TC02802

Appeal number: LON/2003/0068-70

VAT – option to tax land - whether golf course land was asset of Appellant at time of election to waive exemption – yes - whether golf course land was asset of Appellant at later time - yes - whether Appellant made supplies of land – yes - whether supplies taxable by virtue of election to waive exemption – yes

FIRST-TIER TRIBUNAL
TAX CHAMBER

WRAG BARN GOLF AND COUNTRY CLUB
(A FIRM) **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE GREG SINFIELD
HELEN MYERSCOUGH ACA CTA

Sitting in public in London on 27 - 28 June 2013

Keith Gordon and Ximena Montes Manzano, counsel, instructed by DLA Piper LLP, for the Appellant

Amanda Tipples QC, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION ON A PRELIMINARY ISSUE

Introduction

1. This decision relates to a preliminary issue in an appeal by a partnership, trading as the Wrag Barn Golf and Country Club, ("the Partnership") against three assessments for a total of £244,404 VAT issued by HM Customs and Excise, now the Respondents, (both "HMRC") to the Partnership.

2. The preliminary issue was originally heard by the First-tier Tribunal (Judge Fionagh Green) in October 2009. The issue was whether the Partnership had made an election to waive exemption under paragraph 2 of Schedule 6A to the Value Added Tax Act 1983 ("the Election") in relation to land ("the Golf Course") on 27 June 1990. If the Partnership had made the Election then it was liable to account for VAT on supplies of the Golf Course to Wrag Barn Golf Limited and Wrag Barn Members Club Limited under a tenancy and a lease granted in 2000.

3. In a decision released on 14 January 2010, [2010] UKFTT 30, Judge Green found that the Partnership made the Election in relation to the Golf Course on 27 June 1990 and that it was irrevocable and binding on the Partnership thereafter. Judge Green dismissed the Partnership's appeal.

4. The Partnership appealed to the Upper Tribunal and the appeal was heard on 28 and 29 February 2012. The Partnership made various criticisms of Judge Green's findings of fact. The Upper Tribunal, in a decision released on 29 March 2012, 2012 UKUT 111 (TCC), rejected most of the criticisms but decided that they could not be confident that Judge Green had made a finding of fact that the Golf Course was an asset of the Partnership. The Upper Tribunal remitted the appeal to a differently-constituted First-tier Tribunal:

> "… to determine … whether … [the Golf Course] … was an asset of the [Partnership] at the time the option to tax was exercised. For the avoidance of doubt, the findings of fact made by the First-tier Tribunal and upheld in this decision may not be challenged in the context of that re-hearing."

5. For the reasons set out below, we have found that the Golf Course was an asset of the Partnership on 27 June 1990, when the Election was made, and at all times up to and including the grant of the tenancy and the lease in 2000 and, accordingly, it was liable to account for VAT on the supplies of the Golf Course to Wrag Barn Golf Limited and Wrag Barn Members Club Limited.

Issue to be determined

6. Although the Upper Tribunal stated that the issue was whether the Golf Course was an asset of the Partnership "at the time the option to tax was exercised", ie 27 June 1990, Miss Amanda Tipples QC, who appeared for HMRC, contended that Schedule 6A to the Value Added Tax Act 1983 did not contain any requirement that a

person must own the land in question at the time of making the election and thus it was irrelevant whether the Partnership owned the Golf Course on 27 June 1990.

7. Mr Keith Gordon, who appeared with Ms Ximena Montes Manzano for the Partnership, accepted that the legislation contained no requirement that a person must have an interest in the land at the time of making an election in respect of it but contended that there was an implicit restriction in the legislation and in guidance issued by HMRC. Mr Gordon referred to paragraph 3(4) and (5) of Schedule 6A to the Value Added Tax Act 1983 which are as follows:

> "(4) Where such an election is made in relation to agricultural land (including a building on agricultural land), it shall have effect in relation to any other agricultural land if that other land is not separated from it by
>
> (a) land which is not agricultural land; or
>
> (b) agricultural land in separate ownership.
>
> (5) For the purposes of sub-paragraph (4) above
>
> (a) land shall be taken not to be separated from other land if it is separated from it only by a road, railway, river or something similar; and
>
> (b) land is in separate ownership from land in relation to which an election is made if the person by whom the election is made has no interest in, right over or licence to occupy it and, where that person is a body corporate, no relevant associate has any such interest, right or licence."

