

BUSMAN'S HOLIDAY

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Julie Butler reports on a case that saw inheritance tax relief achieved on a furnished holiday let



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*¹ has allowed a BPR claim on an FHL cottage.

The judgment has helped provide guidance on the business nature of the ownership and management of a holiday letting property with regard to claiming BPR. HMRC has appealed against this decision, which is interesting as a number of similar cases are awaiting the appeal's verdict.

The property, in Thorpeness, Suffolk, was let fully furnished as a holiday home and jointly owned by the deceased and members of her family. The deceased held a 25 per cent share in the FHL property.

MINIMAL PRIVATE USAGE

The First-tier Tribunal (FTT) accepted that the property had been run as a business for more than the two years before the deceased's death. The FTT also accepted that the family's use of the property for three weeks a year did not prevent it from being run as a holiday let. Family use of the property reduced the level of activity and profit but it was not considered 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 Tribunal concluded that the business was being run with a view to gain, which satisfied s103(1) *Inheritance Tax Act 1984*, which states that a business carried on otherwise than for gain is not to be regarded as a business.

'INDICIA OF BUSINESS'

Three authorities were cited for consideration as to whether there was a business: *Lord Fisher, Morrison's Academy and McCall v IRC*². Then the six 'indicia of business' were considered. In *McCall* it was decided that a landowner who derives income from property will be treated as having a business of holding an investment, rather than a trading business. Such receipt of income is notwithstanding that to obtain the income the landowner carries out incidental maintenance and management work, finds tenants and grants leases.

'THE FTT AGREED THE PROPERTY WAS A BUSINESS ASSET BEING USED TO PROVIDE A SERVICE'

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 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 under s105(1)(a) *Inheritance Tax Act 1984*.

PROVIDING A SERVICE

In addition, the FTT had to consider if the business consisted wholly or mainly of the holding of an investment (s105(3) *Inheritance Tax Act 1984*). Taking into account the decision in *George (Stedman's Executors) v CIR*³, 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 on the FHL 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.'

So the practical steps to be taken to try to protect future BPR on FHL property are to ensure that the operation is profitable, the private use is minimal and there is clear evidence of the provision of relevant services for the holidaymakers. Perhaps this case has provided confused hope, but aiming to meet the criteria discussed can only be positive as the outcome of the appeal is eagerly awaited.

Julie Butler is the author of *Tax Planning for Farm and Land Diversification*, *Equine Tax Planning* and *Stanley: Taxation of Farmers and Landowners*



¹ *Mrs N V Pawson's Personal Representative v HMRC* [2012] UK FTT 51

² *McCall v IRC* [2009] STC 990

³ *George (Stedman's Executors) v CIR* [2004] STC 147