

INHERITANCE TAX RELIEF ACHIEVED ON FURNISHED HOLIDAY LET

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The decision of Mrs N V Pawson's Personal Representative v HMRC [2012] UK FTT 51 has allowed a BPR claim on a FHL cottage. The judgement 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.

It is considered very likely that HMRC will appeal against this decision, particularly as it is understood that a number of similar cases are awaiting a verdict. The property, located 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% share in the FHL property.

The FTT 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 Tribunal concluded that the business was being run with a view to gain which satisfied IHTA 1984, s 103(1).

Three authorities were cited for consideration as to whether there was a business – "Lord Fisher", "Morrison's Academy" and *McCall v IRC [2009] STC 990*. Then the six "indicia of business" were considered.

Business asset being used to provide a service

The FTT had to consider if the business consisted wholly or mainly of the holding of an investment (section 105(3) IHTA 1984). Taking into account the decision in *George (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 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 judgement: "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 toward achieving BPR

The practical steps to be taken moving forward in order to try and protect future BPR on FHL property are:

- to ensure that the operation is profitable
- keep private use minimal and provide clear evidence of the available relevant services for holidaymakers

Perhaps the case has provided "confused hope" but aiming to meet the criteria discussed can only be positive whilst the news of an appeal is awaited. What will an intelligent businessman decide next time?



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