8. Mr Gordon also referred to paragraphs 40 and 41 of VAT Notice 742B "Property ownership" (1 January 1990) the relevant parts of which are as follows (emphasis supplied).

> "40. Subject to certain rules, you may elect to waive exemption for **your** land and buildings … This means that most of what would have been your exempt supplies in relation to the relevant property will be taxable instead. Electing to waive exemption is also known as "opting to tax". This Section tells you how this option works.
>
> You may opt for **any land or building if you have a reasonable expectation of selling, assigning, leasing, or licensing all or part of it**. … Your option will affect only those **supplies made by you in relation to your own interest**. Your option is irrevocable, however, and once you have opted for a given building or area of land, that choice is binding for all future supplies. …
>
> 41. You must opt for whole buildings – even if **your interest** is only in parts of each building. You cannot, for example, opt to tax the rents for the top floor of a building without taxing those for any **other parts in which you have, or acquire, an interest**. …"

9. Mr Gordon submitted that the passages cited above supported the view that the person must have an interest in the land, or a reasonable expectation of acquiring one,

at the time of making an election in relation to it. He did not contend that the legislation imposed such a requirement but that it could be inferred and that Notice 742B showed that that was how HMRC had interpreted the legislation.

10. We do not agree. The purpose of paragraph 3(4) and (5) of Schedule 6A is to define the extent of the land that is affected by an election. It does not restrict the ability of a person to make an election under paragraph 2 of Schedule 6A "in relation to any land". The guidance in Notice 742B is just that: it uses everyday expressions rather then the precise of language of the legislation and does not override it. In any event, the Notice does not say that a person must have an interest in the property at the time of making the election: paragraph 41 clearly states that the option applies to parts of a building which a person acquires. We consider that a condition that a person making an election must have an interest in the land concerned at the time, or a reasonable expectation of acquiring one, would require clear words and cannot be inferred from the legislation or introduced by guidance in a Notice. Our view is that an election to waive exemption can have effect in relation to any land and there is no requirement that a person must own the land in question at the time of making the election or even have a reasonable expectation of acquiring an interest in it. We note that the Upper Tribunal recognised this in their decision at [5] where they referred to the fact that "it was possible to elect in respect of someone else's land, usually in the expectation of an acquisition".

11. Accordingly, we consider that the issue that we must determine is whether the Golf Course was an asset of the Partnership on 27 June 1990 when the Election was made or at any later time up to and including the time of the supplies of the Golf Course to Wrag Barn Golf Limited and Wrag Barn Members Club Limited in 2000.

Facts

12. The findings of fact made by the First-tier Tribunal and upheld in the decision of the Upper Tribunal stand and were not challenged in the hearing before us. Save as to the issue remitted to us, the narrative that follows is drawn from the facts found by Judge Green and documents before her, the contents of which were not disputed. In relation to the question of whether the Golf Course was an asset of the Partnership as at 27 June 1990 or subsequently, our findings of fact are based on the evidence that we received, which is described more fully below.

13. The partners of the Partnership are all members of the Manners family and have that surname. For the sake of clarity and brevity, we adopt the practice in this decision of referring to the members of the family by their forenames.

14. Mr James Manners ("James") and Mrs Suzanne Manners ("Suzanne") had owned land at Bellingham Farm in Wiltshire since 1967. For many years before the events with which this appeal is concerned, James and Suzanne carried on a farming business in partnership; initially with each other and later with their sons, Mr Timothy Manners ("Timothy") and Mr Richard Manners ("Richard"), as well as Richard's wife, Caroline.

