



TC06389

Appeal number: TC/2016/04258

INHERITANCE TAX—business property relief -deduction for rental payments under 10 year lease- whether deduction against business property – Inheritance Tax Act 1984, s 110(b) –HELD – rental payments deductible from value of business – Hardcastle considered - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr Timothy Mark Williams (1) **Appellants**
Ms Andrea McCallum Coleman (2)
(The Executors of the Estate of Duncan Stewart Campbell Deceased)

- and -

THE COMMISSIONERS FOR HER MAJESTY’S **Respondents**
REVENUE & CUSTOMS

TRIBUNAL: JUDGE Rachel Short
Mr William Haarer (Member)

Sitting in public at Bristol Civil Court Centre, 4 Redcliff Street, Bristol on 2 February 2018

Mr George Rowell of St John’s Chambers, Bristol for the Appellant

Mr John Brinsmead-Stockham, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by the Appellants (acting through Mr Timothy Mark Williams) against a Notice of Determination (the “Notice”) issued by HMRC on 9 October 2015 under s 221 of the Inheritance Tax Act 1984 (“IHTA 1984”).

2. By that Notice HMRC increased the inheritance tax due on the estate of Mr Campbell by £45,500 by reason of deducting from the part of Mr Campbell’s estate which qualified for business property relief a sum of £113,750 being the rental outstanding on the lease of Mr Campbell’s business premises (“the Rental Payment”), stating that “*the Liability falls to be taken account of in valuing the Deceased’s Business having regard to section 110(b) Inheritance Tax Act 1984*” (“IHTA 1984”).

3. The Appellants appealed against the Notice to HMRC on 9 November 2015 and to this Tribunal by a notice of appeal dated 4 August 2016.

Background facts

4. Mr Campbell died on 14 February 2011. The Appellants were appointed as his executors.

5. Prior to his death Mr Campbell had carried on business as a proprietor of a fine art business in London “Duncan Campbell Fine Art” from premises at 15 Thackeray Street, Kensington, London.

6. Mr Campbell occupied 15 Thackeray Street under a lease (the “Lease”) dated 4 May 2007 which was granted for a ten year term starting on 25 December 2005. The annual rental was £22,750, payable quarterly in advance.

7. Mr Campbell paid the rent on the Lease from his business bank account and recorded it as a business expense in his accounts.

8. After his death the remaining leasehold interest in 15 Thackeray Street was surrendered for a negotiated sum of £34,998.57 to the landlord.

9. The Appellants returned an IHT 400 for Mr Campbell’s estate on 26 July 2011 and a corrected account on 5 December 2011. The corrected IHT account included a claim for business property relief of £171,790, relating to Mr Campbell’s stock in trade, but excluding Mr Campbell’s liabilities under the Lease and a claim for £116,572 as a deduction against Mr Campbell’s general estate, (being the Rental Payment under the remaining term of the Lease of £113,750 and other amounts of rent outstanding at his death).

Agreed matters

(1) £171,790 of business assets (the paintings held in Mr Campbell's business on his death) were properly treated as part of his estate subject to business property relief.

5 (2) The £113,750 Rental Payment on the Lease of Mr Campbell's business premises was deductible from Mr Campbell's general estate for IHT purposes.

(3) The £113,750 Rental Payment was properly characterised for tax purposes as a revenue item.

(4) Any question of the valuation of the Lease as at the date of Mr Campbell's death is outside the remit of this Tribunal.

10 10. The main question in dispute between the parties is whether the £113,750 Rental Payment should also be deducted from the part of Mr Campbell's estate which qualifies for business property relief.

The law

15 11. Sections 4 and 5 of the IHTA 1984 set out the general charge on a person's estate on death:

IHTA s 4 Transfers on death

20 (1) *On the death of any person tax shall be charged as if, immediately before his death, he had made a transfer of value and the value transferred by it had been equal to the value of his estate immediately before his death"*

IHTA s 5 Meaning of estate

(1) *For the purposes of this Act a person's estate is the aggregate of all the property to which he is beneficially entitled,*

25 (3) *In determining the value of a person's estate at any time his liabilities at that time shall be taken into account, except as otherwise provided by this Act"*

Sections 104 and 105 IHTA 1984 set out the relief from inheritance tax for any part of the deceased's estate which is attributable to "relevant business property"

IHTA s 104 The relief

30 (1) *"Where the whole or part of the value transferred by a transfer of value is attributable to the value of any relevant business property, the whole or part of the value transferred shall be treated as reduced –*

(a) in the case of property falling within section 105(1)(a) (b) or (bb) below, by 100%.....

