A resolution on Balfour

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The Upper Tax Tribunal has upheld the decision in the First Tier Tribunal that the diversified activities of a Scottish landed estate satisfied the wholly or mainly trading test and so qualified for 100% business property relief ('BPR') following the death of the Fourth Earl of Balfour. The facts of the case are unusually complicated but there are a number of useful pointers to be drawn from the decision.

Single composite business – two sets of accounts

If there was a separate business comprising only of non-trading activities, then BPR would have been restricted. The evidence was not helpful to the taxpayer as there were two sets of accounts, separate VAT registrations and separate bank accounts for the in-hand farming operation and the other activities.

However, what was hugely influential, was Lord Balfour's active role and involvement in the management of the Estate. It was clear from the evidence that, whatever the accounting and administrative arrangements, the Estate was in fact managed by Lord Balfour as a single composite business; separate accounts did not in itself create two separate businesses. Although this may be helpful in other similar situations, it would be prudent to have one set of accounts to support the fact that there is a single composite business.

Trust property

BPR is available at a rate of 100% where trustees make property available to a life tenant, who uses that property in his sole trader business. The position would have been different if Lord Balfour had been operating the business in partnership. There are many similar family arrangements where trust assets are used in a partnership operated between the life tenant and other family members. These arrangements should be reviewed carefully and consideration given to the trustees becoming partners so that BPR is available at 100% rather than 50%.

Investment business

It was accepted that the First Tier Tribunal was entitled to conclude that the business was one that was wholly or mainly trading and so qualified for BPR. The decision confirmed that no single test is determinative and although factors such as acreage, turnover, profit, expenditure, capital value and time spent by employees and management are all relevant, it is matter of more general assessment and impression as to where the preponderance of business activity lies.

It is clear that BPR can be available even if it is not possible to 'tick' all of the boxes on the various factors. Clearly, if it is possible to satisfy all of the indicia, this will be preferable as it will make it more difficult for HMRC to deny relief.

Let properties

Let properties will almost always fall on the investment side of the equation. However, it was held that although the capital value of the let properties indicated an investment activity, as the long-term policy of the Estate was to retain the land, capital values were not a weighty factor. It may be unwise to rely on this factor being irrelevant in other cases.

Concluding comments

BPR is wider in scope than agricultural property relief and, with the correct planning, can provide greater protection for a traditional landed estate from inheritance tax. Owners of a diversified estate should be encouraged to carry out a regular audit to ensure that there are no nasty surprises in the future as each case will turn on its own particular facts.