15. In 1987, James and Suzanne considered diversifying their business activities and that included the possibility of starting a golfing business. In 1987, James and Suzanne incorporated a company, Wrag Barn Golf and Country Club Limited ("the Company"). James and Suzanne were the directors of the Company and Suzanne was the company secretary. The Company's principal activity was stated to be that of "developers of a golf club". It registered for VAT. By 30 June 1990, the Company had incurred costs totalling £152,843 in relation to the construction of the Golf Course. The Company reclaimed the input tax on its VAT returns. Timothy was in charge of the construction of the golf course which was designed by a specialist golf course architect.

16. At some point prior to 27 June 1990, James and Suzanne decided that the business of operating the golf club would not be carried on by the Company and they formed the Partnership to carry on the business of operating the Wrag Barn Golf Club. There is no contemporaneous evidence to support or explain the decision to operate the Golf Course by a partnership and not by a company.

17. On 27 June 1990, James sent four documents to HMRC, namely

(1) A letter, typed on plain paper, from "Mr & Mrs J H Manners" at their home address. The letter had no heading and stated:

> "We enclose forms VAT1 and VAT2 to effect registration of the partnership with effect from 27 June 1990.
>
> In addition we enclose our 'option' notice in respect of the Wrag Barn Golf Course.
>
> Your early notification of registration would be appreciated."

It was signed by James.

(2) Form VAT1 Application for Registration. The application form showed James and Suzanne as the applicants for VAT registration. It stated that their business status was partnership and the trading name was JH & S Manners. The business activity was described as "Golf Course Club". The first taxable supply was stated to be on 27 June 1990 and the estimated value of taxable supplies in the following 12 months was given as £25,000. The VAT1 was signed by Suzanne.

(3) Form VAT2 is a list of the partners. As at 27 June 1990, this showed only James and Suzanne. As explained below, it was later amended to show Timothy and Richard then amended again to delete James and show Timothy's wife, Mrs Verity Manners ("Verity").

(4) A letter, typed on plain paper, from "Mr J H & Mrs S Manners" at their home address. The letter was headed "Option to tax" and stated:

> "We hereby give notice of our election to waive exemption (option to tax) on the disposal of Wrag Barn Golf and Country Club pursuant to VATA 1983 Sch 6A s 2."

It was signed by James.

18. Judge Green found that the Partnership, consisting of only James and Suzanne at that time, registered for VAT so that the Partnership could carry on the business of a golf club and notified HMRC that they had made the Election in relation to the Golf Course. Judge Green found that, notwithstanding the reference in the notification of the Election, no disposal of the Golf Course was anticipated. The Election was binding on the partnership and supplies of the Golf Course by the Partnership became chargeable to VAT at the standard rate. Judge Green found that the Partnership began trading and made its first supply on 27 June 1990.

19. In a letter dated 10 August 1990 to Milne Ross, chartered accountants acting on behalf of Wrag Barn Golf and Country Club Limited and James and Suzanne, HMRC asked four questions, namely:

> "(i) Who are the owners of the golf course and the golf club, ie the limited company or the partnership?
>
> (ii) Did the partners always own the land, and merely lease it to the limited company who carried out the construction work?
>
> (iii) If the limited company were the owners and have transferred the land to the partners, please give details of the assets that were transferred.
>
> (iv) It would appear that the limited company now no longer has any intention to make taxable supplies and the requirements of its registration are no longer met. Please state if any taxable supplies have been made to date or are expected to be made."

20. Milne Ross replied by letter dated 16 August 1990 as follows:

> "1. The owners of the golf course and of the golf club are J&S Manners who are in partnership.
>
> 2. The partners always owned the land and allowed the limited company to carry out construction work on it.
>
> 3. No transfer has taken place.
>
> 4. The limited company has borne the expense of the construction work on the golf course and this is now being re-invoiced to the partnership. The date of the raising of the invoice is not known but the matter will be dealt with shortly. We will advise you as soon as this takes place."

Judge Green found that the letter from Milne Ross accurately recorded the position at that date.

