[2017] UKFTT 632 (TC)

TC06068

Appeal number: TC/2016/05196

TYPE OF TAX – Inheritance tax – business property relief. Land use – livery. Business "wholly or mainly" that of "holding investments". **To be read *sui generis* with "*dealing in securities, stocks or shares, land or buildings.*"**

FIRST-TIER TRIBUNAL
TAX CHAMBER

THE PERSONAL REPRESENTATIVES OF THE ESTATE OF MAUREEN W. VIGNE (DECEASED).
- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

TRIBUNAL: JUDGE GERAINT JONES Q. C.
MR. JOHN ADRAIN FCA.

Sitting in public at Taylor House, London on 14 July 2017.

Mr. Patrick Vigne (one of the personal representatives of the estate) for the Appellant.

Mr. Bracegirdle, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

Background Facts.

1. The late Mrs Maureen Vigne died on 29 May 2012. At that time she was the sole owner of approximately 30 acres of land which throughout this appeal has been referred to as Gravelly Way livery stables, Penn Bottom, Penn, Buckinghamshire. She did not reside in a residence on that land, but elsewhere.

2. When Inheritance Tax fell to be dealt with, the deceased's personal representatives claimed business property relief on the ground that the asset constituted 'relevant business property' as defined in section 105 of the Inheritance Tax Act 1984 ("the 1984 Act") and/or agricultural property relief on the ground that the asset constituted 'agricultural property' within section 116 of the 1984 Act.

3. On 16 December 2013 a firm of accountants, Butler and Company, submitted a form IHT400 to the respondents in respect of the estate. It showed :

Businesses …….. £308,990

Total estate in the UK ……. £894,710

Exemptions and reliefs …… £308,990

Aggregate chargeable transfer . £595,886.

4. On 15 February 2016 the respondents issued a determination under section 221 of the 1984 Act to the effect that neither of the above reliefs could be claimed. That, naturally, impacted upon the quantum of inheritance tax payable because it meant that the sum of £308,990 was not treated as exempt and the consequence was that the aggregate chargeable transfer increased to £904,876.

5. The estate has appealed those determinations. Thus it is for us to decide whether the estate qualifies for either of the reliefs referred to above.

The Applicable Law.

6. Section 5 of the 1984 Act sets out the statutory definition of what amounts to a person's "estate" upon death. In this appeal it is not disputed that the land and its value falls within the deceased's estate unless either of the exemptions and reliefs to which we have referred above can be properly claimed.

7. Section 105 of the 1984 Act provides, so far as material in the context of this case, as follows :

Relevant business property.

105 (1) Subject to the following provisions of this section and to sections 106, 108, . ., 112(3) and 113 below, in this Chapter "relevant business property" means, in relation to any transfer of value,—

(a) property consisting of a business or interest in a business;

(3) A business or interest in a business, or shares in or securities of a company, are not relevant business property if the business or, as the case may be, the business carried on by the company consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments.

8. So far as material sections 115 and 116 of the 1984 Act provide as follows

115 (2) I*n this Chapter "agricultural property" means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.*

116 (1) Where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property, the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage, but subject to the following provisions of this Chapter.

9. It is trite that these statutory provisions must be read in their statutory context and as a whole. Section 105 of the 1984 Act sets out a definition of "relevant business property". The particularly relevant provision in this appeal is section 105(1)(a). It has two essential components. The first is that there must be property, which might be either real or personal property. The other is that the property must be property used in or in conjunction with the operation of a business. We then have to concentrate on section 105(3) of the 1984 Act because its effect is to exclude from the definition of "relevant business property" the property of certain defined businesses. That statutory provision is not without difficulty. That is because if the parts of it relevant to this appeal are identified, we must concentrate upon *"A business or interest in a business …… are [is] not relevant business property if the business…… consists wholly or mainly of one or more of the following, that is to say …… making or holding investments".*

10. This appeal has proceeded on the basis that it is common ground that the deceased operated a business and that there is property that can properly be described as "*business property*", associated with and necessary for the carrying on of that business. The issue between the parties is whether the business, which we will consider in detail below, is a business which consists mainly of holding investments. The respondents' position is that if a livery business is being operated, which

necessitates land being available for it to be viable, that is nonetheless the holding of an investment and the entire business should be characterised as a business of holding investments. The appellant's position is that the deceased did not operate an investment business nor did her business consist of "*holding investments*".

