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Case Number: TC09288

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, 88 Rosebery Avenue, London
EC1R 4QU

Appeal reference: TC/2022/12293
TC/2022/12991

INHERITANCE TAX-Business Relief-fishery business-whether eligible for relief-whether business of making or holding investments

Heard on: 16 July 2024
Judgment date: 12 September 2024

Before

TRIBUNAL JUDGE MARILYN MCKEEVER
MR JOHN AGBOOLA

Between

DIMITRAKIS G DEMETRIOU AS EXECUTOR OF THE ESTATE OF THE LATE MRS LONGINA BOCZON PEARCE (1)
And
N J TURNER AS THE TRUSTEE OF THE ESTATE OF THE LATE DENIS ARTHUR PEARCE (2)

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Bernard Eke, Tax Advisor, instructed by Paris Smith Solicitors

For the Respondents: Mr Parminder Singh, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The question in this case is whether the wild fishery business carried on by the late Mrs Pearce was eligible for Business Relief from Inheritance tax. This turns on a single point: whether the business consisted "wholly or mainly of making or holding investments".

2. We considered the voluminous written evidence and correspondence in our bundle. We also heard oral evidence from Ms Holly Pearce, the daughter of the deceased who now carries on the business and from Mr Christopher Netherton, one of Mrs Pearce's executors, who had worked for Mrs Pearce's late husband Denis and subsequently provided advice and business assistance to Mrs Pearce.

3. We have carefully considered the arguments of both parties and the many authorities to which we were taken in argument, but in the interests of keeping this decision as concise as possible, we have not referred in detail to all of them.

4. Statutory references are to the Inheritance Tax Act 1984 unless otherwise stated.

THE LAW

5. Section 104 of the Inheritance Tax Act 1984 confers relief from inheritance tax on "relevant business property". Relevant business property includes "property consisting of a business or interest in a business" (section 105(1)(a)).

6. Section 105(3) provides so far as material:

> "(3) A business or interest in a business, …, [is] not relevant business property if the business … consists wholly or mainly of … making or holding investments."

7. It is common ground that Mrs Pearce was carrying on a business. The issue for this Tribunal is whether the business, at the date of Mrs Pearce's death, consisted wholly or mainly of holding investments.

THE FACTS

8. Mrs Pearce dies on 18 August 2020. The executors of her will were her accountant, Mr Demetriou of Haines Watts, Kingston LLP and Mr Netherton (the executors). Mrs Pearce had a life interest the will trust of her late husband (the will trust). Mr Turner, of Paris Smith LLP was the trustee of the will trust (the trustee).

9. Since her husband's death, and for the seventeen years until her own death, Mrs Pearce had carried on a sole trader business known as Kingsworthy Meadow Fisheries. The fishery business was carried out at Fulling Mill near Winchester. Part of Fulling Mill was owned by Mrs Pearce personally and part was owned by the will trust.

10. An IHT 400 inheritance tax account was submitted on behalf of the executors on 30 March 2021 and an IHT100 inheritance tax account was submitted by the trustee in relation to the termination of Mrs Pearce's life interest. Both the IHT 400 and the IHT 100 included claims for agricultural property relief in respect of part of the property, and Business Relief in respect of other parts of the property. HMRC agreed the agricultural property relief claim.

11. Following enquiries into the accounts, HMRC issued Notices of Determination to both the executors and the trustee on 26 April 2022 refusing the claims for Business Relief on the ground that the business was one "mainly of holding investments".

12. The executors and the trustee respectively appealed the Notices of Determination. Following further correspondence, HMRC issued their review conclusion letters on 15 July

2022, upholding the decisions to refuse Business Relief. On 12 August 2022, the executors and the trustee appealed to the Tribunal.