35 (2) *For the purposes of this section the value transferred by a transfer of value shall be calculated as a value on which no tax is chargeable"*

IHTA s 105 Relevant Business Property

(1) Subject to the following provisions of this section and to sections 106, 108, 112(3) and 113 below, in this Chapter “relevant business property” means, in relation to any transfer of value-

(a) property consisting of a business or interest in a business

5 (b).....

(d) any land or building, machinery or plant which, immediately before the transfer, was used wholly or mainly for the purposes of a business carried on by a company of which the transferor then had control.....

10 (e) any land or building, machinery or plant which, immediately before the transfer, was used wholly or mainly for the purpose of a business carried on by the transferor and was settled property in which he was then beneficially entitled to an interest in possession”

S110 IHTA 1984 sets out the basis on which a business should be valued for business property relief purposes:

15 IHTA s 110;

“For the purposes of this Chapter

(a) the value of a business or of an interest in a business shall be taken to be its net value;

20 (b) the net value of a business is the value of the assets used in the business (including goodwill) reduced by the aggregate amount of any liabilities incurred for the purposes of the business....”

The Tribunal’s powers in respect of the Notice are set out in s 224 IHTA 1984

IHTA 224 Determination of appeal by tribunal

25 “If an appeal is notified to the tribunal, the tribunal must confirm the determination appealed against (or that determination as varied on a review under section 223E) unless the tribunal is satisfied that it ought to be varied (or further varied) or quashed”.

12. Authorities cited:

30 (a) *Hardcastle & Anor (Executors of Vernede, deceased) v IRC* [2000] STC (SCD) 532

(b) *Reed (Inspector of Taxes) v Young* [1986] STC 285

(c) *Fetherstonaugh v IRC* [1984] STC 261

(d) *Re the Nelson Dance Family Settlement* [2009] STC 802

35 (e) *Arkwright & Anor (personal representatives of Williams, deceased) v Inland Revenue Commissioners* [2004] EWHC 1720 (Ch)

13. *Evidence seen:*

(1) Lease of business premises, 15 Thackeray Street, dated 4 May 2007;

The Lease states the rental due as £22,750 per annum with a contractual term of 10 years commencing on 25 December 2005.

5 *The yearly rental is payable by equal quarterly payments in advance.*

(2) Deed of Surrender in respect of the Lease of 15 Thackeray Street dated 2 September 2011;

This Deed states that the sum of £25,153.13 will be payable by the Tenant (the executors of Mr Campbell) for the surrender of the Lease.

10 (3) Rent Notice dated 26 May 2011 setting out details of outstanding rent payable under Lease;

Rent from 25 March to 23 June 2011 £6,200

Undercharge of December 2010 rent £512.50

Outstanding balance £2,134.37

15 *Total £8,846.87*

(4) Will of Mr Duncan Campbell dated 1 March 2010;

(5) Form IHT 400 sent to HMRC on 26 July 2011 and corrective account sent 5 December 2011;

20 *At box 69 "Businesses, including farm businesses, business assets and timber" stated at £171,790*

At box 82 "Other liabilities" stated to include:

(a) Business purposes £113,750,

(b) Outstanding rent on lease of business £2,134 and

(c) Under charged rent for December 2010 £688

25 (6) Schedule IHT413 – Business and partnership assets, value of business at date of death stated to be £171,790 in respect of which 100% business relief claimed.

(7) Valuation of Chattels of Mr Duncan Campbell for s 160 IHTA purposes dated 17 May 2011;

30 This lists the paintings held by Mr Campbell for his business and values them at £72,200.

(8) Unaudited financial statements of Duncan Campbell Fine Art for the years ended 31 March 2009, 31 March 2010 and 14 February 2011;

35 *The rent and rates for 15 Thackeray Street are included in these financial statements for each of the three years. The total for years 2009 and 2010 being £32,485 and £33,013 respectively. For 2011 the total is £62,552*

(being the outstanding rent and rates plus the sum paid for the surrender of the lease).