11. We were referred to several authorities but our task is to apply the statutory language without any artificial gloss being placed upon it. Thus, we consider the first essential issue to be whether the deceased's business was a business which consisted wholly or mainly of holding investments. Put otherwise, was the deceased operating an investment business.

12. Each of the parties sought to gain support from dicta in the Court of Appeal in *I.R.C v George* [2004] STC 147, a case concerned with business property relief where a company owned a caravan site and carried on business activities such as charging for the siting of caravans, providing a club for caravan site residents and non-residents, storing caravans when not in use, providing administration services and running an insurance agency for associated insurance policies. The Court of Appeal decided that the holding of property, which it characterised as property being held as an investment, was only one component of the caravan park business and not the main component. It concluded that there was no reason why an active family business of the kind in question in that case should be excluded from business property relief merely because one necessary component of its profit-making activity was the use of land. Lord Justice Carnwath cited with approval from the decision of the Special Commissioner at first instance [2002] STC 358, paragraph 12, where he had observed that it was not in dispute that the company carried on a business and that the central question was whether it was a business consisting mainly of holding or making investments. The Special Commissioner had gone on to identify that there is a spectrum where, at one end, there will be the exploitation of land by granting tenancies or licences coupled with sufficient associated activity to make it a business which might be characterised as the business of granting tenancies or licences. He identified that at the other end of the spectrum there may be associated services which indicate a trade being operated and he identified the running of an hotel or a shop as obvious examples. The Special Commissioner then went on to say *"Here the concept of trade is irrelevant, and one is required to determine whether the business of the company consists mainly of making or holding investments or some other business. Although I was referred to a number of income tax cases, I do not find these helpful on this issue"*. We consider that approach, endorsed as it was by the Court of Appeal, as applicable in this appeal. Our task is not to identify whether a trade was being carried on, but, rather, whether the deceased's business consisted wholly or mainly of making or holding investments.

13. The respondents drew attention to paragraph 27 in the judgement of Lord Justice Carnwath in support of the proposition that property management is, or at least can be, part of a business which is involved in holding property as an investment. It is to be noted that the learned judge went on to say that property management which might be necessary in maintaining the investment property must be distinguished from the provision of additional services or facilities to occupants of the property, regardless of whether they were or were not contractually entitled to such services or facilities

under the lease or licence agreement. The judge also commented, in paragraph 28 of his judgement, that the characterisation of any services provided depends on the nature and purpose of the activity, not on the terms of the lease or licence. Lady Justice Hale agreed with the lead judgement but commented, importantly, that "*It is usually unfortunate to try to gloss clear statutory language, with additional judicial tests"*. In other words, each case will be fact sensitive and the facts, once agreed or found, are then applied to the statutory words or test.

14. We were also asked to have regard to the decision of Special Commissioner Nowlan in *Piercy v HMRC* [2008] STC 858. He pointed out that "*it has long been accepted that a building company (that generally, of course, buys land, builds on it and sells it off in a trading or dealing manner) is not for this purpose "a land dealing company"."*

