

Taper Trouble
September 4, 2008

My client is an individual who owned some industrial units which she acquired prior to April 1998. Each industrial unit was let to an unquoted company, unconnected to her, which traded from the unit.

On disposal of the units in the year ended 5 April 2008, taper relief was claimed at the non-business rate for the period 6 April 1998 to 5 April 2000 and at the business rate for the period after 5 April 2000.

HMRC disputed the claim for the latter period, saying that 'assets used as lettings were not considered to be business assets until 6 April 2004', referring me to the *Capital Gains Manual* at CG17937. I checked CG17948 and the then wording of TCGA 1992, Sch A1 paras 5 and 6 and felt this appeared to say that business taper did apply from 6 April 2000 and wrote back accordingly.

HMRC's response was that my client did not have 'any link with the company' and that, as the company was not her company, CG17948 did not apply. Could this be the significance of the phrase 'by reference to an individual' in para 6(1)?

It is not clear what links the landlord is supposed to have to enable this paragraph to apply, so could respondents please explain the point of this phrase?

I note from Appendix 1 to *Tolley's Tax Digest — A Practical Guide to Taper Relief* (published in 2002) that the fourth line of the table implies that the units are business assets.

Are the units business assets for taper relief from 6 April 2000 and, if so, is there anything I can say to convince HMRC?

Query 17,265 — Tapir.

Reply by Stephen Parnham

TCGA 1992, Sch A1 para 5(2)(a) establishes that an asset is a business asset for taper relief purposes where it is used in a trade carried on by that individual's qualifying company. FA 2000, s 67 substantially relaxed the definition of qualifying company from 6 April 2000 and one can see from para 6(1)(a) and (b) that an unlisted trading company is a qualifying company for a landlord letting property to such a company. Once it has been established that a company is trading, only one of three conditions needs to be satisfied for the company to be a qualifying one:

- that the company is unquoted; or
- the individual is an officer or employee; or

- the individual could exercise at least 5% of the voting rights.

Where the company is quoted, the latter two tests may prove invaluable, but the unquoted trading company test is a standalone test and where it applies there is no necessity for the individual to have any other interest in or connection with the company other than the letting activity.

As Tapir suggests, this is echoed in *Tax Digest Issue 215* at paragraph 5.2 which says that 'it is worth noting that TCGA 1992, Sch A1 para 5(2) will have effect so that any building owned by an individual and let to an unlisted company which is either a trading company or the holding company of a trading group will be regarded as a business asset for taper relief purposes. There is no requirement for an owner of a building to hold shares in the unlisted company ...'

The Inspector appears to have arrived at his conclusion by inadvertently concentrating on the quoted rather than unquoted company tests. Such misinterpretation is not without precedent, although in this case I have some sympathy with the Inspector who I feel has been let down by the manual's layout. While the contents accurately reflect the legislation, the use of bullet points and hyphens do not lend themselves to providing absolute clarity.

How to convince the Inspector? It is suggested that Tapir quotes paras 5(2)(a) and 6(1)(a) and (b) as above and in addition directs the Inspector's attention to the example in the *Capital Gains Manual* at CG17936 which very nicely illustrates the changes introduced by FA 2000, s 67. The example is entirely consistent with the legislation and, I would argue, the manual and yet is at odds with the Inspector's conclusion. If the Inspector remains unable to reconsider the position, Tapir should request an internal review before taking the matter further.