

INHERITANCE TAX – agricultural property relief - house and barn owned by the deceased – house and barn not agricultural land – property for the purposes of IHTA 1984 s115(2) restricted to agricultural land within the estate of the deceased - house not a farmhouse – barn was of a character appropriate to the property – barn owned and occupied for the relevant period – house not entitled to agricultural relief – barn entitled to agricultural relief – IHTA 1984 s115(2), s116 and s 117.

THE SPECIAL COMMISSIONERS

ENID MERIOL AMELIA ROSSER

Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE

Respondents

Special Commissioner: MR MICHAEL TILDESLEY

Sitting in London on 2 May 2003

Alan John Rosser, the husband of Mrs Enid Meriol Amelia Rosser, for the Appellant

Peter Twiddy, the Assistant Director of the Capital Taxes Office for the Respondents

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DECISION

The Appeal

1. The Appellant appeals against the Notice of Determination issued by the Commissioners of Inland Revenue dated 2 January 2003. The Determination states that

“In relation to the deemed disposal for the purposes of inheritance tax on the death on 6 June 2001 of Mrs Olive Amelia Phillips (“the Deceased”)

That the Deceased’s house and buildings at Cwm Farm, Cwm Lane, Rogerstone, Gwent were not having regard to the provisions of section 115(2) Inheritance Tax Act, of a character appropriate to the agricultural land or pasture included in the estate of the Deceased at her death”.

The Legislation

2. Chapter I (sections 1 to 5) of the Inheritance Act 1984 (hereinafter referred to as the 1984 Act) provides the overall structure for the charging of inheritance tax.

3 Section 4(1) deals with the charging of inheritance tax on the death of any person:

“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”.

4 The word “estate” is defined in section 5(1):

“the aggregate of all the property to which a person is beneficially entitled, except that the estate of a person immediately before his death does not include excluded property”.

5. The word “property” is stated in section 272 to include “rights and interests of any description”.

6. Chapter 2 (sections 115 to 124C of the 1984 Act) contains the provisions giving relief for agricultural property. Section 116 provides that

“ Where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property, the whole or part of the value transferred shall be treated as reduced by the appropriate percentage....”

The appropriate percentage is either 100 per cent or 50 per cent. In broad terms owner occupiers are entitled to a 100 per cent reduction, whilst agricultural landlords

are entitled to a 50 per cent reduction except where the tenancy or a tenant succeeds to the tenancy after 10 August 1995.

7. Section 115(2) defines agricultural property for the purposes of section 116 as:

“....agricultural property means agricultural land or pasture (*part 1*) and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture (*part 2*); and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property (*part 3*)”.

The italics in the definition are mine and intended to identify the three separate dimensions to the definition of agricultural property as identified in *Starke and another (executors of Brown deceased) v Inland Revenue Commissioners* [1995] STC 689 (CA).

8. Section 117 states that section 116 does not apply to any agricultural property unless -

- (a) it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of transfer, or
- (b) it was owned by him throughout the period of seven years ending with that date and was throughout the period occupied by him or another for the purposes of agriculture.

The Issues

9. The estate of Mrs Olive Amelia Phillips immediately before her death included Cwm Farm which comprised of two acres of agricultural land, a house and a barn. Originally, the total acreage of agricultural land for Cwm Farm was 41 acres, however, in 1989 Mrs Olive Amelia Phillips gifted 39 acres to her daughter, Mrs Enid Meriol Amelia Rosser, the Appellant.

10. The central issue for determination in the appeal was whether the value transferred by the disposition of the house and barn attracted agricultural relief within the meaning of section 116 of the 1984 Act. In order to make that determination it was necessary to consider the following subordinate issues in sequence:

- (a) Were the house and or barn agricultural land within the meaning of section 115(2) (*part 1*)?
If no
- (b) Under section 115(2) (*part3*) did the property comprise the two acres of agricultural land or the original 41 acres?
- (c) Was the house a farmhouse in accordance with section 115(2) (*part3*)?
- (d) Were the house and or barn of a character appropriate to the property within the meaning of section 115(2) (*part3*)?

- If yes
- (e) Have the requirements of section 117 in respect of the minimum period of occupation or ownership been met?

5 **The Evidence**

11. There was a brief statement of agreed facts. The Appellant and the Inland Revenue each produced a bundle of documents. The bundles contained the same set of ten photographs which did not include photographs directly of the house (there was a photograph which included a side on view in the background). Another bundle of documents was produced by the Inland Revenue with the agreement of the Appellant during the hearing. That bundle contained a letter dated 27 July 2002 from the Appellant to the Inland Revenue which was marked “**without prejudice**”. It was agreed by the parties that I could have regard to the contents of the letter provided I disregarded the last two paragraphs, which I did.