15. We were also directed to *McCall v HMRC* [2009] STC 990, a decision of Special Commissioner Hellier which went to the Court of Appeal (Northern Ireland). That Court of Appeal endorsed what had been said by the Special Commissioner in *George* and added its endorsement to the previous endorsement of Lord Justice Carnwath and Lady Justice Hale. The decision made by the Special Commissioner in that case was that the letting of the relevant land for grazing did not have the necessary business activity component to allow it to be said that the land was held other than as an investment. Although the point does not appear to have been properly argued in that case, Mr. Justice Deeny observed at paragraph 3 of his judgement "*However, if one applies the maxim noscitur a sociis then one can see the possibility that Parliament intended a business more akin to one dealing in and holding securities, shares or properties in a portfolio to be excluded from this form of business relief rather than, as here, the management by widow of a single farm business, which might otherwise be inherited intact by a daughter or son paying inheritance tax on a farm which had development value because of its location may well lead to the breakup of the farm unit by the necessity to sell and to pay the tax. Taking a purposive approach to the provision might therefore yield a different outcome from a literal approach.*" He went on to say that he would wish to reserve his position if such a case arose. The same judge went on to observe that on the facts of the case then under appeal the landowner had not provided any services which, he said, "*on the authorities may very well have properly led to a different conclusion than that arrived at by the Special Commissioner here."*

16. Thus, with such guidance in mind we approach this matter by primarily having regard to the plain words of the statute, but being mindful that the outcome of this appeal is essentially fact sensitive because it is on the basis of the facts (agreed or found) that we have to apply the statutory language. In so doing we keep in mind that section 105 of the 1984 Act is essentially driving at businesses which can properly be characterised as investment businesses, that is, where there is little or no element of trading or the provision of services in consideration of monies received. We are in no doubt that the cited analysis of the Special Commissioner in *George* (paragraph 13 above) must be adopted as the guiding principle. We consider it implicit in that principle that the eventual outcome cannot be dictated by simply looking at the comparative value to be attributed to the occupation of land when compared to the

provision of services (if any) but must include such things as the subjective intention of the landowner, any manifestations on the part of the landowner as to whether the relevant land is being held purely as a long or medium term investment and what, if any, components of business activity existed (at the time of the deceased's death) before a decision is made as to whether, on the facts, the outcome falls one side or the other side of what, in many instances, might be a very fine dividing line.

17. We should point out that Mr. Bracegirdle sought to compartmentalise activities on or associated with the land so that they should be characterised either as falling within general maintenance of what he saw as land being held as part of an investment business or characterised as referable to the business of keeping horses at livery. We reject that approach because we are entirely satisfied that to compartmentalise different activities in that singular way is completely artificial. A task or service, such as repairing and/or maintaining fences serves as an example of a task or function with a duality of purpose. On the one hand, if horses are at livery it is necessary that they should not be able to escape onto neighbouring land or, quite possibly, the public highway. On the other hand, it might be said that maintaining fences in good repair is simply an element of maintaining the land. A similar approach might be taken to the arranging of insurance where the contracted policy may well provide an indemnity in respect of occupiers liability under the Occupiers Liability Act 1972 whilst, at the same time, providing an indemnity in respect of public liability in the event of livestock or horses escaping from the land and causing damage for which liability might be incurred.

18. It might be too crude an approach to say that an application of the statutory language requires one to look at, touch, feel and smell the activity being undertaken on the deceased's land before deciding on which side of the dividing line any case falls, but that sentiment encapsulates what is, essentially, a "fact and degree" approach in answering the ultimate essential question: was this a business of holding investments?

19. We agree with Mr. Justice Deeny (in *McCall*) that the whole of section 105(3) of the 1984 Act has to be read and considered because it informs its own statutory construction, in that "*making or holding investments"* must be considered *sui generis* with "*dealing in securities, stocks or shares, land or buildings ……".* The Parliamentary intention is to exclude from the concept of relevant business property, securities or land (and possibly certain chattels) where the underlying intention is to hold them as an investment rather than as a component of and integral to some other business activity. That is why we have identified above that the subjective intention of the property owner is at least capable of being one of the relevant considerations.

20. We have concluded that the answer to the question posed in paragraph 18 above, is "no". The remainder of this Decision sets out our findings of fact and reasoning for arriving at that conclusion.

