Surf and turf tax treatment

Julie Butler and Libby James highlight the importance of proactively analysing trading operations, illustrated by a recent UK tax tribunal decision on Entrepreneurs’ Relief

Authors

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Julie Butler

Founding Director at Butler & Co Alresford Limited Chartered Accountants

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Libby James

Tax & Accounts Associate at Butler & Co

An appropriate alt text

What is the issue?

It is important to be able to prove trading status to achieve a number of business reliefs such as Business Asset Disposal Relief (formerly Entrepreneurs' Relief) and Business Property Relief.

What does it mean for me?

To be able to achieve trading reliefs, members need to be able to obtain evidence of trading, and it is imperative for them to forensically analyse what exactly the operation involves.

What can I take away?

It is important to review marginal cases where insufficient trading might deny business reliefs and to consider ways to improve and evidence eligibility.

It has often been said how similar the tax treatment of private usage of yachts and horses is. However, in the recent *Moffat* case, there were similarities between the tax treatment of yacht services and the provision of farmland without services. The emphasis of trading versus non-trading is very clear.

This article looks at the case of *Moffat & Anor* v *HMRC*[1] in more detail. The First-tier Tribunal (FTT) dismissed an appeal against an HMRC decision to deny Entrepreneurs' Relief (ER – now known as Business Asset Disposal Relief) on the disposal of shares in Chelsea Yacht and Boat Company Ltd (CYBC), a company whose principal activities were the provision of moorings together with services and maintenance. There were additional optional services, including the provision of boat repairs and renovation. ER was denied on the basis that the group was not trading. In this regard, there are strong similarities with the diversified farm and the various trading and non-trading activities this involves. The FTT allowed the taxpayer an appeal against a penalty levied for inaccuracies in the return allegedly caused by careless behaviour.

> ***Proactivity around the need to demonstrate and evidence a greater proportion of trading, as opposed to simply income derived from exploitation of land, is essential.***

Entrepreneurs' relief – non-trading activities

Mr and Mrs Moffat (the Appellants) claimed ER on the disposal of their shares in CYBC. HMRC refused the ER claim on the basis that CYBC was not a trading company as required by the ER legislation. The Appellants appealed against the HMRC decision to the FTT. The FTT decided that it considered that CYBC carried on activities that, to a 'substantial extent', included non-trading activities. Its main source of income was from mooring fees and licences, which exploited its 'proprietary rights in land', and was therefore not derived from a trade. The claim for ER was dismissed by the FTT and the similarities with farming are noted.

The Appellants also appealed against the penalties HMRC had imposed on the directors for not taking reasonable care in completing their tax returns. HMRC said that the Appellants should have obtained formal written advice or contacted HMRC to ascertain the correct tax treatment. The FTT did not accept the view taken by HMRC. The judges said there was:

> ***'No obligation on taxpayers to contact HMRC to ascertain the correct tax treatment of a transaction or any potential claim for relief. Furthermore, HMRC are under no obligation or duty to provide such advice to taxpayers and we would expect any such request to HMRC for advice to be declined'.***

It is very interesting to note that although the appeal for the ER failed, the appeal against the penalty was a success.

A 'counsel of perfection'

The FTT did not agree that the absence of written professional advice led to the conclusion that the Appellants had acted carelessly, noting that they had obtained advice orally from an advisor. They added that HMRC had 'sought to impose a counsel of perfection' on the Appellants when the correct test to be applied was to consider 'what a reasonable taxpayer, exercising reasonable diligence in the completion and submission of the return, would have done'.

With respect to the claim for ER and the responsibility taken by the Appellants, the FTT judge reported that: 'In light of the above, we do not accept that the Appellants have displaced the "cardinal principal [sic]" such that CYBC was carrying out a single trade of providing moorings together with maintenance and other services to boatowners. CYBC was exploiting its proprietary rights in land and the "income

derived from the exercise of property rights so called by the owner of land (freehold or leasehold) is not income derived from the carrying on of a trade" per Griffiths at [191] … we consider that CYBC was carrying on activities which to a substantial extent included non-trading activities. CYBC's main source of income during the Period was from mooring fees and licences which was income from exploiting a proprietary interest in land. CYBY's balance sheet recorded that 80 per cent of CYBC's total fixed assets were related to mooring fees.