12. The Appellant did not appear at the hearing. She was represented by her husband, Alan John Rosser, who was not legally qualified. Mr Rosser was assisted by their two daughters, Mrs Gillespie and Ms Rosser. Mr Rosser gave evidence on behalf of the Appellant in a very open and honest manner, but occasionally lacked focus on the central issues in the Appeal.

The Facts Found

13. I found the following facts from the evidence presented at the hearing.

14. Cwm Farm lies on the eastern edge of the village of Rogerstone which is situated in the Ebbw Valley just north of Newport in the county of Gwent, South Wales. Cwm Farm was part of the estate of Mrs Olive Amelia Phillips who died on the 6 June 2001. At the time of her death Cwm Farm consisted of a two acre site with a four bed roomed house and a barn surrounded by agricultural land. Mrs Enid Meriol Amelia Rosser, the Appellant and the daughter of Mrs Phillips, was the sole beneficiary of Mrs Phillips’ estate.

15. Cwm Farm has been a farm for a very long time. A plan of the farm (known then as Coomb Farm) from a copy of a mortgage deed dated 20 August 1730 was produced which appeared to show the current house and barn in situ. In 1900 Mr John Richards Phillips, the Appellant’s grandfather, took on Cwm Farm as a tenant farmer under the Tredegar estate. The tenancy passed to his son, Mr John Augustus Phillips, shortly after his marriage in 1932 to Miss Olive Amelia Smith (Mrs Phillips). Mr and Mrs Phillips, the Appellant’s parents, set up a farming partnership concentrating on stock rearing, principally sheep, which lasted throughout the 20th century. In 1958 Mr Phillips purchased Cwm Farm following the dissolution of the Tredegar Estate. For the next 30 years Mr and Mrs Phillips continued to farm the holding of 41 acres and for part of the time other land on the Moors, which was situated some 6 to 8 miles from Cwm Farm. Mr Phillips’ legal interest in grazing rights on the Moors was sold in the 1960’s.

16. In July 1989 Mr and Mrs Phillips, who were now aged 85 and 80 years respectively, gifted 39 acres of the 41 acre holding to their daughter, the Appellant who was living and farming with her husband, Mr Rosser, and their family at Trychymad Farm, Jerusalem Lane, New Inn, Pontypool, Gwent, about 7 miles north east of Cwm Farm. Mr and Mrs Phillips never mentioned their reasons for giving the land, however, a holding of 41 acres would have been too much for them to farm in their eighties.

17. From 1989 Mr and Mrs Phillips continued to live in the house on Cwm Farm and maintained an active interest in the farming of the two acres and the land gifted to the Appellant. Mrs Phillips made meals for the people working on the farm, whilst Mr Phillips helped with the repairing of hedges and gates and kept a watchful eye on the stock. Their enthusiasm for the farm was best summed up by Mr Rosser's comment that "he wished they would go into the house and sit down for a while". The farming partnership of Mr and Mrs Phillips officially came to an end in 1996.

18. Around 1990 Mr and Mrs Rosser assumed responsibility for farming Cwm Farm (the two acres) with the adjoining 39 acres and their holdings at Trychymad Farm and the Pontypool Park Estate. This created a modest farming business for Mr and Mrs Rosser consisting of 112 acres. Mrs Rosser accepted in her application to the Inland Revenue for Agricultural Relief that she had occupied Cwm Farm during the seven years up to the date of her mother's death. Mr and Mrs Rosser's stock ran on the two acres as well as the 39 acres. Mr Rosser together with Mr Goode, an employee, repaired the doors to the barn in 1995 and 2000 and maintained the two acre site in "apple pie order".

19. The profits from the two acres site were accounted for in Mr and Mrs Rosser's farm business. There was no formal arrangement or partnership agreement between Mr and Mrs Phillips and Mr and Mrs Rosser about the use of the two acres and the 39 acres sites by Mr and Mrs Rosser. No payment of monies was made by the Appellant for their use. Instead the relationship between Mr and Mrs Phillips and Mr and Mrs Rosser was governed by love and trust underpinned by a strong unspoken culture of mutual help: "we would do anything they wanted and they would anything for us that we wanted". They were united together in carrying on the long family tradition of farming at Cwm Farm.