13. The claim to Business Relief by the executors relates to 2/7 of the value of the deceased's residence and 17 acres of river and the land around it. The claim by the trustee of the will trust relates to 9.6 acres of river and land. The Appellants claimed relief at the rate of 100%: £806,273 in relation to the personal estate (being the value of 2/7 of the residence and the land less the net business liabilities) and £62,214 in relation to the will trust.

14. The parts of the residence subject to the Business Relief claim are:

(1) An office from which Mrs Pearce managed the business.

(2) A reception room where Mrs Pearce met customers, provided them with coffee, briefed them on the fishing and debriefed them at the end of the day.

(3) A rod room where customers could store fishing equipment and kit, fish food and other items.

(4) An outbuilding and a garage in each of which fishing equipment and kit were stored. It is not clear whether this equipment belonged to the family or customers. Equipment for maintaining the land around the river such as strimmers, mowers and hand tools were also stored in these buildings.

(5) An outdoor toilet for the use of customers.

15. The land which was the subject of the claim comprises:

(1) The river and the streams which fed it which contained the fish. The streams were also important for the reproductive cycle and development of the fish.

(2) The banks of the river and streams where the fishermen fished. The rods also fished in the river itself. The banks of the river were managed and maintained to optimise the fishing experience and the deceased's conservation aims.

(3) Clients could not fish wherever they liked along Fulling Mill's stretch of the river. The fishing area was divided into two "beats" (permitted fishing areas) the upper beat and the lower beat. There was a fisherman's hut on each beat in which customers could store their personal belongings and use as a shelter in bad weather.

(4) There was a car park for customers on each beat.

16. We heard oral evidence from Ms Hollie Pearce and Mr Christopher Netherton. We found them to be helpful and straightforward witnesses. Most of the facts we have found are based on their evidence as set out in their witness statements and the correspondence between Mr Eke and HMRC, supplemented by their oral evidence. There was little in the way of documentary evidence as to Mrs Pearce's activities, the payment of the self-employed river keepers who helped with the heavy work, referred to below, or the terms and conditions subject to which rods were permitted to fish.

17. The fishery at Fulling Mill is on the River Itchen which is a Site of Special Scientific Interest and a Special Area of Conservation. Natural England describes it as "one of the 'classic' chalk rivers of southern England". The Itchen supports a wide variety of flora and fauna including, relevantly, brown trout, grayling and the occasional salmon.

18. Whilst we must consider the position at the date of Mrs Pearce's death, it is helpful to consider the history of the business to put it in context.

19. Mrs Pearce's husband Denis was a successful businessman and a passionate fisherman. He had visited Fulling Mill as a rod, and following the sale of his ready mix concrete

business in the 1990s, he bought Fulling Mill and became a fishery manager and river keeper. He sought to improve the conservation value of his stretch of the river, but also created a profitable stocked fishery business. He created a syndicate of fly-fishermen who paid annual fees to fish for stocked trout and also sold occasional permits for day rods.

20. The "stocked" part of the business meant that Mr Pearce bought in locally grown fish, mostly rainbow trout, and stocked the river with these fish, for the syndicate members and day rods to catch. The river and streams would be stocked at least three times during the season from April to October and the stocked fish would be fed daily to encourage them to remain in the area. The fishermen were allowed to take up to two fish home with them.

21. Mrs Pearce had assisted her husband with the business during his lifetime and took over the business on his death in 2003 and became the river keeper. She continued to run the business until her death in 2020.

22. At some point, early in Mrs Pearce's tenure, the Environment Agency began to discourage stocking fisheries and refused to renew fish stocking licences. The larger stocked fish were "bullying" the native brown trout away from the best habitats and attempting to inter-breed. Their effect in general was detrimental to the population of the wild brown trout in the UK. As a result, Fulling Mill became a wild fishery. That is, no "external" fish were put in the river and streams, so the only fish available were the native brown trout, grayling and some salmon. The brown trout are smaller than the stocked fish and, as Mr Netherton put it are "very wily and far more skittish, so harder to stalk and catch". Further, as part of the conservation requirements, fishermen could not use barbed hooks and fish which were caught had to be released back into the river. Fishermen like to take a prize home but were no longer able to do so.

