



**TC02750**

**Appeal number: TC/2011/10228 & 10229**

***CAPITAL GAINS TAX – Business Asset – Taper Relief – HMRC agreed a four bedroom house used for business for two years – dispute concerned the remaining years – no evidence that the house was used for business – not entitled to business taper relief – Appeal dismissed – amendment to self assessment returns confirmed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR ANDREAS MATEIDES  
& MRS HELEN MATEIDES**

**Appellants**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE  
ANTHONY HUGHES**

**Sitting in public at The Tribunals Service, 45 Bedford Square, London WC1B  
3DN, on 17 April 2013**

**The Appellants did not appear**

**Mrs Gill Carwardine, Presenting Officer of the Appeals and Review Unit for  
HMRC**

## DECISION

### The Appeal

1. The Appellants appealed against amendments to their 2006/07 self assessment returns which increased the tax due from each Appellant to £13,353.40 resulting in a tax difference of £10,226.00 from that declared on each of their self assessment returns.
2. The issue is whether the Appellants were entitled to business taper relief on the capital gain arising from the disposal of a property at 36 The Squirrels, Bushey, Hertfordshire WD23 4RT. The Appellants argued that the property was a business asset throughout their period of ownership, and entitled to business taper relief for the whole period. The Appellants in the spirit of compromise were prepared to limit their claim of business taper relief to five years rather than the original seven years claimed. HMRC on review decided that the Appellants' eligibility for business taper relief applied for just two years of their ownership.
3. The Appellants lodged their appeal with the Tribunal on 30 November 2011 which was outside the 30 day time limit. HMRC did not object to the Appellants' application for an extension of time in which to make an appeal. The Tribunal extends the time limit for lodging an Appeal notice until 30 November 2011.
4. The Appellants did not attend the hearing. HMRC applied for the Appeal to be heard in the absence of the Appellant in accordance with rule 33 of the Tribunal Rules 2009. The Tribunal granted the application. The Tribunal finds that the Appellants were notified of the hearing. On 26 February 2013 the Tribunal sent a notice of hearing for 17 April 2013 by ordinary post to the Appellants' representative, Mr S Tjirkalli of Andrew Steale, Accountants, PO Box 3569, Barnet EN59PW.
5. The Tribunal is satisfied that it was in the interests of justice to proceed with the hearing:
  - (1) The Appellants had offered no reason for their non-attendance.
  - (2) The Appeal had been outstanding since 28 November 2011.
  - (3) On 12 September 2012 the Appeal was struck out because of the Appellants' failure to comply with directions. The Appeal was then reinstated on 17 September 2012 following the Appellants' representations stating that their representative did not receive the said directions.
  - (4) This was the second hearing of the Appeal. The first hearing on 18 January 2013 had been adjourned at the Appellants' request.
  - (5) HMRC was in a position to proceed.
  - (6) The Appellants had submitted a statement of case. The Tribunal was, therefore, fully aware of their case.

## The Facts

6. The Tribunal makes the following findings of fact

5 (1) The Appellants were in partnership trading in the printing business. On 6 November 1998 the Appellants incorporated St Pauls Printers Limited to carry on the business. The partnership remained and charged the company rent for use of the business premises.

(2) The Appellants' business first traded from rented premises at 235 Sussex Way, London N19. In 2001 the Appellants purchased new business premises at Unit 4, Hotspur Industrial Estate, West Road, Tottenham, London N17.

10 (3) The Appellants purchased the property at 36 The Squirrels Bushey Hertfordshire on 9 June 2008. The property was a four bedroom residential house.

(4) The Appellants sold 36 The Squirrels Bushey on 21 June 2006. The period of ownership was 2,934 days.

15 (5) Each Appellant declared a capital gain of £107,747 before taper relief in their respective self assessment returns for 2006/07 in connection with the sale of The Squirrels. HMRC agreed with the amount of the gain before taper relief.

(6) The Appellants' tax returns showed that they received rent from The Squirrels for each year of their ownership. The gross rental receipts from the property as returned were as follows:

1998/99: £9,758

1999/00: £13,816

2000/01: £18,198

2001/02: £18,096

25 2002/03: £13,650

2003/04: £13,500

2004/05: £10,800

2005/06 £8,400

30 (7) The Appellants have given contradictory explanations about the uses to which The Squirrels were put.

(8) On 19 May 2009 the Appellants informed HMRC that they purchased the property to house specialist staff associated with their printing business. The specialist staff paid the market rent.

35 (9) On 12 April 2010 the Appellants advised that The Squirrels was let for two years to Venus Printers which arranged to house the specialist staff/experts. After which The Squirrels was let to a designer for six months, and then either let to individuals or remained empty until the property was sold.

40 (10) On 10 December 2010 the Appellants asserted that The Squirrels had been used to house specialist staff/experts and to store stock at the time when St Pauls Limited did not own a property. The Appellants also raised funds for the

business using the property as security. Further the monies from the sale of The Squirrels were used to finance a new printing machine.

5 (11) At a meeting on 15 June 2011 the Appellants' representative informed HMRC that The Squirrels was originally bought for storage. Further, the representative advised that the experts were from Germany and engaged to train both the Appellants and their employees in the operation of machinery. The designer worked on the Appellants' business premises to assist them with the design of cards and wedding invitations.

10 (12) On 12 July 2011 the Appellants informed HMRC that The Squirrels initially stored paper and ink in part of the property, whilst the remainder (two rooms and kitchen) was rented out to nurses until the time of the letting to Venus Printers.