20. Sadly in 1999 Mrs Phillip's health seriously deteriorated, suffering from severe dementia which required constant medical care in a nursing home. Mrs Rosser and her daughters looked after Mr Phillips at Cwm Farm except the final two weeks where he had to be admitted to a nursing home. Mr Phillips died at the age of 97 on 13 April 2001. He was followed some seven weeks and five days later by his wife, Mrs Phillips who died at the age of 92 on 6 June 2001.

21. The house on Cwm Farm consisted of two floors with a pitched slate roof, two chimney stacks and a brick bailey at the rear. There were four bedrooms on the upper floor accessed by two staircases, one from the front hall; the other from the kitchen.

Downstairs consisted of a small front hall, the dining room and the sitting room ran off from the hall on the left and right respectively. At the rear of a house was the kitchen from which access could be gained at the same floor level to the lumber room and the cellar. There were two doors to the house; the front door which opened into the hall and the back door into the kitchen. The family preferred to use the back door as their main point of entry which opened off a small farmyard. The front door was rarely used and looked onto a small lawn. Mr Rosser was unable to give a precise date when the house was built, although a house on the same spot was in existence at 1730. Mr Rosser believed that the house had remained largely unaltered since it was built apart from the erection of a porch and the conversion of the lumber room to a downstairs toilet. It was very difficult for me in the absence of a photograph to form an accurate view of the size of the house and its relationship with the surrounding agricultural land. Also no evidence was produced about comparable properties.

22. Mr Rosser described the house as a typical Welsh farm house: “if it had been placed in the middle of a town it would instantly be recognisable as a Welsh farmhouse”. The house was certainly used as the farmhouse for Cwm Farm probably until 1996 when Mr and Mrs Phillips farming partnership came to an end. After then the functions associated with farming carried on at the house were the provision of mid-morning refreshments and cooked lunches for people working on the farm and the storage of farm tools and pesticides. In his later years Mr Phillips would keep a watchful eye on the stock but if an animal required attention he would telephone Mr and Mrs Rosser at Trychymad Farm to come over and deal with the problem.

23. The Appellant sought to persuade the Tribunal that the house had been used continuously as the “headquarters” for farming operations at Cwm farm until the death of her mother. The Appellant produced in support of her contention nine invoices relating to the farm and the registration of the farm under the Integrated Administration and Control System (IACS) administered by the Agriculture Department of the National Assembly for Wales. The nine invoices covered the period December 1999 to April 2001 but they related to domestic use of the house rather than commercial use, such as renewal of the television licence and the payment of domestic electricity. Also five of the invoices were either addressed to or signed by Mrs Rosser with at least two being sent to Trychymad Farm. During this period Mr and Mrs Rosser had powers of attorney in respect of Mr and Mrs Phillips. IACS was a system which mapped agricultural land for the purposes of triggering eligibility for farm subsidies. The IACS registration (A0031585) for Cwm Farm was in the name of the Appellant with a correspondence address of Trychymad, Jerusalem Lane, New Inn, Pontypool.

24. The bundles of documents contained three letters, two from neighbouring farmers, Mr Leonard and Mr Lewis, and one from Mr Goode who worked at Cwm Farm, two days a week. The letters were submitted by the Appellant as additional evidence for the agricultural use of the property. However, only Mr Goode referred directly to the house as the farmhouse, Mr Leonard and Mr Lewis restricted their remarks to the farm buildings (the barn).

25. Mr Rosser on behalf of the Appellant acknowledged that the house had changed character and was performing a dual purpose of supporting the farm and providing a retirement home for Mr and Mrs Phillips.

5 **26.** The barn was separate from the house on the right of the drive immediately after the entrance from Cwm Lane. The barn was of traditional farm design as demonstrated by the photographs, constructed of stone with an asbestos roof. Mr Rosser believed it was the barn shown on the 1730 map because there had been no change in overall dimensions.

10 **27.** The barn in fact was a complex of small self-contained units with specific functions associated with farming. At the end of the barn nearest to Cwm Lane was the tractor shed with its own entrance and loft. Next to the tractor shed but separated by a wall was a stock pen with a hay rack. Immediately facing the stock pen was the
15 barn for storing hay and straw. The barn and the stock pen shared the two side entrances to the complex with one opening to the drive, the other to an enclosed paddock which was within the two acres forming part of Mrs Phillip's estate and fenced off from the gifted 39 acres. At the rear of the complex was another stock pen divided from the barn by a wall. Access was gained to the pen through a door facing
20 in the direction of the house. A water tank for feeding the livestock stood outside the stock pen on the paddock side of the complex. Mr Leonard and Mr Lewis described the barn in similar terms as a good lock up tractor shed, a hay and straw storage area and loose boxes all in good condition.