For all the reasons set out above, ER was not available on the Appellants' disposal of the shares in CYBC and we dismiss this ground of appeal'.

Butler v *HMRC*

There are strong comparisons here with HMRC's decisions on diversified farming operations; for example, *Eva Mary Butler and others* v *HMRC*,[2] where the activity of providing a wedding barn was considered not to be trading.

HMRC also argued that because the return included a claim for ER that was not valid, the return was inaccurate and caused by careless behaviour, leading to a penalty. The FTT did not agree, concluding that:

> ***'We do not accept Mr Turnbull's submission that the absence of a formal written advice from either MHA [Morley, Riches and Ablewhite] or BR [Blick Rothenberg] leads to the inevitable conclusion that Mr Moffat had not acted reasonably. We found as a fact that Mr Moffat had obtained advice orally from professional and competent advisers and we do not consider it unreasonable to have done so. HMRC have sought to impose a counsel of perfection upon Mr Moffat when "The test to be applied … is to consider what a reasonable taxpayer, exercising reasonable diligence in the completion and submission of the return, would have done".***
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> ***For the reasons set out above, we find that the Appellants took reasonable care to avoid inaccuracy in their SATRs [Self Assessment tax returns] and were not careless. We allow the appeals against the penalties'.***

Possibly, many farm tax advisors would state (as would the professional tax bodies) that all tax advice must be in writing, especially where the tribunals have found the fine line between trading and the

exploitation of land.[3]

Reasonable care and the non-trading emphasis

Many would argue that it cannot be right that taking reasonable care should involve seeking HMRC's opinion on the correct filing position of any tax relief. Apart from there being no legal requirement, as a matter of practice it is highly unlikely that one could get a meaningful response from HMRC within a reasonable timeframe. Many would very sincerely hope that HMRC does not raise this argument in other cases where the taxpayer is professionally represented.

Again, the non-trading position of the exploitation of land has been so important in so many tax tribunals for business relief where business status is needed to mitigate the inheritance tax.

Action points moving forward

The *Moffat* case must impact on a number of emotions and action points for many tax advisors. Although some would be pleased that the penalty was removed, many tax advisors would have wanted to fight the trading argument. In practice, a mooring facility is generally side by side with handlers selling the appropriate goods needed, along with an extensive repair service, with the opportunity to help other boats that are brought in. Often, they are twinned with lessons and a club that has lots of trading income to integrate and dovetail with the mooring, thus placing the emphasis on trading. A full forensic analysis of the trading operation is essential and quality accounts where there is a mix of trading and non-trading is essential.

The case is again a timely reminder for all land-based operations, be it the provision of moorings, wedding barns, liveries or furnished holiday lettings, to fully analyse the activity and to take tax advice in these difficult times.[4] Proactivity around the need to demonstrate and evidence a greater proportion of trading, as opposed to simply income derived from exploitation of land, is essential.

- *[1]Moffat & Anor v HMRC [2025] UKFTT 663 (TC)*
- *[2]Eva Mary Butler and others v HMRC [2023] (TC08949)*
- *[3]For example, The Personal Representatives of the Estate of Maureen Vigne (Deceased) v HMRC [2018] UKUT 0357 (TCC) and the provision of livery; and Executors for the Estate of the Late Gertrud Tanner v HMRC [2025] TC09456 and The Personal Representatives of Grace Joyce Graham (Deceased) v HMRC [2018] UKFTT 0306 (TC) and the provision of furnished holiday accommodation.*
- *[4]*

'Holiday business – BPR denied', *Taxation*, 1 May 2025

https://journal.step.org/step-journal-issue-1-2026/surf-and-turf-tax-treatment