(9) Various correspondence between the parties, including HMRC's letter of 26 May 2016 saying:

5 *“The Notice of Determination determines that the liability of £113,750 falls to be taken into account in valuing the Deceased's business. Having reviewed the matter on receipt of your appeal, we now consider that the liability that falls into account is the actual value of this liability at the date of death. That figure is not necessarily the sum of the outstanding*
10 *5 years rent. One would normally expect to have to make a payment to terminate a lease, but this would not be as much as the full future rental payments. There is clearly uncertainty at the date of death over what may happen in negotiations, but a better value of the liability may be the approximately £35,000 actually paid to the landlord”*

15

Appellants' arguments

Is the Rental Payment a liability for business property relief?

14. The Appellants are appealing against HMRC's Notice because in their view the Rental Payment is not a business liability which should be taken account of as part of
20 the value of Mr Campbell's estate which is eligible for business property relief under s 105 IHTA 1984. The Appellants say that the Rental Payment should be a deduction from Mr Campbell's general estate only.

15. The Appellants say that the Rental Payment does not fall within the s 105 IHTA 1984 definition of business property because there is a difference between the
25 “*property*” referred to in s 4 and 5 of the IHTA 1984, which is a broad definition used to define the transfer value of an estate on death and the “*assets used in the business*” referred to in s 110(b) IHTA 1984, which is a more restrictive definition. The Rental Payment falls within the wider definition of property at ss 4 and 5 but outside the specific and restricted definition of assets used in the business at s 110(b).

30 16. The Appellants point out that there is no specific definition of an “asset” in the IHTA 1984 but say that the distinction made between property in ss 4 and 5 and assets in s 110(b) is intentional and is a reflection of the established distinction between expenditure which brings into existence an enduring asset of a trade and payments made on ordinary commercial contracts, suggesting that the draftsman had in mind
35 the distinction between revenue and capital items and reflecting the fact that inheritance tax is a tax on “capital value”.

17. The Appellants rely in particular on the decision of the Special Commissioner in *Hardcastle*, which they say made a clear distinction between trading losses and other similar “liabilities”, specifically referring to rental liabilities as an example of the type
40 of liabilities which were not within the ambit of business property relief.

18. The Rental Payment in dispute falls squarely within the definition provided by the Special Commissioner in this decision. The Special Commissioner said at paragraph 34 of her decision:

5 *“it is clear from the context of section 110(b) that the liabilities referred to in that section are those which counterbalance the assets used in the business and so would not include ordinary liabilities incurred in the day-to-day running of the business, for example unpaid rent of business premises or money owing on ordinary commercial contracts”*

10 19. *Hardcastle* should be respected because it has never been appealed by HMRC and is directly relevant to this appeal. The Rental Payment represents quarterly rental payments on a ten year lease which are “day-to-day expenses” of the business and are not expenditure incurred on bringing an asset into existence for the enduring benefit of the trade.

15 20. The Appellants also suggest that “losses” as referred to in the IHTA 1984 context are not the same as “trading losses” for income tax purposes. The IHTA is a tax on capital transfers, as made clear by its original title Capital Transfer Tax. The term “asset” as used in s 110 can therefore be inferred to mean a capital asset and it is agreed between the parties that the Rental Payment is a revenue and not a capital item.

20 21. The *Hardcastle* decision rejected a “balance sheet” approach to defining assets and liabilities for inheritance tax purposes and any statements made to the contrary in *Nelson Dance* about an accounting based approach to this question were throw away comments. The *Fetherstonaugh* decision makes it clear that a “notional balance sheet” approach is not the correct approach to this issue for inheritance tax purposes, it is specifically rejected by Oliver LJ in that decision

25 *“The second difficulty is that, even assuming on ordinary accountancy principles one might not attribute any value to the deceased’s life interest in valuing his business, equally on ordinary accountancy principles no one would include the land in which the life interest subsisted as part of the estate which included the business.....”* p 269(f).