23. Mrs Pearce's business changed from being a stocked fishery to the managing and maintaining of a wild fishery.

24. This had an impact on the business. Members of the syndicate left because the fishing was more difficult and they could not even take their catch away. The fishery's income declined.

25. Many of Mrs Pearce's clients had been long-standing members of the syndicates who had become friends. New syndicate members were introduced by personal word of mouth recommendations from existing members or referrals from owners of other fisheries. All were vetted. The business did not have a website or carry out marketing activities.

26. This is reflected in the financial figures. The net profits in the years leading up to Mrs Pearce's death were: 2017-£3,988, 2018-£2,280, 2019- (£2,419) a loss and 2020-£6,184. Mrs Pearce did not pay herself a salary. The capital accounts for the above years show modest drawings of between £2,109 and £3,500 but the capital account was in deficit.

27. Mrs Pearce worked full time running the wild fishery, even though it was increasingly unprofitable. As well as maintaining the river and its environs in the best possible condition for fishing, she also sought to promote and improve the conservation of the river and to manage the fishery and the surrounding land in accordance with the environmental and conservation requirements of the Environment Agency and Natural England. Although grants were available for the conservation work, they came with restrictions on activities. For this reason Mrs Pearce decided not to apply for any grants, but carried out what work she could with the resources available.

28. All this involved a great deal of work. The riverbank had to be kept clear of vegetation so the fishermen had access to the river. The vegetation behind the bank had to be controlled so that the fishermen could back cast without their hooks becoming entangled. The grass had

to be mown regularly, some of it by hand to conserve rare plants. Trees and other plants along the riverbank had to be managed to provide the right amount of shade and the right conditions to encourage the flies on which the fish fed. The river itself had to be kept clear. At certain seasons all the river keepers would co-ordinate the cutting of weeds in the river and sending them downstream. This made the working day even longer. If trees or branches fell in the river they had to be cleared. The paths and bridges used by the fishermen had to be maintained. The banks of the river had to be protected from erosion. Conditions in the breeding areas in the streams which fed the river had to be maintained to optimise the breeding and development of the fish. All this required skill and knowledge of fish/fly habits and conservation requirements as well as physical effort. Mrs Pearce did as much of the work personally as she could with the help of the family, including Ms Hollie Pearce who took over the business on her mother's death.

29. Mrs Pearce used self-employed river keepers and other individuals, paid on an hourly basis, to help with the heavier work which she could not manage herself. She directed and supervised these individuals and instructed them as to the work she required them to do.

30. Ms Pierce said that the work would have been less, had Fulling Mill not been operated as a business. For example, they would not have needed to cut back the vegetation behind the riverbank or to provide access to the river in order to unhook fish and release them. However, the family would still have carried out some maintenance because of their passion for conservation and environmental matters. The level of maintenance and enhancement was vital for the business as they had to keep the river in the best possible condition for the fish. If the river was not maintained there would be no fish and if there was no fish there would be no business.

31. There was no legal obligation to maintain the river to SSSI standards as Mrs Pearce did not take any grants because of the restrictions which they would impose. Mrs Pearce carried out the level of maintenance and enhancement which she did as it was important to do this to ensure a first class fishing experience and keep their clients.

32. The sole income of the business came from the rod fees, that is, the fees paid by customers for permission to come on the land at Fulling Mill and fish in the river and streams.

33. There were three categories of customer:

(1) **Syndicates**. The syndicates were effectively a club. Members paid an annual fee which entitled them to fish in the river on certain days in the season. A member could be a "full rod" which entitled them to fish on one day a week, or a "half rod" which entitled them to fish on one day a fortnight. The days were not fixed. A rod would make arrangements in advance with Mrs Pearce to confirm the day of the visit. New members were admitted to a syndicate on the basis of personal recommendation or by invitation. They were vetted by Mrs Pearce.