25 **28.** The barn was in good condition and had been regularly maintained. The doors to the barn and the tractor shed had been replaced in 1995 and 2000 respectively. The barn has a long history of uninterrupted agricultural use which was confirmed by the letters of Mr Lewis and Mr Leonard, neighbouring farmers. At the time of Mrs Phillips death it was being used for agricultural purposes in connection with the
30 surrounding two acres of agricultural land providing shelter and feed for the stock and as a workshop for maintaining hedges, fencing and gates. The barn also served the needs of the 39 acres site. The barn was a part of Mr and Mrs Rosser farming business which covered Cwm and Trychymad Farms.

35 **29.** The Appellant had no intention of converting the barn for residential use. The barn occupied a strategic position on the farm providing the only means of access to agricultural land at its rear. The barn was important for the conservation of wildlife, a topic which Mr Rosser was very passionate about.

40 **30.** The two acres comprised of agricultural land upon which the house and the barn stood. Mr Twiddy on behalf of the Inland Revenue accepted that it was agricultural land. This agricultural land provided grazing for the stock. The land supported a pond ideal for the rearing of geese, (although there was no evidence that it was being used for this purpose) and in the past a large vegetable garden which had
45 fallen into disuse on the deterioration of Mr Phillip's health. The land was enclosed by hedges and fencing from the surrounding 39 acres. The evidence and the photographs showed that the fences and hedges had been kept in good order and was

being used for agricultural purposes. There was a long history of uninterrupted use of this land for agricultural purposes.

31. The 39 acres gifted to the Appellant in 1989 surrounded the two acres site on all flanks except to the west. The land consisted of a series of enclosed fields with an undulating terrain particularly near the reservoir on the eastern edge. The land was used for stock rearing and had enjoyed a long history of agricultural use. The Appellant had farmed the land as part of her farming business shared with her husband since 1989.

The Authorities

32. The following authorities were cited at the hearing:

Starke and another (executors of Brown deceased) v Inland Revenue Commissioners [1994] STC 295; [1995] STC 689 (CA).

Lloyds TSB as personal representative of Rosemary Antrobus deceased v Inland Revenue Commissioners [2002] STC (SCD) 468.

33. Mr Rosser produced an article entitled “Starke Victory Re: Lady R Deceased” published in “Farm Tax and Finance” (2001/02 Vol 18 No 6). Mr Twiddy was content for this article to be shown to me but he questioned the status of the document and the accuracy of its contents. I found the article helpful in explaining why Mr Rosser chose a particular line of argument, however, I did not rely on its contents in making my decision.

The Arguments for the Appellant

34. Mr Rosser on behalf of the Appellant submitted that the house and the barn were included in the definition of agricultural land as set out in section 115 (2) of the 1984 Act by virtue of section 5 of the Interpretation Act 1978. Section 5 provides that

“In any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule”

Schedule 1 provides, among other definitions, that

“.....land includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land”

35. According to Mr Rosser section 115(2) expressed no contrary intention to counter the wider meaning of land to include buildings and structures. Thus as the house and barn were agricultural buildings the requirements of section 115(2) (*part1*) were met. In those circumstances Mr Rosser said it was unnecessary for me to consider whether the house and barn were of a character appropriate to the property (*part 3 of section 115(2)*). At this juncture I advised Mr Rosser with the full support

of Mr Twiddy to keep open his options and gave him the choice of advancing further arguments.

36. Mr Rosser chose to pose additional arguments. He suggested that the Inland Revenue had been inconsistent about its interpretation “of a character appropriate to the property”. He referred to the article entitled “Starke Victory Re: Lady R Deceased” published in “Farm Tax and Finance” (2001/02 Vol 18 No 6) where the Inland Revenue had apparently widened the definition of property to include agricultural land not within the estate of the deceased. Mr Rosser felt that the 39 acres and the two acres should be treated as a single entity for the purposes of section 115(2) because of the history of farming use and its association with the same family farming business. The house and the barn had always been used for agricultural purposes.

37. The Appellant in her letter dated 27 July 2002 (within the additional bundle produced at the hearing) submitted that agricultural relief was a concession to farming families by the government of the day to prevent the family farm from being sold in order to meet inheritance tax.

The Arguments for the Respondent

38. Mr Twiddy on behalf of the Respondents stated that section 115 had to be read within the context of the overall structure for inheritance tax as set out in the 1984 Act. Essentially this was a tax arising from the disposition made by a person as a result of which the value of his estate was reduced. The tax applied to lifetime transfers of value as well as the deemed transfer of value on death. It was in effect a tax on gifts.

