



[2021] UKFTT 0453 (TC)

TC 08337A/V

Entrepreneurs relief – disposal of partnership property – extended transfer of partnership to new partners - whether a material disposal of business assets– yes - whether relief available - yes

**Appeal number:
TC/2020/01154**

FIRST-TIER TRIBUNAL

TAX CHAMBER

BETWEEN

CHRISTOPHER THOMSON

Appellant

-and-

THE COMMISSIONERS FOR

HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

TRIBUNAL: JUDGE IAN HYDE

REBECCA NEWNS

The hearing took place on 13 September 2021. With the consent of the parties, the hearing was a video hearing, with all parties attending remotely, using the Tribunal video platform.

We were referred to an electronic hearing bundle and authority bundle.

The appellant appeared in person

Daniel Hickey-Baird, Solicitor’s Office and Legal Services, for the Respondents

DECISION

INTRODUCTION

1. This appeal concerns the availability of entrepreneurs' relief on the disposal of office premises held by a partnership in which the appellant was a partner.
2. All references in this decision to sections are to the Taxation of Chargeable Gains Act 1992 unless otherwise specified.

THE FACTS

3. The appellant appeared in person and gave oral witness evidence. We found both the appellant to be honest and truthful. HMRC did not challenge any of his evidence and we accept it entirely.
4. On that basis we find the facts in this appeal as set out below.

Investigation and appeal

5. On 31 October 2017 Voisey & Co, an accountancy partnership in which the appellant was a partner, disposed of office premises at 6-8 Winmarleigh Street Warrington ("the Premises").
6. In his self-assessment tax return for 2017-18 the appellant claimed entrepreneurs' relief on gains of £121,475 relating to the sale.
7. On 19 September 2019, following investigations, HMRC issued a closure notice under section 28A Taxes Management Act 1970 ("TMA 1970") in respect of the 2017-18 year rejecting the appellant's claim for entrepreneurs' relief.
8. Following a review of the matter letter issued on 17 October 2019 and an internal review by HMRC issued on 6 February 2020 upholding the closure notice the appellant appealed to the Tribunal on 3 March 2020.

The appellant's partnership

9. The appellant is a chartered accountant who has since the 1970s worked at Voisey & Co, an established firm of accountants based in Warrington.
10. In 1970 the appellant became a partner at Voisey & Co, joining the original sole partner. At that time the partnership rented its offices at 8 Winmarleigh Street.
11. In 1974 the partnership bought 8 Winmarleigh Street which it continued to occupy.
12. In 1989 or 1990 the original partner retired and the practice bought out his share. The effect was that through the partnership the appellant became entitled to 99.9% of 8 Winmarleigh Street with 0.1% acquired by a new partner, Philip Urmston.
13. In 1995 the partnership bought the adjoining premises, 6 Winmarleigh Street and expanded its offices into the new premises.
14. In 1996 the appellant started to consider retirement and succession. Of the accountants working in the practice the appellant identified two who were suitable to take over from him, Mr Urmston and Lee Warburton, who were at the time 31 and 29 respectively ("the New Partners"). In planning how to effect the transition the appellant was aware that the New Partners were young and that many of the firm's clients were his personal clients for whom he had worked for a number of years. He also held a number of executorships, trusteeships and directorships. In 1991 there were 65 such appointments.

15. Whilst nothing was reduced to writing – the appellant expressed a distrust of partnership agreements – in order to effect the transition the appellant and the New Partners agreed to do the following:

- (1) The New Partners would each pay the appellant £20,000 a year for the then £434,000 of work in progress until the appellant was left with a token 1%.
- (2) The appellant would transfer clients over to the New Partners, starting with compliance and audit matters but then the appellant's more difficult longstanding clients.
- (3) As matters were transferred the new work was credited to the New Partners and so gradually the appellant's share of profits reduced.
- (4) The appellant gradually reduced his hours to match.