(2) **Day rods**. These were one day permits, sold on an ad hoc basis. Most of these were sold by The Rod Box, a fishing shop in Winchester. The Rod Box would sell a day's fishing for a fee which represented a profit and would pay an agreed amount to Mrs Pearce. Although the proprietor of The Rod Box did not vet the day rods, she was a friend of Mrs Pearce and understood which customers would be acceptable.

(3) **Guided rods**. Guides or ghillies would sell day fishing trips to their own clients. The Ghillies were third parties who would provide fishing instruction and guidance to their clients.

34. When a client arrived Mrs Pearce would allocate a beat to the client. A client could fish anywhere on the allocated beat. Typically, there would be no more than two rods per beat per day, on five days a week. A rod could bring a guest. The syndicates were not large. In a wild fishery, the river cannot be fished heavily or the fish won't rise, unlike with a stocked fishery where more rods could be accommodated.

35. There were no set hours. Fishing was permitted between dawn and dusk but fishermen could arrive when they wished. Typically, they arrived at about 9.00 am and they would remain all day.

36. Mrs Pearce would greet her clients on arrival and would often offer them a cup of coffee in the reception room. Besides allocating a beat, she would deal with any queries and provide advice and recommendations to the clients, for example, where the fish were to be found, which dry flies were most likely to be successful based on the season and conditions and other hints and tips that would enhance their fishing experience. Similarly, in the evening she would debrief the rods, sometimes over a glass of wine or lemonade to discuss their day, which would provide intelligence for her to pass on to the next set of rods.

37. Mrs Pearce granted the various types of permits, and made arrangements as to days, mostly by email correspondence but also by telephone. She kept records of the days allocated to customers.

38. Mrs Pearce usually worked a seven hour day in the business and longer in the weed-cutting season. She was also available at any time in case of emergencies.

39. Her daily activities included:

(1) Taking bookings.

(2) Greeting clients, allocating beats and providing advice as described above.

(3) Dealing with customers by email and telephone.

(4) Assisting clients with any problems and providing first aid.

(5) Mowing the two and a half miles of riverbank.

(6) Walking the beat twice a day, early in the morning and again in the evening. Each walk would take about two hours (so four hours in total a day). The walks were to ward off poachers and to check that there was no debris/fallen trees/blockages in the river that could cause problems. If there were any problems she would deal with them or arrange for them to be dealt with.

(7) On the walks, she would also monitor the customers' activity to make sure they were fishing in accordance with the conservation restrictions e.g. not using barbed hooks or keeping fish caught. Anyone in breach of the restrictions would be removed from the property. She would also chat to the fishermen and give further advice about the best place to fish or the flies to use.

(8) Organising the workload for the self-employed river keeper and other people, instructing them as to the work required and supervising them.

(9) Assisting with/directing the weed-cutting in the weed-cutting season.

(10) Ensuring the fishermen's huts were clean and tidy. She did not remove any rubbish. The clients had to take that away with them.

40. The facilities which were available to the rods were:

(1) The fishermen's huts on the upper beat and the lower beat.

(2) The car parks for the upper beat and lower beat.

(3) The office and reception room in Fulling Mill where Mrs Pearce would greet her clients, provide coffee/wine, and discuss any queries.

(4) The rod room.

(5) The outside toilet.

41. Mrs Pearce did not hire or sell any equipment or bait or other items.

42. Although Mrs Pearce provided helpful tips and advice to rods, she did not provide any fishing instruction or guiding services. She did provide day permits to third party ghillies who would guide their own clients.

THE PARTIES' CONTENTIONS

43. HMRC's position is that the deceased's business was the exploitation of land to produce income which is an investment activity. The property was exploited by the granting of permissions or licences to people who wanted to fish in the river. The only income of the business was from the rod fees. The Respondents accept that the deceased took active steps in running the business and carried out a great deal of maintenance but one had to focus on the nature of the business activities. Accordingly, the business is one of holding investments and so is excluded from Business Relief by section 105(3).