30 22. Finally, the fact that the *Hardcastle* decision gives rise to potentially bizarre results is not a reason to ignore the plain wording of the legislation

What is the value of the Lease?

35 23. The Appellants argue that it is not now open to HMRC to argue that if the Rental Payment does fall outside the scope of business property relief under s 110(b) IHTA 1984, the Lease should be valued for s 5(3) IHTA 1984 purposes taking account of the value of the rights under the Lease as well as the obligations to pay the Rental Payment as set out in their letter of 26 May 2016.

24. HMRC have suggested that they would accept that the value of the Lease under s 5(3) should be a negative £34,998.57 which was the sum agreed and paid by the Appellants under the Lease Deed of Surrender.

5 25. The Appellants say that approach to the valuation of the Lease is a new argument which was not part of the Notice which is the subject of this appeal and therefore cannot be considered by this Tribunal. The Tribunal's powers are limited to varying, quashing or confirming the Notice in accordance with s 224 IHTA 1984. It is not open to this Tribunal to consider matters which are not part of the Notice.

10 26. If the point is to be considered by the Tribunal, the Appellants say that the value of the Lease needs to be considered at the time immediately before Mr Campbell's death (in accordance with s 4(1) IHTA 1984); at this time Mr Campbell's obligations were to pay the outstanding rent of £113,750 and nothing more or less. The amount paid to surrender the Lease was not agreed until several months after Mr Campbell's death.

15 27. Finally, while reserving their position as to the correct quantum of Mr Campbell's liabilities, the Appellants say that any questions of actual valuation of the Lease at the date of Mr Campbell's death are for the Upper Tribunal (Lands Chamber) and not for the First-tier Tax Tribunal.

20 *HMRC's arguments*

28. HMRC issued the Notice on the basis that the Rental Payment should be treated as part of Mr Campbell's relevant business property under s 105 IHTA 1984, reducing the amount of Mr Campbell's estate which qualified for business property relief by £113,750 and therefore increasing the value of his estate which should be treated as
25 subject to inheritance tax under s 3 IHTA 1984, increasing the amount of IHT payable by £45,500.

29. HMRC's case is that in the context of business property relief any property which is business property is taken to reduce the total value of the taxable transfers made on death under IHTA 1984. The definitions of "property" and "assets" between
30 s 5 and s 110 should be complementary, because business property is part of the transfer value of the whole estate. There is no significant difference in the term "property" in s 5 and "asset" in s 110(b). The only restriction in s 110(b) is that the asset must be used for business purposes. It is perfectly possible for a liability to fall
35 within both s 5(3) as a liability of a transferor's estate and s 110(b) as a liability incurred for the purpose of the transferor's business.

30. The business property in question here is property of a business under s 110 (b) (that of a sole trader) rather than in a business (which applies to partnership interests only).

40 31. The Lease of Mr Campbell's business property is clearly a business asset because:

- (1) It was a vital part of the running of his business
- (2) Rental was paid from his business bank account
- (3) The business accounts showed the rental as an expense.
- (4) The payment of rent in those accounts included the amount paid for the surrender of the Lease in September 2011.

32. As a point of statutory construction the s 110(a) IHTA 1984 rules for valuing a business (on a net basis) apply for the purposes of the business property relief chapter of the IHTA 1984. That leads naturally to a balance sheet approach to valuation, with assets netted against liabilities, which is the approach taken by HMRC.

33. HMRC consider that all liabilities relating to the Lease of Mr Campbell's business premises should be deducted under s 110(b), including the small amounts of outstanding rental (made up of £2,134.00 and £688) which have been omitted from the Notice in error. HMRC are not now intending to amend the Notice to include these small amounts but do contend that a correct interpretation of s 110(b) would lead to them being included as liabilities for business property relief purposes.

34. HMRC contend that here is no capital revenue distinction in s 110(b), as demonstrated by the leading authority in this area, the Court of Appeal decision in *Fetherstonaugh*. The Court of Appeal held that an interest in land held via an interest in possession trust was business property for the purposes of the then IHT legislation and was mainly concerned with the deeming provisions of what is now s 49(1) IHTA 1984.

