Busman's holiday

A recent tribunal case has shed some light on the question of when a furnished holiday let will be considered to be run as a business, and therefore qualify for business property relief. **Julie Butler** explains

There has been much debate about when a tribunal would be faced with the question of whether business property relief (BPR) could be achieved on a furnished holiday let (FHL) property. This tribunal has now taken place. The decision of *Mrs N V Pawson's Personal Representative v HMRC* [2012] UK FTT 51 has allowed a BPR claim on an FHL cottage. The judgment has helped provide useful guidance on the business nature of the ownership and management of a holiday letting property, with regard to the possibility of claiming BPR.

HM Revenue & Customs (HMRC) has appealed against this decision, as it is understood that a number of similar cases are, at the time of this edition of *PS* going to press, awaiting a verdict.

THE FACTS OF THE CASE

The property, located in Thorpeness in Suffolk, was let fully furnished as a holiday home, and was jointly owned by the deceased and members of her family. The deceased held a 25% share in the FHL property. The First-tier Tribunal (FTT) accepted that the property had been run as a business for more than two years before the deceased's death. The FTT also accepted the fact that the family's use of the property for three weeks a year did not prevent it from being run as a holiday let. The use of the property by family members reduced the level of activity and profit, but it was considered not enough to prevent the property being run on sound principles. The business had been profitable for two of the three years before the taxpayer died, and was running profitably in the year of her death. The FTT concluded that the business was being run with a view to gain which satisfied section 103(1) of the Inheritance Tax Act 1984 (IHTA 1984) – that is, that a business carried on otherwise than for gain is not to be regarded as a business.

Three authorities were cited for consideration as to whether there was a business: *Commissioners of Customs & Excise v Lord Fisher* [1981] STC 238; *CCE v Morrison's Academy Boarding Houses Association* [1978] STC 1; and *McCall v IRC* [2009] STC 990. Then the six "indicia of business" were considered. These principles were derived from *Lord Fisher* and summarised in *McCall*, where it was decided that a landowner who derives income from property will be treated as having a business of holding an investment, as opposed to a trading business. Such receipt of income is notwithstanding the fact that, in order to obtain the income, the landowner carries out incidental maintenance and management work, finds tenants and grants leases.

In this case, it was decided that the FHL was a business asset providing a service. The generic profit motive (as opposed to some other purpose or motive) is of key importance to help justify the BPR claim. The FTT confirmed that the business was "a property consisting of a business or interest in a business" carried on for gain (section 105(1)(a) of the IHTA 1984).

In addition, the FTT had to consider if the business consisted wholly or mainly of the holding of an investment (under section 105(3) of the IHTA 1984). Taking into account the decision in *George and Loochin (Stedman's Executors) v CIR* [2004] STC 163, the FTT concluded that "an intelligent businessman would not regard the ownership of a holiday letting property as an investment as such, and would regard it as involving far too active an operation for it to come under that heading". The FTT agreed that having to find new occupants and provide the relevant services were not the equivalent of owning a property as an investment. The property was a business asset being used to provide a service. The taxpayer's appeal for the claim for BPR was allowed.

Many had considered that BPR could not be achieved on a single FHL property, but this case has provided greater hope for the genuine well-run FHL business. It is worth quoting from the judgment: "The operation of the property as a holiday cottage for letting to holidaymakers was a serious undertaking earnestly pursued ... the principles on which the activity is run are regular and sound."

PRACTICAL STEPS

There are a number of lessons to be learnt from this decision for clients who wish to try to protect future BPR on FHL property.

First, they must ensure that the operation is profitable; second, that the private use is minimal; and third, that there is clear evidence of the provision of relevant services for the holidaymakers available. The hope provided by the case may be somewhat confused, but aiming to meet these criteria can only be positive while the result of the appeal is awaited.

HMRC wants the appeal to reconsider all aspects of the case, including its findings and treatment of the facts. Leave to appeal was, however, granted only on one ground: whether the tribunal "applied the wrong test in assessing whether the property was held wholly or mainly as an investment". What will an intelligent businessman decide next time? ■

Julie Butler (j.butler@butler-co.co.uk) is a farm and equine tax expert and author of *Tax Planning for Farm and Land Diversification* (Bloomsbury) and *Stanley: Taxation of Farmers and Landowners* (LexisNexis).