44. The Appellants contend that the deceased's wild fishery business cannot be compared with the holiday letting or caravan park cases and cannot be regarded as a property letting business. The income was derived, not from the exploitation of land but from the running of a fishery business. Looked at in the round, the deceased's business is not one of the holding of investments but the provision of services and incidental facilities of such a nature as to take it out of the investment category. Accordingly, the Appellants should be entitled to 100% Business Relief under section 104 in respect of the business.

BURDEN OF PROOF

45. It is for the Appellants to show, on the balance of probabilities that the business of the deceased was not wholly or mainly a business of holding investments.

DISCUSSION

46. The question which we must decide is whether the wild fishery business run by Mrs Pearce consisted, at the time of her death, of a business of holding investments.

47. There is no statutory definition of an investment business for the purposes of Business Relief. There have been many cases on the issue which provide guidance on the approach to be adopted by the Tribunal.

48. The Appellants cited 16 authorities and HMRC referred to an overlapping list of 15 cases. The decisions in these cases are very fact specific and most of them relate to rental businesses, holiday lettings, caravan parks and other factual situations which are very different from the current case. We have considered all the cases to which we were taken by the parties, but have paid particular attention to those cases which are binding on us. These are the Court of Appeal case of *George v IRC* [2003] EWCA Civ 1763 and the Upper Tribunal decisions in *HMRC v Francesca Louise Thoresby Lockyer & Caroline Vanessa Thoresby Robertson (as the Personal Representatives of Nicolette Vivian Pawson Deceased*) [2013] UKUT 050 (TCC), *Brander (as Executor of the Will of the Late fourth Earl of Balfour)* [2010] UKUT 300 (TCC) (the Appellants also referred to this case in the First Tier Tribunal) and *HMRC v the Personal Representatives of the Estate of Maureen W Vigne* [2018] UKUT 357 (TCC) (the Appellants also referred to this case in the First Tier Tribunal).

49. *George* concerned a caravan park where residents paid site fees, but the company which owned the site also provided a number of other services including selling caravans on commission, providing (at a charge) gas, electricity and water, running a social club and bar for residents and arranging insurance. The Court of Appeal at [11] states that the question is whether the business was "mainly" that of holding investments and divides the various activities carried on into "investment" activities and "non-investment" activities, and in particular the services provided. It then considers, in the light of that allocation, whether the investment element of the business was predominant. In this case, the nature and extent of the services meant that the business was not predominantly one of holding investments.

50. *The Person Representatives of Joyce Graham (deceased)* [2018] UKFTT 306 (TC) involved a holiday letting business. In this case, the level of additional services and facilities was so high that the Tribunal found that non-investment activities (just) outweighed the investment activity of letting holiday flats, so that the business was not "mainly" that of holding investments.

51. The Tribunal in *Graham* set out at [56] a helpful summary of the principles to be derived from *George* (and a case decided by the Court of Appeal of Northern Ireland: *McCall and other v HMRC* [2009] NICA 12).

> "56. We derive the following principles from *McCall* and *George* as to the proper construction of section 105(3):
>
> (1) investment is not a term of art but has meaning an intelligent businessman would give to it; such a person would be concerned with the use to which the asset was being put and the way it was being turned to account. *McCall [10]*
>
> (2) a property may be held as an investment even if the person holding it has to take active steps in connection with it: *McCall [14]* Girvan LJ said in that case that what was clear from the authorities is that a landowner who derives income from land or buildings will be treated as having a business of holding an investment notwithstanding that in order to obtain the income he carries out incidental management and maintenance work, finds tenants and grants leases;
>
> (3) land is generally held as an investment where gain is derived from payments to the owner for the use of the property *McCall* [11] *George* [15];
>
> (4) thus the exploitation of a proprietary interest in land for profit is capable of being an investment activity so that the land is an investment, and part of the business is holding it: the holding of property for letting is generally the holding of it for investment (*George* [18]);
>
> (5) but there is a wide spectrum at one end of which is the exploitation of land by the granting of a tenancy and at the other end of which is the exploitation of premises as a hotel or by a shopkeeper. The land subject to tenancy would generally be an investment and any business encompassing it would therefore include holding investments, but the business conducted at a shop or hotel would not be one wholly or mainly of holding investments: *George* [12]
>
> (6) property management is part of the business of holding property as an investment. To this extent investment business activity is not limited to purely passive business. "Management" for these purposes includes the activity of finding tenants and maintaining the property as an investment but does not extend to providing additional facilities whereby the landlord might

