Case Note
HMRC v Hanson
Upper Tribunal Tax and Chancery Chamber
[2013] UKUT 0224 (TCC)

The Upper Tribunal has confirmed the Decision of the First-tier Tribunal in the dispute between the Hanson Family and HMRC over the availability of Agricultural Relief ("APR") on The Old Bakehouse, Great Horwood, Buckinghamshire. The issues were described in a case note published in *Private Client Business* issue 3, 2012. In brief, two arguments put forward by the taxpayer failed but the First-tier Tribunal did allow APR, contrary to the previous decision of the Special Commissioner in *Rosser v IRC*, on the basis that s115(2) Inheritance Tax Act 1984 requires a connection or *nexus* between a "farmhouse" and other agricultural property, but that *nexus* may be common occupation rather than common ownership.

HMRC made it clear at the outset in the hearing before the First-tier Tribunal that this was, for them, an important point. Apparently this issue of *nexus* arises very frequently in practice. The appeal of HMRC from the Decision of the First-tier Tribunal was widely expected.

In a lengthy and scholarly Judgment the Upper Tribunal considered very carefully each of the arguments put forward on behalf of HMRC by Mr Jonathan Davey of Counsel, beginning with the established HMRC approach that s115 cannot be construed in isolation, but only within the context of IHTA 1984 as a whole. That approach owes a good deal to a historical review of the legislation but the Tribunal found it unhelpful, given the many changes from Estate Duty, to Capital Transfer Tax and then to IHT. In any case the old legislation was no clearer than what we have now. In response to Mr Davey's argument, which was based upon the "estate" as the unit of charge for IHT, the Tribunal examined ownership, whether of the freehold or of a lesser interest in land, returning to that analysis at several points in the Judgment.

Mr Davey had raised four important pointers which he said suggested that his interpretation of s115 was to be preferred to that of the taxpayer.

Land, not houses

Agricultural land is at the centre of the definition and the purpose of APR, rather than houses. The First-tier Tribunal had considered that s115 required farmhouses to be of a character appropriate to such land but that they need not be in the same ownership and that to allow relief based on common occupation would be within the scheme and purpose of the legislation. The Upper Tribunal, after considering

elements of the Judgment in *Starke v IRC* [1999] 1WLR 1439, did not feel that that case supported Mr Davey's argument.

Limbs 2 and 3 of section 115(2)

There is a distinction between the part of s115(2) IHTA 1984 known as "limb 2" and the third part, known as "limb 3". Limb 2 emphasises occupation, which limb 3 does not. Whilst the Tribunal, and the First-tier Tribunal before it, had noted a difference between the language of limb 2 and limb 3, there seemed to be no HMRC policy reason for a distinction in terms of the requirement of ownership between land within the two separate limbs.

Practice

The next pointer put forward by Mr Davey concerned the practical application of the interpretation argued for by the taxpayer. It raised difficult questions as to the level or quality of occupation that might be sufficient for the relief. The Tribunal did not accept that point.

No need for land?

Finally Mr Davey considered that the interpretation put forward by the taxpayer was inherently implausible because, under it, an estate might benefit from APR even though it held no agricultural land. That would, Mr Davey argued, be inconsistent with certain elements of the decision of the Court of Appeal in *Starke:* with the recognition by the First-tier Tribunal in *Hanson* that agricultural land is "the core of the definition", and with the purpose of the relief as described in *Higginson's Executors v IRC* [2002] STC (SCD)483. However, in a detailed examination of these arguments, and by reference to various possible scenarios, the Tribunal came to a different conclusion. The result of that examination was that insistence on legal ownership as the only *nexus* between the house and land itself raised many difficulties, at least as many as were feared by Mr Davey from the alternative interpretation that common occupation would be good enough.

More thoughts on farmhouses

The Tribunal then added some useful comments on the meaning of "farmhouse" in s115(2) to supplement, and not to depart from, the description given by Dr Bryce in *Arnander (Executors of McKenna) v IRC* [2006] UKSPC 00565. The "primary focus" of the word "farmhouse", which is not defined in the legislation, "*was in the past, we think, on the house on, or close by, an identifiable farm where the farmer responsible for the operation of a farm lived with his family and from which he operated his farming activities. For a house to be a "farmhouse" there had to be some functional connection between the house and the farm. If that connection ceases to exist, we*

consider that the house ceases to be a farmhouse." The Tribunal continued, "*The question whether or not a house attracts relief falls more naturally to be dealt with in the first place under section 115(2) and only if it is capable of attracting relief is it appropriate to move on to section 117 to see if the occupation and ownership tests are satisfied"*.

The Tribunal then reviewed all the possibilities of the nexus which, it was agreed, must exist between the farmhouse and the land. After a review of all the possible permutations of ownership and tenancy, some of which produced conflicting results, the tribunal commented on the approach of the taxpayer. "*In order to test whether a house is a farmhouse, it is necessary, on this approach, to investigate what is happening on the ground. The answer has nothing, or very little, to do with ownership and everything to do with use and occupation. The house is a farmhouse because it is occupied .. together with the farmland and is the base from which .. conducts his farming business*."

The Tribunal referred only in passing to the arguments put forward by Mr Harris on behalf of the taxpayer, except to say "*However, we do refer to what we see as the main thrust of his argument, with which we agree, that it is appropriate to look at the situation on the ground in order to establish the reality of the farming unit. A single farming unit is likely (at least it is not easy to envisage a case where this is not so) to be in a single occupation. And that is why occupation can be taken as a reliable touchstone for identifying "the property" referred to in limb 3 (of s115(2))*".

Based on this reasoning the Tribunal preferred the interpretation claimed by the taxpayer but concluded "*We will only add that we do not decide that common occupation will always and necessarily constitute a sufficient nexus. It may be right that there can be situations in which, although there is common occupation of agricultural land and a cottage, farm building or farmhouse, there is not a sufficient nexus. We have not thought of an example where this would be so, but do not rule out the possibility. In any case, it is unlikely that such an issue would ever arise since the "character appropriate" test might itself not be fulfilled in such a case*."

All in all, the decision of the Upper Tribunal is one of strong common sense supported by intricate academic examination of the statute and of the relevant cases and of all the arguments brought to the appeal. In particular, the Hanson land was very much a working farm, with livestock and very little reliance on outside contractors. It was, if anything, just the sort of operation that "ought" to qualify for APR. In farming families there may often arise situations where the house from which the farm is in fact run does not lie in the same ownership as some or all of the farmland. This decision will save that kind of property from the full burden of IHT.

Toby Harris is a member of STEP Norwich and Norfolk Branch and represented the taxpayer before the Upper Tribunal.