21. On 22 November 1990, Ms Sian Thomas, officer of HMRC, visited Wrag Barn Golf and Country Club and had a meeting with Suzanne. A report on the visit, prepared by Ms Thomas and dated 22 November 1990 but not signed by Suzanne, noted that:

> "A Ltd Co was formed originally and [input tax] reclaimed for most of the course construction. Then it was decided that the partnership should own the golf course & club but no official [transfer of a going

> concern]. No [output tax] declared from Ltd Co and no [input tax] reclaimed by partnership so no loss to revenue but Ltd Co was obviously registered wrongly - should have been intending trader."

A summary of trading activities and records compiled after the same meeting stated that the business consisted of four partners, husband, wife and two sons.

22. On the basis of the Milne Ross letter and the HMRC visit report, Judge Green found that Timothy and Richard became partners with their parents, James and Suzanne, at some point between 16 August and 22 November 1990.

23. An amended VAT Registration certificate recording the traders' particulars was issued on 10 December 1990. It showed the partners as James, Suzanne, Timothy and Richard, trading as J H & S Manners.

24. On 7 February 1991, James, Suzanne, Timothy and Richard entered into two documents, namely:

(1) A Partnership Agreement. The four parties were referred to as the partners carrying on the business of a golf club in partnership under the name of the "Wrag Farm (sic) Golf Club". The agreement stated that the Partnership commenced on 1 July 1990. In her evidence before Judge Green, Suzanne accepted that the date of 1 July 1990 for the commencement of the Partnership was for administrative convenience.

(2) A Deed of Gift by which James and Suzanne conveyed the Golf Course to themselves and Timothy and Richard in fee simple upon trust to sell in equal shares. Judge Green found that the deed of gift resulted in James and Suzanne transferring one half of the Golf Course to Timothy and Richard. It was not a transfer to a new golfing partnership but was consistent with Timothy and Richard joining the Partnership and carrying on the business of running the golf club.

25. We heard evidence from Mr Richard Ford, the solicitor who advised the Manners family and drafted the Partnership Agreement and the Deed of Gift. He stated that the Partnership Agreement was not related to the Deed of Gift which was a separate transaction. His evidence was that the land was transferred to the individual partners and not to the Partnership. His evidence was that there was no partnership of James and Suzanne to develop the golfing business and that the Partnership did not come into existence until 1 July 1990, as confirmed by the Partnership Agreement of 7 February 1991. The Deed of Gift and the Partnership were entered into on the same day because that was the date of a family meeting when both documents were signed.

26. Mr Ford's evidence was contrary to the finding of fact made by Judge Green that the Partnership, consisting of only James and Suzanne, began trading on 27 June 1990. Judge Green also found that the deed of gift was not a transfer to a new golfing partnership but was consistent with Timothy and Richard joining the Partnership. Although Judge Green did not have the benefit of Mr Ford's evidence, we accept and adopt Judge Green's finding that the Partnership, with just James and Suzanne as partners, existed before 1 July 1990. We do so not only because the Upper Tribunal

directed that Judge Green's findings could not be challenged but also because Mr Ford's evidence was that he was instructed to draw up the Partnership Agreement around December 1990 and the Deed of Gift a few weeks before the meeting in February 1991. As he admitted in cross examination, Mr Ford was not a party to any discussions by the family about the golfing business in June 1990 and he could give no positive evidence that the partners had agreed that the Golf Course should not be an asset of the Partnership. We do not accept Mr Ford's evidence that the fact that the Deed of Gift and the Partnership Agreement were signed on the same day by the same parties was mere coincidence and that they were unconnected. Even if Mr Ford was unaware of the connection, we consider that the coincidence of the parties, date and subject matter (golfing partnership and golf course land) show that the two agreements had a common purpose. Further, Suzanne said in evidence before Judge Green that the date of 1 July 1990 was chosen as the date when Timothy and Richard joined the Partnership for administrative convenience. Mr Ford said that, after the Deed was drawn up he continued to advise the family in relation to the farming business but not the golf course business and so he could not say whether the land was transferred to the Partnership later (ie between 1990 and 2000). Mr Ford suggested that the land would have stayed with the partners individually as it was "the norm" in farming practice to keep the land outside the partnership.

