

# Q&A



## Demetriou v CRC: A step in the wrong direction.

### Author details

Julie Butler FCA is founding director of Butler & Co Alesford Limited. Julie can be contacted by email: [j.butler@butler-co.co.uk](mailto:j.butler@butler-co.co.uk) or by phone: 01962 735544.

The First-tier Tribunal (FTT) decision in *Demetriou and another* (TC9288) held that a fisheries business run by the late Mrs Pearce following the earlier death of her husband was, in the round, an ‘exploitation of land to produce income’ and thus an investment activity not eligible for business property relief (BPR).

### What did the case consider?

The case concerned whether the business was eligible for relief as a trade or was one that consisted mainly of holding investments. This ‘brightline’ between trading and investment is currently a big question for tax advisers and one that tax and accounting bodies are asking for more guidance on. The problem in this instance was that the income of rod fees was essentially recreational use of the river as opposed to, say, the sale of fish where people could take home their catch.

During the time that Mrs Pearce ran the business (17 years as a sole trader), the Environment Agency began to discourage stocking fisheries and refused to renew fish stocking licences. The business therefore changed from being a stocked fishery to the management and maintenance of a wild fishery. This caused income to decline as fishing became more difficult with the net profits in the years leading up to Mrs Pearce’s death as follows: £3,988 in 2017, £2,280 in 2018, £2,419 in 2019 and £6,183 in 2020.

Customers paid a fee to the business, known as Kingsworthy Meadow Fisheries, which allowed them to fish from an allocated part of the river. They had access to basic facilities such as a car park, fishermen’s huts, storage buildings and a toilet. The deceased also had to maintain the riverbanks. In the eyes of the proprietors they felt they were a positive trading business adding value to the local community given all the work involved.

### What did the tribunal decide?

The FTT found that holding the land to generate rod fees was, on the face of it, an investment activity. When weighing up the type of activities involved in running the business, investment activities included taking bookings, vetting the suitability of clients, allocating beats to clients and providing car parking, fishermen’s huts, outbuildings for storage and toilets. The FTT also considered that conservation activities were part of the maintenance and enhancement activities of the investment business. Time spent mowing riverbanks, clearing vegetation, cutting weeds, clearing river obstructions, protecting riverbanks from erosion and managing the vegetation and river

environment to promote the health of the fish and encourage the supply of flies were therefore all activities to maintain and enhance the investment.

The ‘non-investment’ activities included hospitality (wine, morning coffee or lemonade after the day’s fishing), lending fishing kit to clients, the provision of first aid and providing advice to clients on the best places to fish and flies to use. However, these were not sufficient to tip the balance to trading when the elements of the business were looked at in the round.

The view of the tribunal was that the business was conducted more for love than money. Mrs Pearce and other members of the family had a passion for fishing and for conservation and many of the clients had become their friends. Despite declining income, Mrs Pearce continued to put a great deal of time and effort into the business to ensure that Kingsworthy Meadow Fisheries provided clients with excellent fishing on well-maintained beats. This decision might therefore seem very unfair to those running a business similar in nature to that of Kingsworthy Meadow Fisheries.

### What are the practical implications?

HMRC seems relentless in trying to prove property connected businesses are investment activities not trading. There are positives that similar businesses can consider. Where the fishery or, say, wedding barn (*Eva Mary Butler and others* (TC8949) – see *Taxation* 30 November 2023) is part of a strong farming business, make sure that the overall s 105(3) position is protected with a majority of its activities falling on the trading side of the line (see *CRC v Andrew Michael Brander (as executor of the will of the late fourth Earl of Balfour)* [2010] UKUT 300 (TCC)).

Investment versus trading in any operation must be monitored closely to ensure it is protected with non-investment activities outweighing the investment activities. For example, there could have been a whole range of ‘loyalty’ products, from cups and flasks to t-shirts and sweatshirts branded with Kingsworthy Meadow Fisheries to help attract more customers and build a sense of loyalty with the existing clients. The addition of a ‘clubhouse’ with sales of fish products and possibly a well-run café and even a bar could also have helped, providing somewhere for family members to wait and enjoy the water and the ‘vibe’. This could involve extra capital expenditure and going through the process to obtain specific licences and planning permissions but is something businesses undertake to produce greater income, profit and ideally tax relief.

The key to all of the above, however, is having everything evidenced as was shown in *Vigne*. Business plans are vital and should be regularly updated and any marketing material, timesheets or other forms of documentation should be maintained and kept where possible. Services should be clearly identifiable, and people need to be paying for them. While the tribunal noted the advice given to fishermen fell on the non-investment side of the line, their case would have undoubtedly been stronger if this had been formalised into lessons.

Unfortunately, *Demetriou* is yet another step in the wrong direction for these quasi-trading businesses and the likes of *Vigne* and *Graham* certainly appear to be outliers with each new BPR case passed. There is no such thing as too many services and it is becoming more apparent that businesses must really go above and beyond to tip the balance in favour of trading. ●