earn additional fees (e.g. for cleaning and heating) whether or not included in the lease or covered by the rent: *George* [23];

(7) where there is a composite business it is necessary to look at it in the round (*George*[13]);

(8) where there is a composite business the statutory words must be applied as a whole to all the activities: one is not required to open an investment "bag" into which all the activities linked to an investment are placed (because they are ancillary to the investment) and weigh that against the remainder; instead one looks at the business as a whole (*George* [60]).”

52. *Pawson* also concerned a holiday letting business which included a high level of services. In this case, the Upper Tribunal held that the nature and extent of the services and facilities were not such as to prevent the business from being mainly one of holding the property as an investment by providing holiday lets. Although *Pawson* is concerned with a different kind of business from that in the present case, it also contains some helpful principles of general application.

(1) As a starting point it can be taken that the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity [42].

(2) An investment may be actively managed without losing its essential character as an investment. [42].

(3) Activities and expenditure to improve the property to enhance its value as an income producing asset are investment activities. [43]

(4) Activities which naturally fall on the investment side of the line include the taking of active steps to find occupants, making the necessary arrangements with them, collecting payments of rent, the incurring of expenditure on repairs, re-decoration and improvement of the property and maintenance of the garden and grounds in a tidy condition. This is because these activities are directed at maintaining or enhancing the capital value of the property and obtaining a regular income from its letting [43].

(5) Additional services such as providing a cleaner/caretaker to clean the property in between lettings, heating and hot water, television and telephone, being on call to deal with emergencies, and more minor services such as replenishing cleaning materials as needed and providing a welcome pack and providing laundry services are not regarded as part of the maintenance of a property as an investment. It does not matter that no additional charge is made for such services. [44 and 45]

(6) The critical question is whether such services, which are non-investment activities are of such a nature and extent that they prevent the business from being mainly one of holding the property as an investment. [44 and 45]

(7) In relation to the activities of the business, the relevant test is not the degree or level of activity involved but rather the nature of the activities that are carried out. The fact that an operation is very active does not prevent it being an investment business. [48].

53. The Upper Tribunal decision in *HMRC v Brander* involved a large estate on which business activities were carried out consisting of in-hand farming, commercial woodlands and the letting of farms and cottages. The Tribunal held that overall, the in-hand farming and commercial woodlands (not investments) were the predominant part of the business so that the business was not mainly one of holding investments (the investment activities being the

agricultural tenancies and other lettings). The Tribunal drew a number of principles from the authorities at [73]:

> **"[73]** In our judgment the case law on this question, to which we were referred can be summarised as follows.
>
> (i) In deciding what the term 'the business of holding investments' means, the test which the decision-maker applies is that of an intelligent businessman who would be concerned with the use to which the asset was being put and the way it was being turned to account: *McCall* (*personal representatives of McClean (decd)) v Revenue and Customs Comrs* [2009] STC 990 at [11], 79 TC 758 at [11], per Girvan LJ.
>
> (ii) The question whether a business consists wholly or mainly of making or holding investments is a question of fact for the decision-maker: *IRC v George (exors of Stedman, decd)* [2004] STC 147, 75 TC 735.
>
> (iii) The decision-maker is required to look at the business in the round and, in the light of the overall picture, to form a view as to the relative importance to the business as a whole of the investment and non-investment activities in that business: *IRC v George (exors of Stedman, decd)* [2004] STC 147 at [13], [51], [52] and [60], 75 TC 735 at [13], [51], [52] and [60], per Carnwath LJ.
>
> (iv) This exercise involves looking at the business over a period of time as the First-tier Tribunal did in this case. See, for example, *Farmer (exors of Farmer, decd) v IRC* [1999] STC (SCD) 321….
>
> (vi) The fact that the owner of an investment engages in activities to manage and maintain his investment does not of itself take the business out of the investment category: *Martin (exors of Moore decd) v IRC* [1995] STC (SCD) 5 at paras 9–10, per Sir Stephen Oliver QC; *Burkinyoung (exor of Burkinyoung decd) v IRC* [1995] STC (SCD) 29; *IRC v George (exors of Stedman, decd)* [2004] STC 147 at [18], 75 TC 735 at [18], per Carnwath LJ.
>
> (vii) In looking at the question in the round it is not appropriate in every case to compartmentalise the business and attribute management and maintenance activity either to investment or to non-investment as an ancillary activity: *IRC v George (exors of Stedman, decd)* [2004] STC 147 at [51] and [60], 75 TC 735 at [51] and [60], per Carnwath LJ…."

54. The Upper Tribunal case of *Vigne* concerned livery stables. Owners of horses paid fees for their horses to be permitted to reside in a field and to have a stable. In addition, Mrs Vigne provided various services relating to maintaining the health of, and providing care for, the horses. It was held that the business was not mainly that of holding investments.

55. We do not believe that it is useful to examine the facts of other cases in detail, first because the cases (including this one) turn on their own specific facts and secondly, because none of the cases cited by the parties are concerned with the sort of business run by Mrs Pearce. We do, however, note that in the cases in which the appellants were successful there were either significant levels of services offered to customers so that the business was not mainly that of receiving money in return for the occupation of land (*George*, *Vigne*) or the business was a composite one involving investment and non-investment businesses where the non-investment businesses predominated (*Brander*, *Farmer*).

56. We have set out above the principles derived from the cases as to the approach we should take in determining whether the business of Kingsworthy Meadow Fisheries was, or was not, wholly or mainly the holding of investments.

57. We summarise the approach, as follows:

(1) The starting point is that the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity. This is ***not*** a presumption.

(2) We must look at the nature of the activities, not at the level of activity. Very active management of an investment does not prevent the business being an investment business.

(3) There is a spectrum of businesses involving the exploitation of land in order to generate income. At one end are property letting businesses which are clearly investments. At the other end are hotels, shops and farms which are clearly not investment businesses.

(4) We must consider where on that spectrum a business falls by looking at the investment and non-investment activities as a whole, standing back and looking at the business in the round.

(5) Where there are investment and non-investment activities, we must consider whether, looking at the business in the round, the non-investment activities are of sufficient importance that the business is not mainly an investment business.

58. We now apply these principles to the present case.

59. The essence of Mrs Pearce's business of running a wild fishery was that clients paid rod fees in return for permission to come on the land at Fulling Mill to fish from the allocated part of the riverbank. There was no other source of income. Mrs Pearce owned and held the river and surrounding land at Fulling Mill in order to generate income from rod fees. On the face of it, this is an investment activity.

60. We must now consider the activities which Mrs Pearce (with some assistance from the part time river keepers) undertook.

61. Taking the clients' bookings, making arrangements by telephone or email, allocating beats to client and vetting the suitability of clients were all investment activities.

62. The provision of car parks, fishermen's huts, outbuildings for storage and a toilet are also part of the investment activities.

