Business Property Relief – Case Law Summary

The cost of not qualifying for Business Property Relief (BPR) can be substantial and as a result taxpayers have fought in the courts to prove that their business is one of wholly or mainly trading. Over the years the outcome of each case has developed and has used as a guide to determine whether BPR can be obtained.

We have summarised the most significant cases in elation to caravan parks and furnished holiday let businesses and identified the key points to consider should you wish to use BPR as part of your succession planning.

Furness V IRC (1999)

Case facts: The caravan site was licenced primarily for static caravans, however the park also held rallies in the summer which high levels of services were provided. The static vans were owned privately by the residents; however they could not be sub let and had to be bought from the partnership and sold back to the partnership.

The taxpayer was able to show the net profit from the caravan sales and other trading activities exceeded those from the site rental fees. He also demonstrated that a considerable amount of work, including 80% of the park owner's time was spent on, maintaining the welfare of the residents and the park itself.

Final Verdict: Qualified for BPR, as activity did not suggest one of wholly and mainly of the holding investments.

Farmer (Farmer's executors) v IRC (1999)

Case facts: Involved a 449 acre farm with 23 let properties including buildings used for storage and barn conversions. This case established the principle of considering the business '*in the round*' by using the following five factors; what the business actually does, turnover, profits, capital employed and the time spent by employees.

Final Verdict: Qualified for BPR as the business consisted mainly of farming rather than one of holding investments.

Weston (Executor of Weston deceased) v CIR (2000) STC 1064

Case facts: Photographic evidence submitted to the court looked like a suburban housing estate in miniature. The mobile homes did not have the appearance of caravans and appeared much more like small bungalows. It was found from standing back and looking at the matter '*in the round*' that the pitch fees were not ancillary to the caravan sales but that if anything the opposite applied.

Final Verdict: Failed to qualify for BPR as the business was one which consisted mainly of holding investments. This judgement was upheld buy the appeal court.

IRC v George (2003) EWCA 1763

Case facts: The caravan park business included income from several income streams including caravan sales, commission, site fees, sales of gas, electric, insurance etc. This case helps clarify what is regarded as either investment or non-investment activity. It makes clear that the provision of services to owner occupiers under the terms of a pitch agreement is largely a non-investment activity. This means that in cases where a large part of the business's activities (measured in both time and money) consists of providing services to residents, we would be more likely to consider that the business was trading in nature.

Final Verdict: Qualified for BPR.

More recent BPR case law has seen the courts ask one essential question – is the business, wholly or mainly, of holding investments. Although these cases do not involve caravan parks, they provide key details that may be used in any future cases.

HMRC v Nicolette Vivian Pawson (2013)

Case facts: This case addressed whether a furnished holiday property formed part of a business, and if it did was it one of wholly or mainly one of holding investments. The taxpayer argued that the although the furnished holiday let was used by the family, it did not prevent it being treated as a holiday let business and it was being run with a view to making a profit. HMRC argued that there was not enough substantial involvement in managing the property or providing services.

Final Verdict: Failed to qualify for BPR as the property was held mainly as an investment not a trade.

HMRC v Green July 2015

Case facts: Mrs Green ran five self-catered holiday lets. She was active in marketing the properties and provided several services considered to be related to a trading activity, for example, cleaning, providing welcome packs and being on call for customers.

Final Verdict: Failed to qualify for BPR as HMRC argued and concluded that these services were not extensive enough to override the assumption that the business was one of wholly and mainly one of holding investments.

Ross (Executors of Marjorie Ross v HMRC) June 2017

Case facts: The deceased owned 8 holiday cottages, 2 flats in Cornwall and a property in Weymouth. The partnership had an agreement with the hotel across the road, which provided services to the cottage guests in line with those staying in the hotel. HMRC argued that these services were

Final Verdict: Failed to qualify for BPR as HMRC argued that these services once again were not significant enough to successfully challenge the position that the principal business was mainly one of investment.

Conclusion

There is no guarantee for securing BPR status for your park but it is critical to seek professional advice in doing what you can to raise your chances if securing this important relief. EQ's team of leisure specialists will be happy to assist you in making the necessary changes in order to enhance your future position.

You can contact us on 01382 312100 and email us at leisure@eqaccountants.co.uk. Our website contains further information on the leisure sector at www.eqaccountants.co.uk