35. *HMRC* argue that *Fetherstonaugh* indicates:

(1) There is no conflict between the valuation of assets in the general estate and the valuation of assets which are business assets.

(2) The court rejected a "balance sheet approach based on normal accounting principles", but this was because of the need to "deem" the trust property to belong to the deceased.

(3) There is no reference to an income capital distinction for IHT purposes. The plain words of the legislation do not require this to be read in.

36. HMRC also rely on the *Nelson Dance* case to suggest that a straightforward balance sheet approach is the correct approach to determine the part of the deceased's estate which is eligible for business property relief:

"The test in s 110 can readily be applied before and immediately after a disposition, to give a change in value attributable to a business which works in harmony with the basic test at s 3(1) and which accords with, and closely resembles in the special business context, the general basic test in s 5 to value a person's estate for the purposes of the application of s 3(1)" Sales J at [23]

37. That case also refers to trading stock being used in the business as both an "asset" and "property" for IHT purposes and supports an interpretation of the legislation which provides simplicity and certainty.

38. As for *Hardcastle*, HMRC say it is not a binding authority and was wrongly decided. HMRC have never accepted that it was correct and have treated Lloyds underwriting claims as available for business property relief despite this decision. This is set out in HMRC's IHT Manual to which HMRC referred.

5 39. HMRC say that the decision in *Hardcastle* is wrong because:

(1) It makes a distinction between income and capital losses which is derived from the income tax legislation and is not in the IHT legislation.

10 (2) It assumes that trading losses as well as liabilities should be brought into account on death for IHT purposes, failing to appreciate the distinction between the two made in the *Reed v Young* decision: "*The partnership's trading losses are conceptually quite distinct from the debts and liabilities of the firm*" Oliver J at p289(e)

15 (3) Even if there is a capital/revenue distinction to be made, it does not follow that there is a similar distinction between losses and liabilities. There is no necessary read across from capital assets to capital liabilities.

(4) On the basis of *Hardcastle*, the £171,790 which has been accepted as relating to business property assets (the paintings which were trading stock), should also be excluded. Nevertheless this relief has been given by HMRC on principle and not on the basis of a concession.

20 (5) As made clear in Dymond's Capital Taxes (at 24.752) it is generally accepted that *Hardcastle* gives rise to strange results.

Valuation issues

25 40. The valuation of the Lease is not relevant if HMRC's analysis is correct, because there are merely equal and opposite entries in Mr Campbell's general estate and the part of his estate which is eligible for business property relief.

41. If HMRC are not correct on their main arguments, to the extent that it is relevant, HMRC say it is not rational to value the Rental Payments without also valuing the rights obtained by Mr Campbell (or his estate) under the Lease.

30 42. HMRC suggest that value of Mr Campbell's Lease is negative and that they are prepared to accept a valuation equal to the sum paid on the surrender of the Lease of £34,988.57

35 43. While questions of pure valuation are outside the scope of the First-tier Tax Tribunal, questions of law about how the valuation should be approached are within its remit as set out in the *Arkwright* decision:

"In my judgment the Special Commissioner was clearly entitled to conclude that, because s 161(4) did not apply, the value of the deceased's interest in the property was not inevitably a one-half of the vacant possession value, it was not

for her to go on to determine.....that, as a matter of fact, the value of his interested was indeed less than a mathematical one-half of the vacant possession value. That was properly an issue that should have been referred to the Lands Tribunal for determination by it.” Gloster J at para [12].

- 5 44. The question of whether the Lease should be valued taking account of Mr Campbell’s rights as well as his liabilities was raised in HMRC’s letter of 26 May 2016 and as such is a decision which can be included in this appeal and can be considered by the Tribunal as part of its remit to vary the Notice.

Discussion and decision

10 *Findings of fact*

45. On the basis of the evidence which we saw we make the following findings of fact:

- (1) Payments on the Lease of 15 Thackeray Street were paid out of Mr Campbell’s business account.
- 15 (2) The Lease payments were treated as deductions against Mr Campbell’s business profits.
- (3) The Rental Payment included sums of rent due for the remaining five years of the ten year lease.