63. The extensive time spent on mowing the riverbanks, protecting the riverbanks from erosion, clearing the vegetation behind the banks to allow back casts, cutting the weeds in the river, clearing obstructions in the river, e.g. fallen trees, and managing the vegetation and river environment to promote the health of the fish and encourage the supply of flies on which they fed were, in our view, activities to maintain and enhance the investment. Mr Eke submitted that the fishermen did not pay rent to occupy land, but paid their rod fees for the service of providing a maintained fishery. We cannot regard these activities as being the provision of a service to the rods. They are analogous to the maintenance and enhancement of holiday lets to attract customers. If the land is well maintained and attractive and provides a good environment to fish in, it will attract clients to come to Fulling Mill, rather than losing them to other fisheries. This is supported by the comments in Pawson at [52(4)] above.

64. We do not underestimate the amount of time and effort involved in the maintenance activities, but this does not alter their nature as investment activities.

65. We have also taken account of the fact that Mrs Pearce conducted the business in accordance, so far as possible given the means available, in a way which complied with the conservation requirements which apply to Sites of Special Scientific Interest and Special Areas of Conservation, such as the River Itchen. Conservation activities as such would not be investment activities. However, there was no obligation on Mrs Pearce to carry out the conservation as the business did not receive any grants and Ms Pearce's evidence was that they did the work anyway as they wanted to enhance the river environment in order to keep their clients by making sure that the fishing was first class. The conservation activities were accordingly part of the maintenance and enhancement activities for the benefit of the investment business.

66. The organisation and supervision of the part time river keepers to carry out the heavier physical part of this work is also on the investment side.

67. Mrs Pearce carried out a number of activities which were not investment activities.

68. The hospitality provided to clients: the coffees in the morning and the wine or lemonade after the day's fishing are non-investment activities. So also is the provision of first aid, dealing with similar emergencies, and occasionally lending kit to clients.

69. The help and advice given to the fishermen as to the best flies to use, the best places to fish what had been caught or not caught since their last visit also falls on the non-investment side of the line.

70. Mrs Pearce's daily walking the beats included both investment and non-investment elements:

(1) Checking the condition of the banks and the river and dealing with any debris or blockages in the river (maintenance-investment)

(2) Warding off poachers (security-investment)

(3) Providing advice and recommendations about the fishing (non-investment)

(4) Monitoring the clients to ensure they were fishing in accordance with the conservation requirements (e.g. not using barbed hooks and not taking away their catch) and removing anyone in breach (non-investment).

71. Having considered the elements of Mrs Pearce's wild fishery business we now stand back and look at it in the round to decide where it fits on the spectrum of using land to generate income.

72. This seems to be a business which 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.

73. The business included both investment and non-investment elements as set out above. When we consider the business as a whole, the non-investment activities, while doubtless contributing to the clients' enjoyment of their fishing, are not of sufficient significance to tip the balance of the business overall from an investment business to a non-investment business. The rods paid fees for permission to come on the land and fish. They might have been attracted to Fulling Mill because of the high standard of the fishing environment and they might have valued and enjoyed Mrs Pearce's advice and hospitality. However, the business did not provide significant additional services. Had the business provided services such as tuition in fishing, ghillies to guide the rods, if it had sold or hired equipment or provided

catering or a bar the outcome might have been different (although we do not need to, and do not, make any decision on this). Nor was the fishery a composite business with an investment side and a trading side.

74. Having considered matters in the round we have concluded that the business carried on by Mrs Pearce at the time of her death was mainly a business of holding investments. Although there were non-investment elements, they are not sufficient to outweigh the investment elements. Accordingly, the business is not eligible for Inheritance Tax Business Relief.

DECISION

75. For the reasons set out above, we have concluded that the wild fishery business carried on by the deceased at the date of her death was mainly a business of holding investments. Accordingly, the business is not eligible for business relief under section 104 Inheritance Tax Act 1984.

76. We therefore dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

77. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this 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. 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.

MARILYN MCKEEVER
TRIBUNAL JUDGE

Release date: 12th September 2024