

Inheritance tax relief on Furnished Holiday Lets

There has been much debate about when a tribunal would be faced with the question of whether Business Property Relief from inheritance tax could be achieved on a furnished holiday let property.

This Tribunal has now taken place.

Tribunal ruling

The decision of *Mrs N V Pawson's Personal Representative v HMRC [2012] UK FTT 51* has allowed a Business Property Relief claim on a furnished holiday let 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 Business Property Relief.

Unfortunately however the matter cannot yet be regarded as settled, because 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 facts

The property, located in Thorpeness in 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 furnished holiday let property.

Minimal private usage

The First-tier Tribunal accepted that the property had been run as a business for more than the required two years before the deceased's death.

The Tribunal 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 Tribunal therefore concluded that the business was being run with a view to gain which satisfied s103(1) of the Inheritance Tax Act 1984, i.e. that a business carried on otherwise than for gain is not to be regarded as a business.

The "indicia of business"

Three authorities cited for consideration as to whether there was a business were *Lord Fisher, Morrison's Academy and McCall v IRC (2009)*.

Then the six "indicia of business" were considered. These six signs are, in summary, that the courts would expect a genuine business to be:

- (a) a serious undertaking, earnestly pursued;
- (b) actively pursued with reasonable continuity;
- (c) with a reasonably substantial level of sales;
- (d) conducted on sound business principles;
- (e) predominantly making supplies to customers for consideration; and
- (f) of a type that one would commonly expect to profit from.

These principles were raised 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 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 furnished holiday let 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 Business Property Relief claim. The Tribunal confirmed the business was "a property consisting of a business or interest in a business" carried on for gain (s105(1)(a), Inheritance Tax Act 1984).

Business asset being used to provide a service

In addition the Tribunal had to consider whether 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 [2004] STC 163*, the Tribunal 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 Tribunal 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 Business Property Relief on the furnished holiday let was allowed.

Single furnished holiday let property

Many had considered that Business Property Relief could not be achieved on a single furnished holiday let property but this case has provided greater hope for the genuine well-run furnished holiday let business.

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It is worth quoting from the judgement:

“The operation of the property as a holiday cottage for letting to holiday-makers was a serious undertaking earnestly pursued...the principles on which the activity is run are regular and sound.”

Practical steps

The practical steps to be taken moving forward in order to try and protect future Business Property Relief on fur-

nished holiday let 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 only “confused hope,” but aiming to meet the criteria discussed can only be positive as the news of an appeal is awaited.

What will an intelligent businessman decide next time? □

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