39. According to Mr Twiddy there were two hurdles that the house and barn must clear in order to qualify for agricultural relief. They must be agricultural property within the definition of section 115(2) of the 1984 Act and they must be occupied for the purposes of agriculture for the relevant periods set out in section 117 of the Act. If the house and barn failed either test, no agricultural relief was available.

40. Mr Twiddy stated that the Court of Appeal had previously decided in *Starke [1995] STC 689 (CA)* that the wider meaning of land to include buildings by virtue of the Interpretation Act 1978 did not apply to the definition of agricultural land in section 115(2) (*part 1*). Thus the issue that had to be considered was whether the house and barn “were of a character appropriate to the property” (*section 115(2) part 3*).

41. Mr Twiddy argued that the word “property” in *part 3* of section 115(2) must refer to agricultural land within the estate of the deceased by virtue of sections 4 and 5 of the 1984 Act. Therefore, the house and barn were only agricultural property if they were of a character appropriate to the agricultural land contained within the two acres site. The 39 acres of agricultural land had to be excluded from consideration because they were not part of the Mrs Phillip’s estate at the time of her death. Mr Twiddy

referred to *Starke at 695a* where Morritt LJ had reported the alternative view that the word “property” could include property in common occupation rather than common ownership. The “alternative view” was not part of the decision in *Starke*, and there had been no argument on this point according to Mr Twiddy who had been present at the hearing.

42. The burden of proof was upon the Appellant to demonstrate that the house and barn were of “a character appropriate”. Mr Twiddy cited *Starke at [1994] STC 299* where Blackburne J had interpreted “character appropriate” as “being proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question”. Mr Twiddy then cited *Antrobus at 48* which summarised the principles for deciding whether a farmhouse was of a “character appropriate to the property”. Mr Twiddy accepted that no one principle was decisive, the correct approach was to examine the facts founds against the various principles and make a judgement in the round based upon the whole picture. Mr Twiddy accepted that the house and barn had a long history of farming production but he doubted that there was evidence to support the other principles underpinning the legal definition of the “character appropriate test”.

43. Mr Twiddy raised the issue whether the house on Cwm Farm was in fact at farmhouse at the time immediately before the death of Mrs Phillips. In order to qualify as a farmhouse it was necessary for the Appellant to show that at the relevant time the house was at the centre of the farming operations at Cwm Farm, in short the headquarters. Mr Twiddy cited no specific authorities on this point. The provisions of section 115 (2), apply to a farmhouse not a house.

44. Mr Twiddy gave a brief account of the legislative history of agricultural relief. It was introduced in 1975 and its scope extended in 1981 and 1995. In his view an interpretation of the legislation based upon a purposive construction was subservient to the overriding rule about the strict interpretation of tax laws.

Reasons for Decision

45. The starting point for my determination of the various issues raised in the Appeal is section 115 (2) which sets out three categories of agricultural property eligible for agricultural relief. The three categories are marked in italics:

“....agricultural property means agricultural land or pasture (*part 1*) and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture (*part 2*); and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property (*part 3*)”.

I consider separately each of the subordinate issues identified in paragraph 10.

a) Were the house and or barn agricultural land within the meaning of section 115(2) (part 1)?

46. Mr Rosser sought to persuade me that the house and barn were agricultural land by virtue of the wider meaning given to land in the Interpretation Act 1978. The Court of Appeal, however, has ruled on this issue in *Starke* and another (executors of Brown deceased) v Inland Revenue Commissioners [1995] STC 689 (CA):

“The Interpretation Act required the word *land* to be read as including *buildings or other structures* unless the contrary intention appeared. Such a contrary intention could be read into section 115(2) sufficient to exclude from the word *land* the words *building or other structures*”

I am required to follow the ruling of the Court of Appeal. **Therefore, I determine that the house and barn were not agricultural land within the meaning of section 115(2) (part 1).**

b) Under section 115(2) (part3) did the property comprise the two acres of agricultural land or the original 41 acres?

47. The size of the property could have a critical bearing upon the question whether the house and or barn were of a character appropriate to the *property*. 41 acres of agricultural land is a very different proposition from two acres. The word *property* in section 115(2) *part 3* has two dimensions which must be satisfied before the “character appropriate “ test can be applied to the house and barn. First the *property* itself must be agricultural land within the definition of section 115(2). The Inland Revenue has agreed that the two acres and the 41 acres were agricultural land. Second there must be a nexus between the house and barn and *the property*.

