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Is it really a '**Farm**' house?...

Tough procedures in claiming **Agricultural Property Relief** (APR)

In recent years professionals and taxpayers have noticed a much more aggressive approach by H.M. Revenue and Customs to claims for Agricultural Property Relief. ('APR')

There has been an increasing number of cases going to the Special Commissioners and the Lands Tribunal. One of the most interesting cases recently involved a small and valuable country estate in Cornwall. This decision of the Special Commissioners is important because of the guidance it gives as to how future similar cases will be looked at.

Rosteague House

We should start by looking at the characteristics of the property itself. Rosteague is on a coastal peninsula in the south of Cornwall, not far from Portscatho. The estate comprised the main house with six acres of gardens, a lodge house and a cottage, a stable flat, various agricultural outbuildings and 188 acres of land which included 52 acres of coastal slope and foreshore. It was accepted that 110 acres and one of the agricultural buildings qualified for APR. The other agricultural buildings did not qualify for relief because, in HMRC's view, they had not been occupied for agriculture throughout the period of two years immediately prior to the relevant death. Had that test been satisfied, they would have attracted APR.

Rosteague House goes back many centuries but its present form is partly Elizabethan and partly eighteenth century. By any standards it is a fine manor house. It is listed Grade II*. Behind the house is a cobbled courtyard with a range of buildings, including the stable flat and the cottage. One of the barns was converted in the 1970s into a music room where occasional recitals have been held. Beyond the cobbled courtyard, on the further side of an estate road, is the farmyard with the various agricultural buildings.

> "...Mr McKenna was a **gentleman farmer**. He kept up an active interest in matters agricultural, belonged to the relevant local societies, and sometimes gave specific instructions to his contractors concerning the farming, But at **no time was he the actual working farmer**."

The owners of Rosteague

Mr David McKenna and Lady McKenna were the owners of Rosteague from 1945 until their deaths, a few months apart, in 2003.

Throughout the whole period, Mr McKenna spent considerable periods of time in London where he owned a flat available to him and his spouse until 1998. He occupied senior posts in the musical world and was a Vice President and Honorary Secretary of the Royal College of Music and the Chairman of the Sadlers Wells Trust.

From 1995 onwards the health of the McKennas declined and they could do less and less in the management of the farming.

In the best sense of the word, Mr McKenna was a gentleman farmer. He kept up an active interest in matters agricultural, belonged to the relevant local societies, and sometimes gave specific instructions to his contractors concerning the farming, But at no time was he the actual working farmer.

> "in **HMRC's view,** they (the buildings) had not been occupied for **agriculture** throughout the period of two years immediately prior to the relevant death."

How was the farming organised?

Until the early twentieth century the farming at Rosteague was all in hand and managed from the mansion house. In 1908 a separate farmhouse was built and from then onwards the day to day management of the holding was conducted from that building. When the McKennas purchased in 1945 they continued an existing tenancy of the farm. While there was some small scale in-hand farming, this was not continuous.

After 1984 the farmland was put to contract farming, this being ultimately

overseen by a partnership between Mr McKenna and Lady McKenna, who employed a professional firm to assist and advise them. In fact the advisers did almost all of the correspondence with the contractors and others concerning the farm. One of the partners purchased a house nearby and became almost an on-site manager. Even so, Mr McKenna took an active interest in the arrangements and spent about an hour a day on them, for as long as his health allowed.

Was Rosteague a farmhouse at all?

This was the basic question the Commissioners had to decide, and on the basis of all the evidence Rosteague was held not to be a farmhouse. As a farmhouse it was too large for the land it was said to control. The "educated rural layman" would say that it was a small country estate, not a farmhouse. The farmyard was separated from the house beyond the cobbled courtyard and the estate road. After the McKennas' deaths, the property was marketed as a "country estate" and not advertised in the farming journals. It simply did not qualify as "the chief dwelling house attached to a farm".

It should be noted that had there been significantly more land, and had there been greater involvement by the McKennas with the management of the farming, then the decision could have been different. It is, as always, a matter of fact and degree.

The Commissioners were mindful of the recent decision in the Antrobus case that a house occupied with a farm is not a farmhouse simply because the person living there had overall control of the farming business conducted on the land.

> "It is **however clear** that if the income from the land would **not be sufficient to support the running of the house** that would be a strong indication (no more) that the house was not a farmhouse at all..."

Character Appropriate

Once the Commissioners had decided that Rosteague was not a farmhouse, the further question was not strictly relevant, but views were expressed "as an aside" (obiter dicta). It was clear that had Rosteague been a farmhouse, it would not have been of a character appropriate, or proportionate in size, for a holding of 110 acres.

This was determined by an extensive examination of the evidence of recent sales of West Country farms and estate from materials produced by major selling agents and the District Valuer's Office.

An economic test?

The Commissioners came close to reintroducing some form of "economic test" of the viability of the farming operations, whilst acknowledging that since the Inheritance Tax Act 1984 there was no statutory requirement for that. It is however clear that if the income from the land would not be sufficient to support the running of the house that would be a strong indication (no more) that the house was not a farmhouse at all. Rosteague House was "predominant in the estate over the agricultural land" and its value was well out of proportion to the profitability of the farm.

The two year user test

No property can qualify for APR unless it has been occupied for the purposes of agriculture throughout the two years ending with the relevant death. Again, given the finding that Rosteague was not a farmhouse at all, this issue did not need to be decided directly, but it does seem that Lady McKenna's absence from the property in a nursing home during the final period of her life would in itself have disqualified her estate from obtaining the relief.

Not all of the buildings in the farm yard qualified for APR; it was made clear that the burden of proof lay on the executors. Buildings which had been left vacant, or may have been used for storage of items relating to the house and gardens, or which had been used for horse livery in that final two year period, failed to obtain APR. Each building was considered separately (and would have needed its own distinct valuation).

Some lessons

The first is that contract farming arrangements covering an entire holding are likely to lead to the loss of APR, unless the management of those arrangements takes up virtually the whole of the landowner's time, and he does that directly, rather than simply employing an agent to do the managing. The second is that must be proportionality between the size and economics of the house and that of the land. And the third is that the situation of the farm buildings in relation to the house can be crucial – the more distant from the house, the less likely that it will be a farmhouse. The house must be in the immediate sight and smell of its farm. House and farm must be a single integrity.

> "the **situation of the farm buildings in relation to the house can be crucial** – the more distant from the house, the **less likely that it will be a farmhouse.** The house **must be in the immediate sight and smell** of its farm."

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3. If we do not have your correct details please also inform us of any changes so that we may update our records.