27. The Partnership's accounts for the period ended 30 April 1991 were the only accounts that were produced before Judge Green and the Upper Tribunal. The accounts list James, Suzanne, Timothy and Richard as partners and describe them as trading as Wrag Barn Golf and Country Club. The accounts are signed by the partners. No start date is specified in the accounts but it was accepted that it must be 1 July 1990. The accounts list "Golf Course & Clubhouse" as the first and most valuable of the Partnership's fixed assets. The accounts were prepared on the historical costs basis and the cost of the "Golf Course & Clubhouse" as at 1 July 1990 was shown as £152,843 with additions during the year of £52,640, giving a value at 30 April 1991 of £205,483.

28. The accounts of the Company for the period ending 30 June 1990 showed "Development of golf course" as a fixed asset of the Company with a value of £152,843. There was no suggestion that the Company ever owned the Golf Course. The Company's accounts show that the costs incurred in developing the Golf Course had been capitalised as tangible fixed assets. The obvious inference is that the reference to the "Golf Course & Clubhouse" in the Partnership's accounts is a reference to the capitalised costs incurred by the Company and, from 1 July 1990, by the Partnership in developing the Golf Course. The Partnership's accounts for the period ended 30 April 1991 do not show that the Golf Course (ie, for the avoidance of doubt, the land on which the golf course had been developed) was a fixed asset of the Partnership. The accounts do not show any rent or other payment by the Partnership for its occupation of the Golf Course. Miss Tipples suggested that there was no mention of rent and no need to pay any as the Golf Course was an asset of the Partnership. The alternative explanation, put forward by Mr Gordon, was that the Partnership, like the Company before it, was allowed to occupy the Golf Course rent free.

29. Unlike Judge Green and the Upper Tribunal, we had the benefit of seeing the Partnership's accounts for other periods, namely 1992 - 2000. The accounts for the years up to and including the period ending 30 April 1999 are essentially identical, save as to the figures, to the Partnership's accounts for the period ended 30 April 1991. The accounts for the period ended 30 April 1992 and the Partnership's amended VAT registration certificate issued on 12 May 1992 show that, at some point prior to 12 May 1992, James retired as a partner and was replaced by Verity. As stated above, the VAT 2 list of the partners was amended, at some point, to delete James and show Verity as one of the partners. James died in 1999.

30. It appears that the Partnership changed its accounting period in 2000 and the accounts for that year cover the period 1 May 1999 to 31 October 2000. On 31 October 2000, Suzanne, Timothy and Richard granted a tenancy at will ("the Tenancy") in relation to the Golf Course and part of the Club House to Wrag Barn Golf Limited and Wrag Barn Members Club Limited which were non-profit making bodies. On 1 December 2000, the Tenancy was replaced by a lease relating to Wrag Barn Golf Club ("the Lease"). Both the Tenancy and the Lease stated that they were granted by Suzanne, Timothy and Richard "trading as Wrag Barn Golf & Country Club".

31. The Partnership accounts for the year ended 31 October 2001 show income of £304,902 described as "Management charge – rent". The accounts for earlier years did not contain any reference to rental income.

32. The Partnership did not account for VAT on the rents paid under the Tenancy and the Lease. HM Customs and Excise considered that the Partnership made supplies of the Golf Course to Wrag Barn Golf Limited and Wrag Barn Members Club Limited and should have accounted for VAT on those supplies. In 2003 and 2005, HM Customs and Excise issued three assessments to the Partnership for a total of £244,404 VAT.

Discussion

33. Mr Gordon accepted the finding of Judge Green that the Partnership, consisting of James and Suzanne, registered for VAT and elected to waive exemption in relation to the Golf Course with effect from 27 June 1990 but he submitted that the Golf Course was not an asset of the Partnership in June 1990 or at any point. Mr Gordon contended that the Golf Course was owned by James and Suzanne as tenants in common until the Deed of Gift of 7 February 1991 when the land became the property of James, Suzanne, Timothy and Richard in equal shares. The Deed of Gift was separate from the Partnership Agreement and did not refer to the Partnership because the Golf Course was not an asset of the Partnership. As the Golf Course was never an asset of the Partnership, the Partnership could not have made any supplies of the Golf Course.

