

The decision in *Russell* follows existing case law on what constitutes a sale of part of a business for the purposes of entrepreneurs' relief. But a purposive interpretation of the law might have given a fairer result.

One of the features of entrepreneurs' relief is that it can apply to a capital gain made on the disposal of the whole or part of the business. This sounds straightforward but it is more difficult than it looks to identify a part of a business for this purpose. This was clearly demonstrated in the recent case of *Russell v HMRC* TC02299 ([2012] UKFTT 623) where Mr Russell and his brothers carried on a farming business. They disposed of approximately one third of the farmland making a large capital gain on which they claimed entrepreneurs' relief.

The question was whether they had merely disposed of an asset or whether they had disposed of part of their farm business? The omens were not good. You only have to look at the case of *McGregor v Adcock* [1977] STC 206 where the High Court said that there was a clear distinction between the business and the assets used in the business and that prima facie the mere sale of farmland is not a disposal of part of the farm business. In *Atkinson v Dancer* 61 TC 598 the court came to the same conclusion, notwithstanding that the sale would reduce the activities of the farmer and reduce his profits as well. Mr Russell's circumstances were very simple. He and his brothers farmed 22 hectares of barley. That was the business – there was no factory or anything like that. It was just a field. The legislation refers to the sale of part of a business – so what did Mr Russell have to do to sell part of his business? The only thing he could do is sell part of his land. If he had sold half (or a third) of his field to me and I continued to tend the crops and generally do what farmers do in respect of a field of barley, I would surely have acquired a business. I would not have acquired the whole field, so I must have acquired part of his business. One could therefore conclude that he must have disposed of part of his business.

So why did Mr Russell lose? He lost for the very good reason that all the authorities were against him. However, I wonder whether the conclusions reached in those authorities (which were expressly described as only 'prima facie' conclusions) were entirely appropriate to Mr Russell's circumstances and whether another approach could have been adopted.

It is interesting to consider the position had the barley been harvested and the field was just bare land waiting to be sown with the next crop. A sale of part of the land at that time could only be the sale of a piece of bare land. That does not sound good (prima facie) but Mr Russell would not have ceased to be a farmer when his barley was harvested and became a farmer again when the new crop was sown. He was a farmer and this was the natural cycle of growing things.

It could be suggested that the authorities were applied rather too literally to Mr Russell's circumstances with the result that it was impossible for him to sell part of his business. That seems to be a harsh interpretation, depriving anybody like Mr Russell of any possibility of this valuable relief. There is another interpretation which could have been adopted, one might even call it a purposive interpretation, to give sensible effect to the legislation. That might have been reasonable because, after all, purposive interpretations should not only apply against the taxpayer.

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