15 (13) The Appellants adduced no documentary evidence to substantiate their assertions about the business use of the property. According to the Appellants, the written agreement or licence with Venus Printers was inadvertently destroyed. The Appellants did not supply the names of the workers/experts, despite being required to do so by a schedule 36 Information Notice dated 3 March 2010. Overall the information supplied by the Appellants about the purported business use of The Squirrels was stated in general terms and  
20 unspecified.

(14) The only documentation supplied by the Appellants in relation to The Squirrels was some repair bills and Council Tax demands.

### Reasons

25 7. The question for the Tribunal is whether The Squirrels was a business asset throughout the period of the Appellants' ownership. The significance of the property being a business asset was that it attracted on disposal a considerably higher rate of taper relief than that for non-business assets.

30 8. The legislation for taper relief is found at section 2 and schedule A1 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Taper relief has now been abolished for disposals after 5 April 2008. Essentially taper relief reduced the capital gain on a sliding scale according to the complete number of years that an asset had been held from acquisition or from 6 April 1998, if later. A higher rate of taper relief applied to business assets than to non-business assets, and the minimum ownership period before an asset qualified for taper relief was one year for business assets and  
35 three years for non business assets. On disposals on or after 6 April 2002 the maximum rate of taper relief on business assets after two qualifying years was 75 per cent leaving 25 per cent chargeable. For non-business assets, the maximum rate after ten qualifying years was 40 per cent, leaving 60 per cent chargeable.

40 9. The rules for determining whether an asset qualified as a business asset at a time before its disposal is found in paragraph 5 schedule A1 TCGA 1992, the wording of which was amended by section 160 of the Finance Act 2003 for the period from 6 April 2004 to 5 April 2008. The amendment makes no material difference in relation

to the facts of this Appeal. Under paragraphs 5(1A) and 5(2) of schedule A1 of TCGA1992 an asset is a business asset if it was being used wholly or partly for the purposes of a trade being carried on by an individual, or a partnership of which an individual was at the time a member, or a qualifying company to that individual.

5 Paragraph 6 of schedule A1 deals with the conditions for a qualifying company. Paragraph 3 of schedule A1 permits apportionment of the respective rates for taper relief when the asset is used for the purpose of trade for only part of the period of ownership. Investments in residential property are non-business assets.

10 10. The determining factor for deciding whether an asset is a business or non business asset is the use to which it was put during the years of ownership. Thus in this case the Appellants were required to demonstrate on the balance of probabilities that The Squirrels was being used wholly or partly for the purposes of a trade carried on by the Appellants or their company, St Pauls Printers Limited.

15 11. The Tribunal places weight on the fact that The Squirrels was a residential four bedroom house which was not designed for commercial use. Further the Tribunal considers that the only reliable evidence about its use during the period of the Appellants' ownership was the gross rental receipts for the property as declared by the Appellants in their tax returns from 1998/99 to 2005/06, which suggested that it was being let for residential purposes.

20 12. The Tribunal finds the Appellants' assertions about The Squirrels being used for the purposes of their printing business contradictory, unsubstantiated by documentation and highly improbable.

25 13. During a period of over two years from May 2009 to July 2011 the Appellants gave various accounts of the business use of the property. Their suggestion of acquiring The Squirrels to store stock was first made some two years after HMRC opened its enquiry into the Appellants' tax returns. The Appellants' explanation that half the property was used for storage, whilst the other half was let to nurses was inconsistent with the level of rent achieved in 1999/2000 which suggested that the whole property was let. The Appellants' assertions about the letting to Venus Printers and the subsequent use of the property were bereft of detail. The Appellants failed to produce a single document to corroborate the purported business use or supply specific details about the persons that lived at the property. The Tribunal also considers there was no need for the Appellants to use The Squirrels for the purposes of their printing trade. Their business was run from dedicated commercial premises first at 235 Sussex Way, and then from 2001 at Unit 4, Hotspur Industrial Estate.

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14. The Appellants' assertions that The Squirrels was being used as collateral for business loans, and that the proceeds from the sale of The Squirrels were applied to acquire business assets were not relevant to the question of the use to which the property was put.

40 15. In view of its findings the Tribunal gave active consideration to whether it should increase the tax due from the Appellants which it has power to do and would have necessitated an adjournment to give the Appellants an opportunity to make

representations. The Tribunal decided in the light of the overall objective of dealing with cases fairly and justly to respect the concession made by HMRC to allow two years business asset taper relief on the disposal of The Squirrels

5 16. HMRC allowed two years business asset taper relief in respect of the Appellants' letting of the property to Venus Printers, which HMRC assumed to be from April 2000 to March 2002. Business asset taper relief was permitted on the basis that The Squirrels was being used to accommodate specialist workers under the terms of a contract to supply the Appellants' business with machinery. The Tribunal notes that the Appellants adduced no documentation to substantiate such use.

10 **Decision**

17. The Tribunal determines that the duration of the Appellants' ownership of The Squirrels was 2,934 days of which 730 days were attributable to business use, and 2,204 days to non business use. The Tribunal confirms HMRC's amendment to the Appellants' self assessments returns for 2006/07 as revised by the Review Officer's  
15 decision completed 12 September 2011. The Tribunal, therefore, dismisses the Appeal.

18. The Tribunal notes that in the course of HMRC's review other issues came to light regarding an incorrect loss relief claim (over-claimed £5,697) and a share of capital expenditure on windows unlikely to have been included in capital gain (share  
20 of expenditure £3,231). After hearing from Mrs Carwardine for HMRC, the Tribunal decided not to address these matters.

19. 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  
25 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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**MICHAEL TILDESLEY OBE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 13 June 2013**