34. Both parties referred us to *Partnership Law* (4th edition, 2011) by Blackett-Ord and Haren ("*Blackett-Ord and Haren*") and *Lindley & Banks on Partnership* (19th edition, 2010) ("*Lindley & Banks*"). Both works provide valuable guidance to the

approach to be taken in determining what are the assets of a partnership and what is the property of an individual partner. *Lindley & Banks* states at 18-03 that it is up to the partners to agree between themselves what assets are to be treated as partnership property. In the absence of an express agreement, the relevant factors are

(1) the circumstances of the acquisition, with particular reference to the source of finance;

(2) the purpose of the acquisition; and

(3) the manner in which the asset has subsequently been dealt with.

At 18-24, *Lindley & Banks* observes that while any agreement between the partners is paramount, in most cases where the status of an asset is in dispute there will be little tangible evidence of such agreement.

35. *Blackett-Ord and Haren* state at 8.15:

> "Often (especially in farming partnerships) the most valuable assets used by the firm are owned by some or all of the partners outside their capacity as such partners. The obvious uncertainty that this causes is discussed … below."

36. Like *Lindley & Banks*, *Blackett-Ord and Haren* observe that an express agreement that an asset is either partnership property or property of all or some of the partners is conclusive. *Blackett-Ord and Haren* go onto point out, at 8.21, that an implied agreement between the partners is as decisive as an express one. They state that important indicia are:

(1) how the property appears in the firm's accounts;

(2) how it was paid for; and

(3) how it is used.

37. They acknowledge that implied agreement as to the ownership of an asset may not be found readily from the accounts. Express agreement may be ascertained from signed accounts because a partner is bound by them as a settled account. In relation to land and leases, *Blackett-Ord and Haren* state that the fact that a partnership pays for additions or improvements is not conclusive that the improved value of the asset is to be credited to the firm.

38. HMRC accepted the statement in *Blackett-Ord and Haren*, at 8.26, that the mere fact that property owned by the partners outside the firm is used by the business does not render it partnership property. The authors state that:

> "The test laid down in older cases [such as *Waterer v Waterer* (1873) LR 15 Eq 402] is whether the property in question was so 'involved in partnership dealings' as to raise the inference that the parties intended it to be partnership property."

They point out that farming cases fall on the line with different cases going different ways.

39. In addition to the text books, we were referred to various cases from which the learned authors derived the principles set out above. We do not think it necessary to set out the facts and decisions in the cases. The question of whether a particular asset is or is not partnership property is, where there is no express agreement, a highly fact sensitive issue. No single test is conclusive and we must answer the question by looking at all the evidence to determine whether the partners intended the Golf Course to be an asset of the Partnership rather then the property of the individual partners. In the particular circumstances of this case, it is easier to ascertain the intention of the partners and the status of the Golf Course by starting with the grants of the Tenancy and Lease in 2000 and working backwards.

40. The Tenancy and the Lease, granted in October and December 2000 respectively, state that they were granted by Suzanne, Timothy and Richard "trading as Wrag Barn Golf & Country Club". Mr Gordon submitted that Verity was not mentioned because the interest in the Golf Course was granted by the then owners who were Suzanne, Timothy and Richard, James having died in 1999, and not by the Partnership. He contended that the references to the owners trading as Wrag Barn Golf & Country Club in the two agreements were simply errors and did not indicate that the land was being let by the Partnership. The Partnership accounts for the year ended 31 October 2001 showed, for the first time, rent as income of the Partnership. Mr Gordon did not attempt to dispute that the rental income related to the Tenancy and the Lease: he submitted that the inclusion of that rent in the Partnership's accounts was simply an error. We do not agree. We consider that the description of the landlord as Suzanne, Timothy and Richard trading as Wrag Barn Golf & Country Club in the Tenancy and the Lease and the inclusion of the rental income in the Partnership's accounts for the period ended 31 October 2001 show that the Golf Course was held by Suzanne, Timothy and Richard as partners and was regarded by them as an asset of the Partnership. The absence of Verity from the Tenancy and Lease is explained by the fact that she did not have any legal title to the land. Her only interest was as a partner in the Partnership and, as such, she would not be included in any tenancy, lease or conveyance. Having regard to the fact that the Golf Course was let by the Partnership and the rent was shown as income in the Partnership's accounts, we find that the Golf Course was an asset of the Partnership in October and December 2000.

