

# FHL – Is It Worth Lobbying? Is the Business Route More Effective?

By Julie Butler

There is no doubt that there has been some serious debate and lobbying by major holiday cottage groups and tourism groups to overturn the 22 April 2009 Budget decision to “cancel” the Furnished Holiday Lets (FHLs) tax reliefs.

## Fairness for Residential Landlords?

There are many who consider the Budget changes provide fairness to many residential landlords who provide services and undertake activities similar to the FHL landlords. Perhaps that is a whole separate subject for debate – it provides the lead to give direction to the thinking that must arise from the proposed changes.

The new thinking for genuine cottage businesses is to forget the concept of landlord and letting and instead consider:

- “A” – Adventure in the nature of trade
- “B” – Business

## FHL Tax Relief Restricted to Income Tax and Capital Gains Tax (CGT)

There must also be the consideration of the fact that the FHL rules only present advantages of income tax and CGT relief AND they had to be commercial. Inheritance Tax (IHT) relief via Business Property Relief (BPR) was, and is, a separate subject. The consideration has to be “think business forget landlord” and think on the concept of a hotel and the provision of services.

## The Way Forward for the Holiday Business

From the practical commercial viewpoint the owner of the holiday accommodation has to decide what direction they want to take their holiday business – landlord or viable, economic commercial undertaking (trade)?

So what are the problems of the “A” word – the adventure in the nature of a trade?

1. A true commercial business is as “it says on the tin” an adventure – an undertaking that involves risks and service to the client.
2. Class 4 National insurance (NIC). As a business when the profits exceed a certain level then Class 4 NIC is due, although there are deferments for those with Class 1 earnings through employment and retirement age advantages.

## Tax Planning – Which Tax is the Driver?

If it is accepted the FHL rule book is thrown away from 6 April 2010 and the birth of the Furnished Holiday Business (FHB) takes place the owners of the property must consider what the main drivers are for wanting FHL tax relief and the tax reliefs that surround a business providing holiday accommodation and use this to help their decision making accordingly.

## Capital Gains Tax

For those who are continuing down the FHB route it is likely that the CGT advantages, especially rollover, i.e. being able to roll the gain into another property, will be lost under the FHL and this presents a planning opportunity before 5 April 2010.

Those most adversely affected by the CGT changes will be owners of properties with development potential or large potential gains that they plan to realise in the near future. The choices would have to ensure a robust business classification, i.e. the FHB, or consider action before 5 April 2010 when the CGT reliefs are still available.

## Income Tax

The loss of capital allowances and the move to wear and tear or the renewals basis must be considered and risk/cost assessed. The largest disadvantage of the FHL rule change has to be the loss (excuse pun) of the ability to offset the income tax losses against total income. In order to mitigate this disadvantage the cottage owner must make a robust move toward the genuine trade or look at the reasons for the loss, e.g. loan interest, non-commercial transactions, areas of excessive expenditure.

It is considered that possibly some FHL loss claims have been allowed which should have come under HMRC scrutiny. Perhaps those in this position should not “protest and shout” too much!

## Summary

Forget the word “loss” – there are a large amount of “FHBs” in the UK which need to be recognised as a business now. Rethink, restructure and register the business with HMRC/Contributions Agency as a trade using form CWF1 (check HMRC website) if appropriate. For the property that will stay as a “FHL” there is a lot of planning to be undertaken by 5 April 2010.