Is the Rental Payment a liability under s 110(b)

20 46. We have concluded that the Rental Payment is a liability of Mr Campbell’s business which should be treated as falling with the relevant business property provisions of s 110(b).

25 47. The Lease in respect of which the Rental Payment was made was part of Mr Campbell’s business as an art dealer and the Appellants did not attempt to argue that it was not.

48. The Appellants’ arguments centred less on the purpose of the Rental Payment, which was accepted to be a business purpose, but more on the categorisation of the Rental Payment as falling into a category of liabilities which were excluded from the liabilities which could be the subject of business property relief.

30 49. While we accept that the category of payments which fall into s 110(b) cannot be all encompassing, our view is that a legal obligation to make on-going payments on a lease of business premises falls within the clear words of the statute, being a liability of Mr Campbell’s business. This is supported by the fact that the rental was paid from Mr Campbell’s business account and lease payments were recorded in his
35 business accounts as business deductions.

50. In our view this categorisation remains correct even accepting the Appellants’ suggestion that there is an intentional distinction between the wider term “property”

used in ss 4 and 5 and the more specific term “asset” (and its opposite, liability) used in s110 IHTA 1984.

51. Any question of the Rental Payment falling outside of the scope of s 110(b) arises only because of the statements made by the Special Commissioner in the *Hardcastle* decision. We are not convinced that this decision can bear the weight which has been placed upon it by the Appellants:

(1) It is a decision which concerns a very particular type of business, Lloyds underwriting, which is of a very different nature than Mr Campbell’s art dealing business and it is not clear how one can extrapolate from open insurance positions of an underwriter in that particular market to outstanding obligations on a business premises’ lease.

(2) Following the Special Commissioner’s logic that trading profits were not business assets, the taxpayer’s open insurance contracts were treated not as liabilities of the business, but as losses on ordinary commercial contracts. Extrapolating to Mr Campbell’s position, that is more akin to Mr Campbell having sold a painting on which there was a debt outstanding at his death; that debt would not be treated as available for business property relief because it is a contract made in the course of carrying on his trade.

(3) While we would not go so far as to say that the statements made by the Special Commissioner about trading deductions and outstanding rental payments were obiter, they were clearly intended to give examples only and are made without any factual context. It is far from clear that the “unpaid rent of the business premises” referred to in *Hardcastle* is necessarily of the same order as the liabilities accruing on the remaining five year term of Mr Campbell’s Lease in this case.

(4) Although it is impossible to be certain what was intended, our view is that it is more likely in the context of her comments and her review of the authorities concerning the capital/revenue distinction, that the Special Commissioner was referring to rental which had arisen but not been paid for a particular period, rather than the long term rental obligations represented by the Rental Payments here. In our view the small sums of rental which had accrued but not been paid by Mr Campbell may possibly fall into this category were they part of this appeal, although it has been agreed they are not.

(5) In our view the real question to be answered following the *Hardcastle* decision and by reference to the test set out by the Special Commissioner at paragraph 32 of that decision, is whether Mr Campbell’s liabilities under the remaining terms of the Lease arose from “*an ordinary commercial contract made in the course of carrying on his trade*”. In our view they did not. The Lease was not a “*contract for the disposal of his product*” rather it was “*a contract relating to the profit making structure of his business*”, as described at paragraphs 33 and 34 of the *Hardcastle* decision, namely the premises from which his business was carried on,

52. We have come to this conclusion bearing in mind that the parties have agreed that the Rental Payment is a revenue item and accepting that income tax principles of

the distinction between revenue and capital items are not necessarily relevant in the context of IHT.

53. We agree with HMRC's preference for the decision of the higher court in *Fetherstonaugh* and that this indicates that there is no reason why "revenue" items cannot be treated as liabilities for s 110(b) purposes.

54. While the *Fetherstonaugh* decision considered a very different question; whether beneficial ownership rights made a difference to whether an asset could be treated as an asset "of the business" within the then equivalent of s 110(b) and little of its reasoning is directly relevant to Mr Campbell's case, it is correct that no distinction is made in that case between revenue and capital assets for IHT purposes. In fact it is stated by O'Connor LJ at p 272 (j) "*Where the property consists of a business, I think it is obvious that any land or building, machinery or plant, used wholly or mainly for the purpose of the business, are part of the business*" and similarly, in the context of a hypothetical antique dealer "*it is apparent that the assets are the goodwill, the stock, trade debtors and cash reserves*" at p 274 (b).

