing them, and Mrs Butler was able to provide advice to wedding couples about how their wedding day should flow, what they needed to hire and book, suitable locations for photographs and other practical advice.'

Helen Butler had developed the business which involved obtaining planning consents and licences and increasing the number of weddings from three in 2004 to 95 weddings in 2015. There is no doubt that a great business had been developed.

The report continues at paragraph 23:

> 'As described above, in the early years of the business, Clock Barn was just a bare venue. Customers had to hire everything. As more weddings took place at Clock Barn, Mrs Butler gained knowledge about local suppliers, and expertise in how to orchestrate them. She provided advice to customers about what they needed to book, transport to and from hotels, the best location for photographs – Eva's evidence was that Mrs Butler advised couples on how their wedding day should flow and could answer any little question they had.'

However, the judge determined that the period under which the LLP's activities should be reviewed for the purposes of determining eligibility for BPR would be from 'some time after the 5 June 2013 agreement was signed, to reflect the initial teething and bedding-in period, when GG became responsible for managing wedding days and providing the venue manager'. The appellant had argued that a five-year period would have been more appropriate to reflect the exponential growth of the business in that time, but HMRC claimed that the significant changes to the business from the appointment of GG meant that this was irrelevant in establishing the essential nature of the business at the date of transfer.

HMRC's guidance in its *Shares and Assets Valuation Manual* at SVM111150 states: 'Where there has been a clear and definite change in direction, only the position after that change should be taken into account.' The tribunal sided with this view.

Service level

The case shows the importance of farmers continuing with the trade of farming and when diversifying taking great care when subletting out the management of any operation.

The cases quoted by the judge have been analysed at length in *Taxation*, including *N Pawson deceased* (TC1748), *Personal Representative of the estate of M W Vigne deceased* (TC6068), *Personal Representatives of Grace Joyce Graham (deceased)* (TC6536), *Zetland* and other furnished accommodation cases. In cases such as these, it is often the level of services provided in addition to the land and buildings that are key to avoiding falling foul of s 105(3).

Some commentators have suggested that the *Pawson* case went too far in characterising a holiday letting business as 'a typical example of a property letting business, albeit one of a fairly specialist nature', a statement that has led to a number of similar businesses being found to be investment. Clearly this conclusion had some influence in Mrs Butler's case.

The judge reviewed the various facilities and services provided to help determine where on the spectrum the wedding business fell. This included the use of the Clock Barn itself, the wedding venue licence and the premises licence, catering, regulatory compliance, furniture, provisions of equipment, heating and technical support, a fully working kitchen, a dance floor, advising customers, co-ordinating with suppliers, installing and reconfiguring furniture and facilities, traffic marshalling, cleaning and maintenance, the garden and general supervision.

He then looked at the business as a whole, but noted that the amenities and services provided were not exceptional in nature that went beyond those provided in a property held predominantly for investment purposes, particularly, perhaps, given that many of them were outsourced. Indeed, the example of an invoice issued to customers describes the

services offered to customers simply as 'use of Clock Barn for a wedding' and he therefore found 'that the fee is paid primarily for the use of Clock Barn, its garden and grounds – in other words the use of a pretty building in a scenic location'.

In our article 'Focus on trade' (*Taxation*, 13 July 2023), we considered the importance of trade in the context of all taxes in the round. The clear point here is evidence of trading to avoid the investment exclusion.

Need to monitor activities and plan

The decreased role of the LLP, particularly when it came to carrying out non-investment activities after the appointment of GG, certainly did not help protect BPR in this case. While the tribunal said that even prior to GG's involvement as caterer, the business still fell to be treated as one of holding investments, some careful tax planning may have changed the outcome.

The case is a reminder that as BPR is a relief on death (as well as lifetime transfers), tax planning must be in place in advance to ensure compliance. This is perhaps more crucial when the business person is diagnosed with a terminal illness, though understandably this might not be at the top of everyone's priority list.

BPR is an 'all or nothing' relief and there are some businesses that just fall on the investment-end of the business spectrum. In marginal cases like these, some would argue it is better to remove these elements from the general business and run them separately so as not to jeopardise relief on the whole. Others would look actively to reduce the investment income or increase trading activities. The sadness of this case is that there appears to have been sufficient trading activity to be at the trading end of the spectrum prior to Mrs Butler's devastating diagnosis but this, coinciding with the change in structure, moved it to the wrong end of the spectrum in the period running up to death.

It will be interesting to see which steps, if any, Mrs Butler's executors take next. There are many who believe this case should be taken to the Court of Appeal to overturn both the current decision and the Upper Tribunal's findings in *Pawson*. An 'intelligent businessman' would see the work carried out by the LLP as a business and argue this case must go all the way.

Author details

Julie Butler FCA is founding director of Butler & Co. She can be contacted by tel: 01962 735544 or email: julie.butler@butler-co.co.uk.

Fred Butler ATT is tax director of Butler & Co Alresford Limited. He can be contacted by email: fred.butler@butler-co.co.uk or tel: 01962 735544.

FIND OUT MORE
On Taxation.co.uk

- Decision in the *Trustees of David Zetland Settlement*: tinyurl.com/y8j7xjmy
- Starting well: tinyurl.com/z2xth7u9
- Focus on trade: tinyurl.com/yksh665p

Tax tip

What is rollover relief and how does it work?

Rollover relief is a very valuable and well known form of capital gains tax relief that allows tax on a gain to be deferred when a new asset is purchased within the qualifying time period. The legislation covering rollover relief is relatively sparse and therefore it is important to make sure you are aware of the nuances that relate to the claims to ensure that you make the most of the opportunity to defer any tax due.

Normally when we talk about rollover relief we phrase it in such a way that it implies that the funds from the sale of the old asset are being used to purchase a replacement asset; indeed, the legislation itself uses the heading 'replacement of business assets'. It is important to note that there is no tracing of funds from the sale to the purchase and that the only thing that matters is that the new asset has been acquired. Further, although we tend to refer to the 'new' asset, there is no requirement for the asset to be unused – it could be a second-hand acquisition. Nor is there any requirement for the 'new' asset to be a direct replacement for the asset disposed of, as long as both the old and new assets come from the list of qualifying assets.

Finally, full rollover relief is only available where at least the amount of net proceeds from the old asset has been spent on acquiring a 'new' asset or assets. Note the inclusion of the plural – this is important because as long as the requisite amount has been spent on 'new' assets it doesn't matter how many assets are purchased. Where more than one 'new' asset has been acquired the taxpayer is free to choose how the deferred gain is allocated between all of the assets.