21. The appeal was also put on the basis that agricultural relief should be available, the land being considered as agricultural property as defined in Section 115(2) IHT 1984. We have concluded that the land does not constitute agricultural property as so

defined and again this Decision sets out our findings of fact and reasoning for arriving at that conclusion.

The Facts.

22. This is an appeal where there was no or no significant factual dispute between the parties. HMRC did not adduce any witness evidence. For the appellant, Mr. Patrick Vigne gave evidence, as did his sister, Juliette Vigne. We say at the outset that we were entirely satisfied that each witness was honest and reliable, and each was a witness upon whose testimony we can properly proceed. Instead of us setting out a list of findings of fact, we make it clear that where we summarise the evidence given by those witnesses or either of them, we are summarising factual evidence which we accept as the truth.

23. We have so far said very little about the use to which the deceased's 30 acres (or thereabouts) was put. Mr.Vigne's evidence was that after his late father's death in 2005 his now deceased mother took over the running of what, at that time, was a DIY livery business. He explained that in the equestrian world there are commonly four levels of livery in this country, being:

(a) Grass livery – where a horse has a right to reside in a field, but is not provided with a stable.

(b) DIY livery- where the horse, in addition to having the right to reside in a field, is additionally provided with a stable with day to day care wholly provided by the horse's owner.

(c) Part livery - where day-to-day care for the horse is shared between the livery operator and the horse owner.

(d) Full livery - where the day-to-day care of the horse and all its associated needs are supplied by the livery operator.

24. Mr. Vigne explained that after his late father's death a decision was taken to let the entire land to Mr. John Lye. He remained in occupation until sometime in 2008 when he ceased to be the tenant or licensee of the land, but agreed to become the Yard Manager for the business which the deceased then decided to operate. It was implicit in what Mr. Vigne said in evidence that the operation of a livery business by his father had come to an end sometime in 2005 when Mr. Lye took over the land and that once he handed it back (to use the expression used in evidence) the deceased began to run a livery business on and from the land.

25. Mr. Vigne's evidence was that from 2008 the business operated on or from the land, whilst coming under the general heading of "a livery", did not fit neatly into any of the four categories mentioned in paragraph 23 above. That, he said, was because when the livery was relaunched in 2008 it was decided that in a bid to give the business a competitive advantage, services over and above those which would usually be included in grass livery and/or DIY livery would be included in the package offered by the business. The evidence was that the package was to and did include :

(1) The provision of worming products, including administering them where and when necessary (if an owner was unable and/or unwilling so to do), on a quarterly basis.

(2) Providing the horses with hay feed during the winter months when the grass might not provide a sufficient food source. A hay crop was grown on part of the land referred to as the hayfield.

(3) Removing horse manure from the fields in which the horses spent most of their time.

(4) Undertaking a daily check of the general health of each horse.

26. It is necessary to understand the relevance or significance of each of the foregoing. Mr. Vigne explained that an efficient and consistent worming programme was essential for two reasons. The first, rather obviously, relates to the general well-being and health of each individual horse. The second is that it helps to protect the goodwill of the business because if a horse develops certain kinds of illness because of a lack of regular worming, there is a significant risk of other horses being adversely affected and becoming sick. That would reflect badly upon the livery operator. The evidence is that the business sourced the appropriate worming products which, we were told, would vary from time to time (upon professional advice), but each horse owner would usually administer the worming product although the livery staff would do so if a particular owner failed to do so for any reason whatsoever (including absence on holiday or an inability to administer the appropriate medication).

27. The provision of hay during the winter probably speaks for itself. Like humans, horses need an adequate diet. When grass does not grow in the winter months the food supply has to be supplemented. Ordinarily, in a grass livery or DIY livery situation that would be the responsibility of each individual horse owner; not that of the livery operator. There is an obvious attraction to each horse owner in having the livery staff provide this additional feed as it obviates the need for regular attendance upon the horse, if it is known that its dietary requirements are being met as a result of somebody else providing the appropriate food.

