

Going glamping

JULIE BUTLER considers whether this 'on trend' business is a trade or furnished holiday accommodation.

The first question to be asked on seeing this title is perhaps 'what is glamping?' It might come as a surprise to learn that the answer lies in the unusual portmanteau of 'glamour' and 'camping' taking place on a farm. The next question that might be asked is 'on what planet could any form of camping, especially on a farm, be glamorous?' Well, high-quality camping is glamorous in 2016.

Logic aside, glamping is a prosperous and popular form of farm diversification which raises several tax concerns. The tax efficiency of the treatment of equipment used is one. The first question must be as to the form of glamping that is under consideration and this will help to direct the tax treatment associated with this business.

Camping with services

Many would argue that the description 'glamorous' indicates a good quality of service, although it could also relate to the location or a combination of both.

Glamping can involve staying in yurts, tipis, pods, bell tents, shepherds' huts, Gypsy caravans and tree houses. It is considered to be camping with amenities and, in some cases, 'resort style' services that provide the luxuries of hotel accommodation with escapism and the outdoors.

Some glamping can be to provide the 'rich and the famous' with prestigious accommodation for music festivals away from (but local to) the festival sites and include butler and limousine transport service. Glamping is about sustainable, quasi-outdoor lodging that offers a comfortable experience on the farm.

KEY POINTS

- Can glamour and camping result in a trade?
- Tax treatment must be assessed on a case-by-case basis.
- Take account of guidance from recent tribunals on general principles of service and the structures.
- Lettings should be commercial with a view to the realisation of profit.
- Lessons to be learned from the recent case of *J Nott*.
- The tax treatment of the whole operation must be considered 'in the round'.



Where such glamping activity involves letting out holiday accommodation rather than operating a trade, the furnished holiday accommodation tax questions arise. It is reasonable, therefore, that the tax treatment must be assessed case-by-case. And this should take account of guidance from recent tribunals on general principles of service and the structures provided. In many situations, glamping involves extensive food service and regular fresh bed linen.

B&B versus FHL

The new business may amount to a bed-and-breakfast (B&B) trade but, if it does not, it will need to be the letting of furnished holiday accommodation (FHL). This is deemed to be a trade by TCGA 1992, s 241 (for UK furnished holiday lettings) for the purposes of rollover relief and some other capital gains tax purposes.

Are the structures that form part of the glamping operation, in fact, plant? Plant has been established to be the apparatus with which a person carries on their trade, rather than the 'setting' in which the trade is carried on. The statutory inclusions and exclusions in CAA 2001, s 21 to s 23 will not apply for this purpose. TCGA 1992, s 241 deems the commercial letting of furnished holiday accommodation to be a trade for the purposes of s 152 to s 157. The Finance Bill 1984 committee debate, when introducing the relief for furnished holiday lettings, made it clear that the new rules were intended to apply to all commercial letting of holiday accommodation, including caravans, and that the term holiday accommodation went much wider than holiday cottages.

The qualifying conditions for the relief to be due are that the lettings should be on a commercial basis and with a view to the realisation of profit, that the accommodation is furnished (ITTOIA 2005, s 323(2) and s 323(3)), and that the minimum periods of availability and letting set out at ITTOIA 2005, s 324 to s 326 are met.

Capital gains tax rollover relief

Some landowners might have sold paddocks or development land and be looking to roll over the gain into the glamping accommodation to help reduce the capital gains tax liability. There is no reason why the cost of purchasing the caravans or structures described cannot qualify for relief if they are advertised for letting as soon as they are acquired and made ready for use, and the minimum periods of availability and occupation are met in the first 12 months and each tax year thereafter once the letting has started. The averaging provisions at s 326 and s 326A may assist where those minimum periods are met in some years, but not in every one.

Glamping and trading income

It is considered that a well-run glamping operation, in which the focus is on services and the badges of trade are evidenced, will be a trade. However, clarity as to what is happening with the operation needs to be established. The recent case of *JNott* (TC4897) considered the question of whether letting from holiday cottages was property or trading income. Such a case encompasses much current HMRC focus on the status of property income and the department's aggressive approach to classify it as derived from property rather than as a trading activity.

On Mr Nott's 2009-10 tax return he showed income from holiday accommodation, music and farming. The return was enquired into by HMRC. It concluded that the holiday cottage income was derived from property as opposed to a trade. Mr Nott appealed on the basis that his holiday accommodation operation was a trading activity and the losses should be offset sideways.

HMRC had confirmed that farming losses could be set against other income for class 4 National Insurance contributions purposes, but the losses from the holiday cottage complex could not be offset against other income. The tribunal upheld this view. HMRC questioned the activity that had given rise to the income stream. The question to be asked was what the customers were paying for: the use of the land or a package of services forming part of a trade? Emphasis was placed by the First-tier Tribunal on the level of any services Mr Nott offered.

What is the payment for?

It is essential to analyse what the glamping customers are paying for. This is necessary to ascertain the correct treatment of the operation. Any farm that has diversified into glamping must

ensure that the services provided are similar to a hotel if income tax loss relief and inheritance tax relief are to be achieved. Always including breakfast as part of the service rather than as an option is a serious consideration to help with tax efficiency.

The conclusion in paragraph 85 of the tribunal's decision in *Nott* states:

'Having considered the additional services provided by Mr Nott, we consider that, while extensive, they are not such as to "change the whole picture" in the words of Lord Greene in *Sywell Aerodrome* [24 TC 126]. They are in large part consistent with the services normally provided by a landlord of furnished holiday accommodation. We agree with HMRC that the recreational facilities offered are, in substance, features intended to increase the attractiveness of the units for letting, rather than additional services. The breakfasts and daily cleaning which are offered for an additional fee are insufficient to change the profit derivation from the exploitation of property to a package of services comprising a trade.'

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Exploitation of property or trade

The tax treatment of the whole operation must be considered 'in the round'. It must be established whether the premises or mobile accommodation qualifies for capital allowances or whether they qualify as assets that can be used for rollover relief. The question of the nature of trade versus accommodation must be considered to determine how the profit is shown on the tax return and whether losses can be offset sideways. Emphasis will be on whether the additional services to make the camping glamorous are due to location and setting, say the inclusion of a swimming pool, or are due to services, for example daily cleaning, breakfast and other meals, and a fully stocked fridge. The glamping brochures should provide evidence of the special services over and above that of accommodation to qualify as a trade where appropriate.

Against the background of negative tax tribunal decisions for holiday accommodation, it is essential that advisers establish the exact nature of the operation and evidence the eligibility for tax relief. ■

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