

GENUINE OCCUPANCY

Julie Butler on principal private residence relief in light of the recent UK case *Hanson v HMRC*

In many family farms and landed estates there can be considerable moving around of properties for many reasons, not least the changing sizes of families. In times when there have been cashflow problems within the landed estate, selling residential property has helped farms survive, particularly if these qualify as the principal private residence. This can be from moving from the original manor house to, say, the farm manager's house and selling the main house, or the conversion of barns and making these principal private residences.

In addition, there is great scope to pass cottages down to the next generation. The furnished holiday-let property can be passed to the next generation using holdover relief as long as it meets the right criteria, the number of days let, etc. The reality is that there is great potential to develop farms, downsize properties and achieve this all within the tax-efficient principal private residence (PPR) relief domain.

To claim PPR relief, the occupation of the residence must be permanent and there must be evidence of this. It is not enough to have a temporary lodging situation and to then claim PPR. There have been many tribunal cases in the past few years on the

'HANSON v HMRC BLATANTLY DISAGREES WITH THE DECISION OF ROSSER'

question of PPR and these show that HMRC has a hunger to verify that PPR claims are genuine: it does want strong evidence of permanent residence.

Many farms and landed estates have involved properties being swapped around between siblings, or strange ownership arrangements that seemed necessary or sensible to sort out family arrangements and shares of the property at the time. However, decades later these might seem

inefficient for PPR relief. Many would argue that it isn't necessary as those properties are not going to be sold, but it is still important to ensure the relief is there if needed.

The complications caused by these muddled structures also have ramifications for inheritance tax (IHT). Does the ownership and residence of the farm residential property give maximum relief for IHT purposes?

DIFFERENT VIEW

A recent case, *Hanson v HMRC*¹, changed the view about farmhouse and land ownership. Following the success of *Golding v HMRC*², the *Hanson* case has shown another victory for the taxpayer, although it is likely that the case will be appealed by HMRC.

The case overturns the decision in *Rosser*³ looking at the strict interpretation of the *Inheritance Tax Act 1984* s115 for agricultural property, and deems that agricultural property relief (APR) can be obtained on the farmhouse provided there is a match between the occupation of the farmhouse and the occupation of the land.

In the *Hanson* case, the farmhouse was owned by a trust and it had been lived in



by the same Mr Hanson who farmed the land surrounding the property. He owned most of this land. The ruling was that an APR claim could be made for an asset even when its ownership has been divorced from that of the farmland, provided there is common occupation. Again, like *Golding*, this occupation had been long term – since the 1970s – and it does blatantly disagree with the decision of *Rosser*, looking at the strict interpretation.

So the plan has to be for all farms and estates to review ownership of the residential property to see that the position about potential claims for PPR relief and APR are protected to the best of the understanding at the time. It is important at least to ascertain exactly who owns which property.

MORE ONLINE

'Every farmhouse case turns on its own facts. The mutual concessions here deprived the Tribunal of the opportunity of considering how far shared land may be taken into account in determining "character appropriate",' says Toby Harris TEP, who appeared for the taxpayer in *Hanson v HMRC*. Read his full comment online at www.stepjournal.org/news/hanson

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- ¹ *Hanson as Trustee of the William Hanson 1957 Settlement v HMRC* [2012] UKFTT 95 (TC)
- ² *Golding v HMRC* [2011] UKFTT 351 (TC)
- ³ *Rosser v IRC* [2003] STC (SCD) 311