48. There is no decided authority on the nature of the nexus between the buildings and *the property*. Morritt LJ commented on this issue at the end of his judgement in *Starke*[1995] STC 689 (CA) at 695 but his remarks were not part of the decision and were not argued before the Court. He said:

“Thus the question whether the property with which the appeal is concerned is excluded from *part 3* because there is no other *property* in the same ownership to which its character may be appropriate does not arise for decision. Counsel for the Crown indicated that the official view is that there must be some nexus between the property alleged to fall within *part 3* and other agricultural land or pasture and that such nexus must be derived from common ownership as the structure of the inheritance tax deals with the diminution in the value of the estate of the transferor. The alternative view might be that the nexus, which must surely be required, may be provided by common occupation without common ownership thereby recognising the reality of agricultural unit of which, as in this case, the buildings evidently formed part”.

49. Mr Twiddy submitted that the nexus must be derived from common ownership rather than common occupation. To arrive at this conclusion it is necessary to consider section 115(2) in the context of the 1984 statute as a whole and the structure for inheritance tax. Under the 1984 Act inheritance tax is charged on the value transferred by a chargeable transfer. A chargeable transfer is a transfer of value which is made by an individual but is not an exempt transfer. A transfer of value is defined as a disposition made by a person as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition and the amount by which it is less is the value transferred by the transfer. Under section 4(1) tax shall be charged on the death of any person 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. The common denominator throughout this charging regime is the word *estate* the value by which it has decreased during lifetime transfers or its value at death will provide the reference point for the amount of tax charged. It follows from this that the farm buildings and the property referred to in section 115(2) must be part of the estate of the person at the time he makes the disposition, including a deemed disposition at death.

50. I agree with Mr Twiddy's analysis. I conclude, therefore, that the nexus between the farm buildings and the property in section 115(2) is that the farm buildings and the property must be in the estate of the person at the time of making the deemed disposition under section 4 (1) of the 1984 Act. The alternative view that the farm buildings are in the estate but the property to which they refer is not is untenable. This view would seriously undermine the structure for inheritance tax and create considerable uncertainty about when tax is chargeable and the amount of the value transferred. I would add, however, that *estate* is defined in the 1984 Act as the aggregate of all property to which the person is beneficially entitled. Property is widely defined in the 1984 Act to include rights and interests of any description. It will therefore cover not only tangible property but also equitable rights, debts and other choses in action, and indeed any rights capable of being reduced to money value. Thus, under the situation covered in section 115(2) if the person making the deemed disposition at death legally owned the farm buildings and had a legal interest such as a right of profit in the property to which the character of the farm buildings is appropriate then the farm buildings and the property would be part of the estate.

51. In relation to this Appeal Mrs Phillip's estate immediately before her death included the house, the barn and the two acres of agricultural land upon which they were built. The estate did not include the 39 acres given to the Appellant in 1989. The facts found showed that Mrs Phillips immediately before her death had no legal ownership and no legal rights over the 39 acres. **Thus in this appeal the property in section 115(2) is the two acres of agricultural land upon which the house and the barn is built.**

c) ***Was the house a farmhouse in accordance with section 115(2) (part3)?***

52. Before considering whether the house was of a character appropriate to the two acres of agricultural land, it is necessary to make a decision about whether the

house on Cwm Farm was in fact a farmhouse at the time immediately before the death of Mrs Phillips. Mr Twiddy contended that in order for the house to qualify as the farmhouse it must be the centre of operations or the headquarters for the farming activities on the two acres of agricultural land. Mr Twiddy cited no specific authorities in support of his proposition. There was reference to the definition of farmhouse in *Antrobus*. However, this case was not concerned with the definition and the authorities mentioned deal with the construction of the word “farmhouse” under different statutes from the 1984 Act.

53. The dictionaries define farmhouse as “the chief dwelling house attached to a farm (The Oxford English Dictionary, 2nd edition, 1989); “a house attached to a farm especially the dwelling from which the farm is managed” (Collins Concise Dictionary 21st Century Edition, 2001); “the farmer’s house attached to a farm” (Chambers English Dictionary, 1989). The ordinary and natural meaning that I would attach to the word “farmhouse” in section 115(2) is that it must be a dwelling for the farmer from which the farm is managed.

