Pearl of a property in a beautiful location

It is fair to say that the vast majority of those involved in the trade of furnished holiday accommodation consider the activity to be a trade; a view is supported by the professionals advising the holiday accommodation industry.

To put the facts in the simplest of terms, holiday accommodation is hard work. From every aspect, eg, in terms of organisation, services provided and administration, it is a business. It would therefore be eligible for business property relief (BPR). The tax tribunals have a different view though – a recent case, A C Curtis Green v HMRC (TC 4427) went against the taxpayer in the view that BPR is eligible on furnished holiday lets (FHL), ie, it is not a trade.

It's no more than managing an investment property

Mrs Green ran a holiday letting business and transferred 85% in two tranches of the holiday business to a settlement, and claimed that the transfers qualified for 100% business property relief (IHTA 1984, s. 103 et seq). HMRC stated that the transfers were not qualifying because the business consisted mainly of making or holding investments s. 103(3).

Although additional services were provided, such as the provision of a welcome pack, linen and towels, it was held that the value of these did not exceed the value of the services traditionally required to manage an investment property, ie, it did not make it a trade. As highlighted by counsel for HMRC, "guests [were] essentially paying for the right to stay in a pearl of a property in a beautiful location". This was a strong argument to defend with. The focus is on the property.

Mrs Green informed the tribunal that some units were let on an assured shorthold tenancy basis and claimed that the difference in rent between, a holiday letting and an assured short-hold tenancy, represented the value of the services provided under a holiday let. The tribunal held that the percentage of the rent attributable to those services must be small because the price was mainly a result of the location of the property: guests paid for the right to stay in a beautiful place, not necessarily for the extra services.

Comparison with previous cases

Green v HMRC [2015] included a comparison with the cases of George (IRC v George & Anor [2004] STC 147) and Pawson (HMRC v Lockyer & Anor) as personal representatives of Pawson, dec'd [2013] UKUT 050 (TCC). The case includes a useful analysis of the services provided in the context of what the client was paying for.

There are no special inheritance tax (IHT) for FHL rules. The question, then, is how FHLs should be treated for the purpose of BPR. The need is to show that the activity amounts to a business and, assuming that it does, it must prove that it does not amount to a business which consists "wholly or mainly of making or holding investments" which is barred from relief under s. 105(3) IHTA 1984.

The Pawson and Green cases do have one feature in common, which is that neither taxpayer was legally represented before the tribunal during the case. In Pawson, the result before the First-tier Tribunal was successful for the FHL to be considered a business for BPR. The intelligent businessman was considered. In the Green case, the result was less helpful. The IHT charge in the Green case arose not as the result of the death of the business owner but as a result of transfers by her into a lifetime settlement.

The salient features are noteworthy. First of all, the starting point adopted by the tribunal was that suggested by Henderson J, when giving the upper tribunal judgement in Pawson that "the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity". The tribunal then followed the earlier tribunal decision in Best v HMRC [2014] UK FTT 077, using an intelligent businessman test to decide, as a question of fact, whether the activity was an investment; and that the business had to be looked at "in the round". This does make the prospect of obtaining BPR on an FHL seem an almost impossible task at worst and a very steep hill to climb at best. However, there are holiday property operations that qualify as a trade under s. 105.

Location of the owner – living at the property

At point 31: "At all times, Mrs Green lived in Woodbridge, Suffolk. The business has a website through which bookings can be made. If a person wishes to stay at the property but does not use the website, he telephones Mrs Green in Woodbridge to see if the unit is available, and then completes a booking form and sends it to Mrs Green. For the years 2009-2012, the booking form states that the price included "linen and towels, electricity and cots/highchairs" and went on to say "please call our caretaker Glenda Sturman on [number] if you have any queries regarding your holiday arrangements."

Many would argue that Green was a very strong case and with a more forceful presentation it would have been successful for proving the arguments for BPR.

Summary

In order for an FHL case to succeed for BPR it will be essential to ensure that the owner is more actively involved than Pawson and Green and will be able to provide evidence. The appeal of Green will be interesting.

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Farming and Rural Business Group, January 2016