

A painting can be regarded as plant if it is sufficiently permanent and is used for the promotion of the trade.

The recent case in the Upper Tribunal of *The Executors of Lord Howard of Henderskelfe deceased v HMRC* [2013] UKUT 0129 was a surprise until you got into it.

The executors were claiming that a painting by Sir Joshua Reynolds—which had been sold for over £9m—was a wasting asset and, therefore, exempt from capital gains tax. A wasting asset is one which has a predictable life of less than 50 years and, as this painting had been painted before 1776, one might imagine that the executors had an uphill struggle.

However, the argument was a little more subtle. The executors claimed that the painting, which was hanging in the public areas of Castle Howard, represented a genuine attraction to visitors, and should be regarded as plant and machinery. How did this help? Because s 44 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992), provides that plant and machinery is regarded as having a predictable life of less than 50 years, irrespective of its actual characteristics and is, therefore, exempt as a wasting asset. Nice one.

So, this case was nothing to do with capital gains tax (CGT) or wasting assets—it was another case about plant and machinery and all those famous cases regarding the meaning of plant and machinery were analysed in depth. The upshot was that the Upper Tribunal felt that the painting was used for the promotion of the trade carried on at Castle Howard and was sufficiently permanent (even though it could be taken away at any moment) to be regarded as plant. Accordingly, it was properly regarded as plant and machinery; it was, therefore, a wasting asset and qualified for exemption from CGT.

This sounds good, but, one might ask, why was the exemption in s 44 not overridden by s 45, which provides that the exemption does not apply when the relevant asset is used for the purposes of a trade and was eligible for capital allowances?

The answer is that the trade (of opening the Castle to the public) was carried on by a company, and the painting was owned by the Duke personally. It was accepted by all concerned that the exemption in s 44(a) (c) does not contain any requirement that the person owning the plant had carried on the trade in which the object was used. Even nicer.

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