41. As there was no evidence (and, indeed, no suggestion by the Partnership) that there was any change in the ownership of the Golf Course between the Deed of Gift in February 1991 and the grant of the Tenancy and the Lease in 2000, apart from on the death of James in 1999 when his interst passed to Suzanne, we conclude that the Golf Course was an asset of the Partnership between 7 February 1991 and October 2000.

42. Judge Green found, on the basis of the letter of 16 August 1990 from Milne Ross, that Timothy and Richard were not partners at that date but they were partners by the time of Ms Thomas's visit on 22 November 1990. The status of Timothy and Richard as partners in the Partnership was confirmed by the Partnership Agreement of 7 February 1991 which stated that the Partnership had commenced on 1 July 1990. The Partnership Agreement provided that all the partners had equal shares in the Partnership from the beginning but the land was, initially, owned by James and

Suzanne. Judge Green held that the Deed of Gift was not a transfer to a new golfing partnership but was consistent with Timothy and Richard joining the existing Partnership. We consider that the Deed of Gift and the Partnership Agreement, which were signed on the same day by the same parties, were intended to confirm that, with effect from 1 July 1990, James, Suzanne, Timothy and Richard were partners in the Partnership and, from 7 February 1991, each had an equal share in the Golf Course that they contributed to the Partnership. The effect of the two documents was to bring Timothy and Richard into the Partnership as equal partners. The transfer for no consideration to the new partners of a share in the Golf Course which was the same as their share in the Partnership strongly suggests that the Golf Course was an asset of the Partnership between 1 July 1990 and 7 February 1991. Further evidence that the partners regarded the Golf Course as partnership property is the fact that there was no agreement under which the Partnership paid the partners for the right to occupy the land and no payment for the use of the Golf Course was shown in the accounts. The opening accounts of the Partnership did not show the Golf Course as a contribution at market value to the Partnership but the accounts are consistent with the land being gifted to the partnership and, even if it were not gifted, accounts are not conclusive especially when contradicted by the fact that the Golf Course was used by the Partnership in carrying on its golfing business. We conclude that all four partners regarded and used the Golf Course as an asset of the Partnership. On the basis of the evidence that we have seen, we find that the Golf Course was an asset of the Partnership between 1 July 1990 and 7 February 1991.

43. Judge Green found that the Partnership, then consisting of just James and Suzanne, existed at 27 June 1990. Judge Green also found that the Partnership made the Election in relation to the Golf Course on 27 June. We have already found that the Golf Course was an asset of the Partnership on 1 July. In the absence of any evidence that James and Suzanne agreed that the Golf Course was not property of the Partnership between 27 June and 30 June, we find on the balance of probabilities that the Golf Course was an asset of the Partnership on 27 June 1990 when the Election was made.

Conclusion on preliminary issue

44. We find that the Golf Course was an asset of the Partnership on 27 June 1990, when the Election was made, and at all times up to and including the grant of the Tenancy and the Lease of the Golf Course to Wrag Barn Golf Limited and Wrag Barn Members Club Limited in 2000.

Rights of appeal

45. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. However, either party may apply for the 56 days to run instead from the date of the decision that disposes of all issues in the proceedings, but such an application should be made as

soon as possible. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

5

GREG SINFIELD

TRIBUNAL JUDGE

RELEASE DATE: 26 July 2013