16. The reduction in profit entitlement was not linear as it depended on transfers of clients taking place and the fees derived from them but, from being entitled in 1996 to 99.9% of profits, the appellant was entitled to 20% in 2017-18, with an 8% reduction during 2017-18. By this time the appellant had disposed of 99% of goodwill and old work in progress. This transfer of clients and profits did not affect the ownership of the Premises and the appellant retained his 99% interest through the partnership.

17. The transfer did not happen as quickly as the appellant had envisaged, for several reasons:

- (1) Two key clients for which the appellant was an executor died in 2005 and 2006. Both estates were very difficult. One where the deceased was a solicitor resulted in legal claims and the second was for a literary figure with estates in Wiltshire and Scotland. The appellant needed to carry out these roles under the protection of the partnership.
- (2) There was also in 2012 threatened litigation in respect of trustee position, referrals to the police and regulators and even, as an indicator of the seriousness of the issues, death threats. Again the appellant needed to carry out these roles through the partnership.
- (3) The New Partners understandably did not want to take on these trust issues so the appellant could not hand them over.
- (4) In 2021 the appellant finally handed over his last personal client.

18. There was no specific agreement in 1996 about the Premises but it was understood there would need to be some arrangement. From 2010 there were discussions between the three partners as to what to do with their offices. As the centre of Warrington deteriorated there were discussions about relocating but in 2015 the premises were refurbished. The New Partners did not want to buy the Premises and the appellant agreed renting would be sensible.

19. The Premises became attractive to the appellant's pension scheme as a source of income and the Premises were therefore sold to the pension scheme in October 2017, taking a three year lease at £32,000 a year rent with options to renew.

ENTREPRENEURS' RELIEF AND RELEVANT LEGISLATION

20. Entrepreneurs' relief is set out in Chapter 3 of Part 5 TCGA and provides for a lower rate of capital gains tax where the conditions for relief are satisfied.

21. For the purposes of this appeal it is accepted by HMRC that the appellant satisfies the conditions for entrepreneurs' relief except that HMRC takes the view that the appellant has not made a disposal of business assets within section 169I(1)(a).

22. The relevant provisions in section 169I as follows:

“Section 169I – Material disposal of business assets

169I(1) There is a material disposal of business assets where–

(a) an individual makes a disposal of business assets (see subsection (2)),
and

(b) the disposal of business assets is a material disposal (see subsections (3) to (7)).

169I(2) For the purposes of this Chapter a disposal of business assets is–

(a) a disposal of the whole or part of a business,

(b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or

(c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.

169I(3)...

169I(8) For the purposes of this section–

(a) an individual who disposes of (or of interests in) assets used for the purposes of a business carried on by the individual on entering into a partnership which is to carry on the business is to be treated as disposing of a part of the business,

(b) the disposal by an individual of the whole or part of the individual's interest in the assets of a partnership is to be treated as a disposal by the individual of the whole or part of the business carried on by the partnership,
and

(c) at any time when a business is carried on by a partnership, the business is to be treated as owned by each individual who is at that time a member of the partnership.”

23. The issue in the appeal is whether the test in section 169I(1)(a) is satisfied, it being common ground that if there is a disposal of business assets it would be a material disposal within section 169I(1)(b). The amount of the gains is not in dispute.

24. It is also agreed between the parties that the conditions for relief under Section 169K for associated disposal are not satisfied or in issue.

25. It is more convenient to summarise HMRC's arguments first.

HMRC'S ARGUMENTS

26. Mr Hickey-Baird for HMRC summarised the statutory test in section 169I(1)(a) and (2)(a) as being satisfied where “an individual makes a disposal of...the whole or part of a business...”. Section 169I(8) did not change that requirement for partnerships but clarified the position.

27. Here there had been no disposal of business assets because the appellant had only sold the Premises, that is, only one of the partnership assets. The claim for entrepreneurs' relief could only be assessed against the claim that had been made and that related only to the Premises.

28. It may be that separate disposals in different tax years could be taken to be the disposal of the whole or part of a business but evidence was required to treat these disposals together as part of the same transaction.

29. In the current circumstances the process has taken some 22 years from 1996 and the facts do not justify treating the process as part of the same transaction.