55. Like the *Fetherstonaugh* decision, the *Nelson Dance* decision considers a question which is not directly relevant to Mr Campbell's case, but we agree with the Respondents that it does support a straightforward and broad application of the terms of s 110(b) in a way which is complementary to the main charging provision at sections 4 and 5 IHTA 1984:

"It appears that the draftsman has aimed for a reasonable degree of simplicity in the operation of the IHTA, as is indicated by the basic application of the loss to donor principle..... by the use of the general concept of a business in s 105(1)(a) as a form of property distinct from its fluctuating component assets and the incorporation of s 106 to avoid the necessity for detailed accounting in relation to such component assets in determining whether BPR should be available or not" Sales J at p 819.

56. We consider that the Appellants' interpretation of s 110(b) relies on a distinction between the components of a business which should not be treated "assets" or "liabilities" which is not contained in the legislation and is only partially supported by the very particular facts of the *Hardcastle* decision.

57. Our view is that the general intention of the business property relief provisions of the IHTA 1984 is to ensure that all "assets" of a business should be free of inheritance tax in order to preserve the viability of family businesses. The Lease was required in order to carry on Mr Campbell's business and therefore it would seem counter to the general scheme of the IHTA that it should be excluded from this relief.

58. For these reasons we have rejected the Appellants' arguments that the Rental Payment should be excluded from the part of Mr Campbell's estate which is eligible for business property relief.

40 *Valuation issues*

59. Having come to this decision, HMRC suggested that we did not need to go on to consider HMRC's approach to the valuation of the Lease on the basis that it makes no difference to the actual IHT liability for the Appellants (since equal and opposite entries would be made in Mr Campbell's general estate and the part of his estate which was eligible for business property relief).

60. However, having considered the arguments of the parties it is our view that in order to "*confirm, vary or quash*" the Notice which is the subject of this appeal, we do need to consider the basis on which the business assets which are within Mr Campbell's estate should be valued for the purposes of the IHTA 1984, even if that is an academic exercise as far as determining the amount of inheritance tax which is payable is concerned.

61. The Appellants suggested that since no reference was made in that Notice to the value of the Lease (as compared to the value of the Rental Payments) this is outside our remit. In our view while the question of the valuation of the Lease was not specified in HMRC's Notice, we consider that it is sufficiently closely related to the matters which were the subject of that Notice to be within the scope of our powers under s 224 IHTA 1984 to vary the Notice.

62. HMRC suggested in their letter of 26 May 2016 that if the Rental Payment was to be taken account of in valuing Mr Campbell's general estate, then the value of Mr Campbell's rights under the Lease also needed to be taken account of in coming to a valuation of Mr Campbell's general estate. HMRC said that they would accept the amount agreed in the Deed of Surrender as representing the market value of the Lease for this purpose.

63. We agree with HMRC's suggestion in this letter that for Inheritance Tax purposes both the rights and the liabilities under Mr Campbell's Lease need to be brought into account and that an approach which only takes account of the liabilities due under that Lease immediately before Mr Campbell's death cannot be a proper measure of the value of Mr Campbell's estate on death.

64. For that reason we have concluded that the Notice should be varied to refer to an amount equal to the market value of the Lease immediately before Mr Campbell's death.

65. We accept that any question of what the correct market value of the Lease might be is outside the scope of this Tribunal, as a question of valuation which does not depend on any questions of law.

66. For these reasons this appeal is dismissed and HMRC's Notice of Determination of October 2015 is varied to replace the reference to the Rental Payment with a reference to the market value of the Lease immediately before Mr Campbell's death, being either the sum paid for the surrender of the Lease on 2 September 2011 or such other sum as made be agreed between the parties or, if necessary, determined by the Upper Tribunal (Lands Chamber).

67. 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.

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Rachel Short

**TRIBUNAL JUDGE
RELEASE DATE: 13 MARCH 2018**

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