54. The house on Cwm Farm has had a lengthy and proud history as a farmhouse providing a home for generations of farmers and their families. However I am obliged to consider whether it was a farmhouse at the time immediately before the death of Mrs Phillips. The facts found demonstrated that the house changed from a farmhouse to a retirement home for Mr and Mrs Phillips with the transition completed at about the time of the ending of Mr and Mrs Phillip’s partnership in 1996. From about 1990 Cwm Farm was managed by the Appellant and her husband, Mr and Mrs Rosser, from Trychymad Farm. They organised the two farms as a single farming business with the profits of Cwm Farm going into that business. The IACS certificate and some of the invoices produced for Cwm Farm were in the name of the Appellant at Trychymad Farm. Mr Phillips kept a watchful eye on the stock but it was Mr Rosser from Trychymad Farm who would deal with any problems. Mr Rosser named two activities associated with farming carried on at the material time at the house on Cwm Farm, namely, provision of early morning refreshments and the midday meal and the storage of agricultural equipment and pesticides. I have concluded that those activities were incidental to the prime function of the house as a retirement home and not sufficient to characterise the house as a farmhouse. **I have, therefore, decided that the house at Cwm Farm was not a farmhouse within the meaning of section 115(2) at the time immediately before the death of Mrs Phillips.**

d) Were the house and or barn of a character appropriate to the property within the meaning of section 115(2) (part3)?

55. The principles governing the “character appropriate test” were summed up by the Special Commissioner in *Antrobus* ([2002] STC (SCO) at p.480):

“Thus the principles which have been established for deciding whether a farmhouse is of a character appropriate to the property may be summarised as: first, one should consider whether the house is appropriate by reference to its size, content

and layout, with the farm buildings and the particular area of farmland being farmed (Korner); one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question (Starke); thirdly, that although one cannot describe a farmhouse which satisfies the “character appropriate” test one knows one when one sees it (Dixon); fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm (Dixon); and, finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (Dixon)”.

The approach adopted for the application of these principles is that no principle is decisive, the principles are considered in the round and the judgement is based upon the broad picture.

56. In view of my finding that at the material time the house on Cwm Farm was not a farmhouse it is not necessary for me to make a decision about whether it was of a character appropriate to the two acres of agricultural land. I would have concluded, however, that the house did not meet the requirements for the “character appropriate” test. The burden was on the Appellant to produce evidence about the appropriateness of the size, content and layout of the house and whether it was proportionate in size to the agricultural land and farming activities. The lack of a photograph of the house and no information about comparable properties from the surrounding area in the absence of other compelling evidence seriously weakened the Appellant’s case. There were no statements from persons except Mr Rosser about whether the house met the tests of the educated rural layman and “one knows when one sees it”. The historical dimension was compromised by the more recent use of the house as a retirement home.

57. The construction of section 115(2) requires that separate consideration should be given to the barn as to whether it was of a “character appropriate” to the two acres of agricultural land. The principles enunciated in *Antrobus* apply equally to farm buildings as well as farmhouses. Dealing with each of the principles in turn, (modified to delete the specific references to farmhouse), I set out the facts for and against the proposition that the barn was of a “character appropriate” to the two acres of agricultural land :

Was the barn appropriate by reference to its size content and layout with the particular area of farmland being farmed?

This was a traditional farm barn which had stood on the same site for almost three centuries. The barn had remained largely unaltered in design and size since it was built. It was a working barn which had been used for agricultural purposes in connection with the surrounding farmland for centuries. Inspection of the photographs and the map revealed that it was not an imposing structure. It was in tune architecturally and size with the surrounding farmland of two acres. Moreover the barn was a series of small self-contained units which served specific functions in

relation to the farming activities on the two acres site. Against these findings in support there was no evidence of comparable properties. Also the barn performed functions for the 39 acres of gifted land in addition to the two acres site.

- 5 *Was the barn proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question?*

10 This barn was organised into a series of small self-contained units which bore a direct relationship with the farming activities carried out on the two acres site. The barn gave shelter and food to the sheep that grazed the site. The tool shed provided the equipment and the materials to maintain the fencing and hedging for the agricultural land in question. The barn was the sole means of access to the paddock behind which was fenced off from the 39 acres site. That paddock was in active use for the rearing of stock. The barn also provided a haven for wildlife on the two acres site promoting conservation which is an integral part of farming today. The above facts support the proposition that the barn was proportionate in size and nature to the requirements of the farming activities conducted on the adjoining land . Those facts have to be weighed against the fact that the barn was also used to support the farming activities on the surrounding 39 acres.

20 *Although one cannot describe a barn which satisfies the “character appropriate” test one knows one when one sees it.*

25 I have relied on the photographs and the map and formed the view that the barn was in tune architecturally and size with the surrounding farmland of two acres.