28. The third service was said to be the removal of manure from the fields. In answer to a question from me, Mr. Vigne explained that usually each individual horse owner would be responsible for clearing away the manure deposited by his/her horse in his/her section of the livery field. Perhaps naïvely, I asked how each horse owner would know which pile of manure had been deposited by his/her horse. It was then explained that the horses would not usually mix communally in a single field but would be in a subdivided field so that each horse would have its designated area. The subdivision might be as rudimentary as the provision of a couple of strands of wire or tape but would be sufficient to keep each horse within its designated area. In that way each horse owner would know which part of the field had to be cleared of manure by him/her. Mr. Vigne gave evidence that the removal of manure is, in some respects, contrary to the interests of an investment land owner because the manure, being organic material, would serve to fertilise the land and contribute to its maintenance or improvement. He explained that the reason for removing the manure was that if left in significant quantities, it has the potential to impact adversely upon animal health.

Thus, he explained, the livery owned a manure removal machine (much like a very large vacuum cleaner) which hoovered up the manure before it was deposited onto a manure heap. The livery then paid a local farmer to take the manure away.

29. Mr. Vigne explained that the livery also undertook a daily health check of each horse. He explained that this would, initially, be a visual inspection of the horses at large, where, to the trained eye, any obvious problems such as lameness, cuts or abrasions or bloating should be readily apparent. If, upon such visual inspection there was cause for concern in respect of any individual horse, then a closer hands on inspection would be undertaken. The evidence was that if the condition of any given horse required veterinary attention the livery would contact the appropriate owner and seek his/her permission to call the vet (because that owner would be responsible for the vet's fees), save in the case of an emergency where the livery contract provided for the livery itself to call for a vet to attend (again with the horse owner being responsible for the vet's fees).

30. So far as employment is concerned, Mr. Vigne's evidence is that Mr. Lye, who was a self-employed Yard Manager, did not remain for long and so he, Mr. Vigne acted as Yard Manager himself prior to Jo being taken on as the Yard Manager in April 2010. She left in May 2011 and handed over to Barbara, who left in December 2011 and the job then went to Zoe. Each of those Yard Managers was self-employed and part-time. That each was remunerated is reflected in the business accounts. The evidence is that they worked about 20 hours per week.

31. A Business Plan dated 20 August 2009 records that the business intended to expand so as to provide part livery (in the sense described above) as well as providing DIY livery for those who wished to care for their own horses. It records that although there were only 11 stables at that time, planning permission existed for further stables and storage rooms to be erected.

32. At about the same time, in 2009, the business applied for planning permission to erect a temporary dwelling for its yard manager. The Chiltern District Council refused that planning permission on 27 October 2009. In our judgement, the significance of the application, regardless of it being unsuccessful, is that it indicates the expansion of the business and the perceived need for the Yard Manager to be resident on site. That is inconsistent with a business operating a grass or purely DIY livery arrangement. The provision of on-site security is not part and parcel of grass or DIY livery and the provision of accommodation for an on-site manager cannot be explained on that basis.

33. We were referred to the accounting summary for the Gravelly Way business for the period 1 June 2010 – 31 May 2012. It includes reference to various contractors to whom payments were made, totalling £17,400. Mr. Vigne explained that labour was usually posted to the appropriate category of work with, for example, the removal of manure being posted under "property maintenance"..

34. For the year ended 31 March 2011 we note that the turnover was shown as £20,921. The gross profit was extremely modest at just £63 after expenses, including horse care, feed and bedding, utilities, property maintenance, insurance, professional

and accountancy fees and depreciation were taken into account. The lack of profitability for this year is in large part explained by the one off cost, in excess of £3000, referable to legal and planning costs in respect of the failed planning application to which we have referred above. The expenditure that we have identified was not reflected in the expenditure up until either 2005, or 2008, from which time, as we find, the business developed beyond being a purely DIY livery into a livery providing the services to which we have referred, albeit falling short of part livery.