THE APPELLANT'S ARGUMENTS

30. The appellant argued that section 169I(1)(a) was satisfied because he, through the partnership, had sold the Premises as part of his retirement.

31. Specifically the test in section 169(8)(b) was met:

“(b) the disposal by an individual of the whole or part of the individual’s interest in the assets of a partnership is to be treated as a disposal by the individual of the whole or part of the business carried on by the partnership,..”

32. All the assets previously held by the appellant in the partnership had been disposed of. The retirement process, which started in 1996, took longer than anticipated but the delay was for good commercial reasons, enabling the appellant to pass on a thriving practice to the New Partners. Despite the delay the sale of the Premises was part of the wider arrangements.

33. It was artificial to look just at the partnership assets treated as assets for capital gains tax purposes as that did not include the other assets transferred to the New Partners. Even in the tax year 2017-18 the appellant reduced his share of the partnership.

DECISION

34. The point in this appeal is a very short one.

35. In our view section 169I(1)(a) as adapted by section 169(8) for partnerships, does not have any hard delineations limiting its application. Whether it applies depends upon a realistic view of the facts and artificial limits should not be read into the legislation that are not there.

36. Specifically, we do not accept HMRC’s argument that whether section 169I(1)(a) applies depends upon looking solely at the capital gains assets being disposed. Further, it may well be that section 169I(1)(a) applies to the disposal of business or partnership assets that are disposed of in different tax years. Again this must be determined on the facts.

37. However, in our view on a proper construction of the legislation a disposal of a single asset that is held by a business or partnership without the disposal of the other assets would not satisfy section 169I(1)(a) or section 169(8).

38. There is implicit support for this point in the decision of this Tribunal in *Gilbert (t/a United Foods v Revenue & Customs* [2011] UKFTT 705 as cited by HMRC which concerned whether a sale of assets constituted a part of the business.

39. More relevantly, in *Dilip Amin v Commissioners for HMRC* [2016] UKFTT 5151 another decision of this Tribunal again cited by HMRC, the Tribunal decided that the sale by an accountant of part of the equity in a property occupied by the accountancy practice to his pension scheme did not satisfy section 169I. There was at the same time a disposal of the firm’s audit practice but the two events were unconnected:

“37. The Tribunal decided that it agreed with HMRC’s interpretation of Entrepreneur’s Relief. While the Tribunal accepts that Mr Dilip Amin did dispose of his audit practice to Mr N S Amin, the legislation does not allow Mr Amin to claim relief for the partial disposal of his premises as a result of the disposal of his audit practice.

38. If Mr Amin had sold distinct office space in the premises such as the second floor on the basis that he no longer needed this office space as a result of no longer carrying out audit work he might have been entitled to the relief; but we agree with HMRC that the sale of the premises and of the goodwill have to be seen as wholly unconnected transactions.”

40. We accept the appellant’s evidence as to the history of his role in Voisey & Co and his relationship with the New Partners. HMRC did not challenge any aspect of that evidence. We therefore accept and find that from 1996 the appellant was trying to transfer ownership of the practice to the New Partners but that this was hampered by his longstanding relationship with key clients and the difficult of new matters that arose.

41. In our view the disposal by the appellant of the premises was part and parcel of a wider disposal of all of the appellant’s share in the assets of the partnership which the appellant was still effecting in 2017-18 at the time of the disposal of the Premises. The disposal therefore satisfies Section 169I(1)(a). Unlike on the facts of *Dilip Amin*, it was not the disposal of a single asset but part of a wider and continuing arrangement to enable the appellant to exit Voisey & Co, albeit one that was not written down or agreed in all its terms by the three partners.

42. We are aware that the period of time over which these events took place is extreme. We have decided this appeal on its own perhaps peculiar facts in which it is clear the appellant was trying to dispose of assets of the partnership albeit over a very extended time period and was still doing so when the relevant disposal took place.

43. We therefore allow this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

44. 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.

**IAN HYDE
TRIBUNAL JUDGE**

Release date: 06 DECEMBER 2021