Would the educated rural layman regard the barn of a character appropriate to the agricultural land?

30 As well as the photographs and the map, I have relied upon the written statements of Mr Lewis and Mr Leonard who farm neighbouring properties to Cwm Farm. They confirmed that the barn and the self contained units within were in good working order and had always been used for farming Cwm Farm. I accept that the reference to Cwm Farm in their statements might include the additional 39 acres as well as the two acres site.

How long has the barn been associated with the agricultural property and what is the history of agricultural production?

40 This barn has been associated with the agricultural property for almost three centuries. The evidence suggested that agricultural production has taken place in the barn for a similar period. Further there has been a history of production within the same farming family since 1900. This barn was very much a working farm building and had been regularly maintained for that purpose . There was no intention on the part of the Appellant to convert it to residential use. The fact that the barn has had an association with the 39 acres did not in my view detract from its long association with the two acres site.

58. In paragraph 57 I have analysed the facts for and against the finding about the barn meeting the “character appropriate” test in relation to the two acres site. I am mindful that the approach to be adopted with respect to the “test” is a broad one with no principle decisive on its own. I am not concerned about the absence of evidence of comparators for the barn because there is other compelling evidence upon which I can rely. Second the “character appropriate test” is not assessed by means of a slide rule in that sizes of barn must equate with specific areas of agricultural land. The more difficult aspect of this Appeal is that the barn has an association with the 39 acres as well as with the two acres site. Section 115 (2), however, does not require me to make a finding that the barn was used exclusively for the two acres site. The question I have to consider is whether the barn was of a “character appropriate” to the agricultural land comprised in the two acres. Thus, the fact that the barn was also used to support the farming activities on the 39 acres is not a showstopper. It is a material fact which has to be weighed against the facts found in favour of the proposition that the barn was of a “character appropriate” to the two acres. The decision is made on the balance of probabilities with the burden of proof on the Appellant.

59. **Having weighed up all the facts identified in paragraph 57 and their application to the principles enunciated in *Antrobus* I have decided on the balance of probabilities that at the time immediately before the death of Mrs Phillips the barn was of a character appropriate to the agricultural land comprised in the two acres.**

e) *Have the requirements of section 117 in respect of the minimum period of occupation or ownership for the barn been met?*

30

60. Section 117 states that section 116 does not apply to any agricultural property unless -

- a. it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of transfer, or
- b. it was owned by him throughout the period of seven years ending with that date and was throughout the period occupied by him or another for the purposes of agriculture.

Mrs Phillips is the transferor for the purposes of section 117. The facts found showed that Mrs Phillips did not occupy the barn for the purposes of agriculture throughout the period of two years ending with her death, the date of the transfer. The evidence about Mrs Phillip’s ownership of the property was unclear, in particular whether she was a joint owner with her husband Mr Phillips prior to his death. However, the

evidence was unequivocal about Mr Phillip's ownership of the property from 1958 and that Mrs Phillips succeeded to ownership on his death. Under section 120 (1)(b) of the 1984 Act Mrs Phillips is deemed to have owned the property for the period for which Mr Phillips owned it. The Appellant had occupied Cwm Farm which includes the barn for agricultural purposes during the seven years prior to the death of Mrs Phillips. Thus the barn was owned by Mrs Phillips for the period of seven years ending with the date of transfer and was throughout the period occupied by Mrs Rosser for the purposes of agriculture in connection with the agricultural land comprised in the two acres. **I, therefore, conclude that the requirements of section 117(b) have been met in relation to the barn.**

Decision

61. The decision on the issue for determination on this appeal is that

"In relation to the deemed disposal for the purposes of inheritance tax on the death on 6 June 2001 of Mrs Olive Amelia Phillips ("the Deceased")

That the Deceased's house at Cwm Farm, Cwm Lane, Rogerstone, Gwent **was not** having regard to the provisions of section 115(2) Inheritance Tax Act **eligible for agricultural relief** under section 116 of the 1984.

That the Deceased's barn at Cwm Farm, Cwm Lane, Rogerstone, Gwent **was** having regard to the provisions of sections 115(2) and 117 Inheritance Tax Act **eligible for agricultural relief** under section 116 of the 1984.

62. The Appeal is, therefore, allowed in part.

63. Under the provisions of section 224 of the 1984 I declare that the determination dated 2 January 2003 should be varied in the terms stated in paragraph 61 above.

**MICHAEL TILDESLEY
SPECIAL COMMISSIONER**