35. During cross-examination, Mr. Vigne also explained that the livery ensures that strip grazing takes place by positioning fences or subdivisions in the fields at appropriate places, with the intention of preventing any one horse from over grazing. Apparently, horses, just like humans, will often over eat if the opportunity arises.

36. The foregoing is a summary of the evidence given by Mr. Vigne, in chief. When cross examined he described worming as a necessary activity for a reputable livery business with particular reference to maintaining the goodwill of the business (as discussed above). He explained that the Yard Manager would have (or be expected to have) a BHS stage 4 (or similar) qualification in equine management, which, we are satisfied, would not be necessary for grass or DIY livery provision.

37. Mr. Vigne was asked questions about the business' records because part of his case was that several horse owners attended the premises irregularly or, at least, insufficiently regularly to give his/her horse the degree of care and attention normally required by a horse. Mr. Vigne acknowledged that the horses at Gravelly Way were not thoroughbred or delicate horses, but, rather, more robust beasts who would not always require night time stabling, provided that, in very cold weather, blankets (something akin to horse coats) were available to keep out the harshness of very low temperatures.

38. The evidence given by Mr. Vigne was supported by and consistent with that given by his sister, Mrs Juliette Vigne. She was not cross examined.

The Submissions

39. Each side submitted helpful Skeleton Arguments. The thrust of the argument for the respondents is that the factual situation on the ground amounts to no more than a land owner letting or licensing land for the use of others, and so must be characterised as an investment business rather than a non-investment business. It was argued that having regard to the spectrum referred to by Lord Justice Carnwath, there was insufficient activity of a business nature and/or insufficient expenditure referable to the operation of a livery business to indicate that a trade or non-investment business is taking place.

40. In support of this submission, the respondents argued that the services provided by the livery, over and above those which would be provided on a grass only or a DIY livery contract, were minor and of little relevance because the fees charged by the business were within the broad range of DIY livery fees charged by other businesses in the area. We do not consider that to be relevant to any significant degree. Each

business owner will price its product or service according to market conditions and other variable factors such as the extent of its overheads. The fact that one livery might charge a fee broadly in line with the fee charged by a different livery is indicative of the livery that provides additional services placing itself at a competitive advantage rather than indicating that those services were of negligible value and so should be left largely out of account.

41. The respondents further sought to divide the 20 hours incurred by the yard manager on a per horse per day basis and then to argue that because mathematically that came to about 10 minutes per horse per day that was indicative of there being very few services being provided. We do not consider that analysis to be realistic. For example, the collection of manure using the vacuum machine to which we have referred, or the distribution of food in winter, would not be undertaken individually for each horse, but would be undertaken as a collective activity on a periodic basis. The visual inspection of the horses would take place on a group basis and individual time would only be devoted if any individual horse was perceived to require a hands on inspection or further individual attention.

42. The appellant's accounting practice of including labour costs within the appropriate category of work, such as the removal of manure being posted under 'propery maintenance', allowed the respondents to assert that it should be so characterised and should not be seen as having any duality of purpose. We reject that notion. Indeed, we are satisfied, based upon the evidence given by Mr. Vigne, that the predominant reason for removing the horse manure was to secure the health of the horses and was undertaken as a service to the several horse owners who, otherwise, would have been obligated to remove it themselves

43. The respondents drew attention to the profitability of the business. While the business accounts do reflect an extremely modest profit, the accounts do not bear the hallmark of the accounts of a purely investment business. The want of profitability might be relevant in a case where the respondents are arguing that the want of profitability is indicative of a person maintaining the pretence that a business (other than a purely investment business) is being operated, but we are entirely satisfied that there was no pretence on the part of the appellant and/or the witnesses referred to above. The best that the respondents could say about the accounts was that they include, under the heading "Property Maintenance", items such as the cutting of hedges and trees, fencing and repairs and pasture maintenance. As explained above, we consider each of those headings to have a duality of purpose, with none of them being referable entirely to the running of the livery business or to holding the land as an investment. The same applies to the other items in that list. So far as the provision of water and electricity is concerned that falls fairly decisively on the livery business side of the line given that such utilities would not be necessary if land is being held simply as an investment. The same is true in respect of the business rates, which would not be payable on land held as an investment upon which no business/trading activity was taking place.

