

The Upper Tribunal has found in favour of HMRC in the case of *Mrs N Pawson Deceased v HMRC* FTC/36/2012 regarding a claim for business property relief on assets used for a holiday letting business. The First Tier Tribunal had regarded the activity as a business qualifying for inheritance tax business property relief, but the Upper Tribunal has concluded that the property was an investment and not eligible for the relief.

Such arguments are, of course, always very fact specific. A property was operated as a holiday letting business and various services were provided. The essence of the decision was that the services were consistent with the holding of an investment and were not enough to prevent the business being mainly one of property investment. As the First Tier Tribunal had determined all the relevant facts, it was quite something for the Upper Tribunal to overturn its decision. However, Henderson J decided that the First Tier Tribunal judges were completely wrong. He said the true and only reasonable conclusion from the facts contradicted their determination. It will be interesting to see whether this goes further. It is always possible that the Court of Appeal will decide that the First Tier Tribunal came to a reasonable view on the facts (albeit not the only view) and that its decision should stand.

An interesting element which emerged from this case was the introduction of the "intelligent businessman test". We are familiar with the celebrated man on the Clapham omnibus and also Foster J's refinement ("the moron in a hurry") but the First Tier Tribunal was suggesting that, for inheritance tax purposes, it is now necessary to consider the views of a hypothetical intelligent businessman in determining the nature of a business.

It would be helpful to be told the characteristics of such a person and how he would address his task. When considering the valuation of unquoted shares for fiscal purposes we know that we have two hypothetical parties: a willing seller and a willing buyer; the purchaser is a prudent man of business and there are many other assumptions upon which the valuation must be made. I am not so sure about the intelligent businessman. Why should the man on the Clapham omnibus not be able to decide whether this activity is an investment or a business? The introduction of an intelligent businessman would seem to be merely a substitute for the judge's own view—but I do not see what is wrong with that anyway.

The Upper Tribunal did not seem to think much of this test and it may be we will hear no more of it.

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*This article was first published in New Law Journal
(<http://www.newlawjournal.co.uk>),
NLJ 24 May 2013, p18*