44. During their Closing Submissions the respondents placed great weight upon the comments of Mr. Justice Henderson in *HMR.C v Pawson* [2013] UKUT 50. We were

referred to paragraph 45 in the Decision where the judge referred to the Court of Appeal decision in George and recognised that additional services and facilities will not be regarded as part of the maintenance of a property, and that the character of services is unaffected by the fact that no separate charges made for them. He then went on to say*:"The critical question, however, is whether these services were of such a nature and extent that they prevented the business from being mainly one of holding Fairhaven as an investment."* With respect to the learned judge, that is to transpose the statutory test. The essential question requires us to begin by asking the simple question: was the deceased carrying on a business, wholly or mainly, of holding investments. It is not correct to start with the preconceived idea that in any given situation, the business is wholly or mainly one of holding investments and then to ask whether there are factors that result in that preliminary view being altered. The proper starting point is to make no assumption one way or the other, but to establish the facts and then to determine whether, taken together, they indicate that the business is wholly or mainly one of holding investments.

45. We are left in no doubt that the Gravelly Way business was a genuine livery business which, from 2008 onwards, was developed so as to be a recognisable livery business offering significantly more than the mere right to occupy a particular parcel of land. We are satisfied that any objective observer who had visited the site 2008 – 2012 would have concluded that a business was being run from and on the land which did provide services to those who kept their horses on the land and that no properly informed observer could or would have said that the deceased was in the business of "*holding investments"*. That, in our judgement, would have been a wholly artificial analysis. We agree with the *obiter dicta* of Mr. Justice Deeny to the effect that if the provision of services is inconsistent or incompatible with the operation of a business of "holding investments", then it is highly likely that the proper analysis is that there is no business of "holding investments" which, in our judgment, must be *sui generis* with the rather obvious investment businesses earlier identified in section 105(3) of the 1984 Act.

46. That leaves us with a consideration of the additional statutory word "*mainly*". The first observation is that this does not require a consideration of whether any identified services or business activity contribute more to the income generated and/or profitability than the ability of a third party to occupy any part of the land. The central issue is whether the "business" is mainly one of holding investments. We do not dissent from the view that looking at the proportion of income derived from the use and occupation of land, as opposed to the provision of services, is irrelevant any more than it is irrelevant to consider the reality of what takes place on and in association with the land. In our judgement that reality is the provision of enhanced livery, albeit stopping short of part livery (as defined by Mr. Vigne), but nonetheless providing a level of valuable services to the various horse owners, which prevents it being properly asserted that the business was mainly one of holding investments.

47. Thus, the appellant's appeal succeeds under section 105 of the 1984 Act.

48. The appeal was also put on the basis that agricultural property relief should be available. In that regard, the appeal fails. It fails because the evidence given by Mr.

Vigne was that although, from time to time, a hay crop is taken from the "hayfield" that had not happened in the two years prior to the deceased's death. Again, the task of the Tribunal is to look at the matter realistically, and ask whether an objective observer, on the basis of the factual situation as we have found it to be, would properly consider agricultural activities to be carried on at or on the land. It is our judgement that if that question is asked, it must be answered against the appellant. Equine activities are not usually characterised as agricultural. That is the reason why Parliament enacted section 115(4) of the 1984 Act so as to provide that the breeding and rearing of horses on a stud farm and the grazing of horses in connection with those activities does, for the purpose of the statute, amount to agriculture.

49. 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.

GERAINT JONES Q.C
TRIBUNAL JUDGE

RELEASE DATE: 15 AUGUST 2017