



THE COALITION BUDGET, THE CONSULTATION DOCUMENT AND A VAT ADVANTAGE - IMPACT ON FURNISHED HOLIDAY LETS (FHLs)

The tax position concerning furnished holiday lets has been much in debate since 22 April 2009 when proposed tax changes were introduced and were then thrown out again in a Budget earlier this year. It can be argued that the Coalition Budget together with the much awaited Consultation Document now give much more clarity.

The old furnished holiday let tax rules do apply until 5 April 2011. Obviously this gives greater clarity and certainty and a degree of tax planning opportunity around the period between now and 5 April 2011.

The Consultation Document does expose areas for tax planning. The suggestion of the document is that in order to comply with the furnished holiday let taxation advantages the property will have to be available for letting for a total of 210 days whereas the number was previously 140. In addition, the property will have to be actually commercially let for 105 days whereas previously the amount of commercial let days that had to be achieved was only 70.

There would be many who would argue this more robust approach to the rules is just eliminating elements of abuse that had taken place and the emphasis is on the fact that the letting must be commercial with the income being included correctly in the accounting records. The biggest change in the Consultation Document is that income tax losses that are incurred on furnished holiday let property will be carried forward against future profits as opposed to being offset sideways against total income. Historically, the two areas of expenditure which had helped increase the loss have been loan interest on the purchase of the property (or improvements to the property) together with repairs to the property that are allowable against income tax. Obviously if there are more commercial days when the property is let out then the chance of profitability should be greater and loss claims will not be such an issue. However, a simple tax planning point should be for owners to look at any repairs that need to be undertaken and to make the repairs before 5 April 2011.

Where the owner has not gone above the VAT threshold, then these repairs should be undertaken before 4 January 2011 as this would give the advantage of the 17.5% rate as opposed to the 20% rate. Obviously after 5 January 2011 there will be the standard rate VAT of 20% on all lettings by VAT registered owners as FHLs are subject to standard rate VAT.

Following the good news that UK holiday homes will retain their favourable income tax and capital gains tax (CGT) relief until 5 April 2011 and if the Consultation Document is approved for the years ahead there is more good news in a "DIY Housebuilders Scheme" which allows input VAT to be reclaimed when a house is built by the owners themselves. A recent VAT case has ruled that holiday homes are not excluded from the effective VAT advantage.

It is advised that all claims for the reclaim of VAT should be accompanied by planning permission, certificate of completion, building plans and all original VAT invoices, bills and credit notes in respect of the holiday home.

A 'holiday home' means a dwelling which cannot lawfully be occupied throughout the year as the owner's principal private residence (for example, because of planning restrictions). HMRC's policy has been to refuse claims under the DIY Housebuilders Scheme for holiday homes, on the grounds that a sale of a completed holiday home by a developer would be a standard-rated supply. However, the First Tier Tribunal held that HMRC had misinterpreted the legislation and that the exclusion from zero-rating of new holiday homes cannot be integrated with the DIY Housebuilders Scheme.

In HMRC Brief 29/10 claims are invited from 'DIY Holiday Homebuilders' with a Certificate of Completion dated not earlier than 16 March 2006 (four years and three months before the Brief was published on 15 June 2010). Claims already made and refused may now be resubmitted (including cases where the Certificate of Completion was issued before 16 March 2006). It should also be noted that HMRC conceded that a claim under the DIY Housebuilders Scheme could include repayment of VAT incurred elsewhere in the EC (in this case, Finnish VAT paid on timber bought from that country).

The Business Brief follows the First Tier Tax Tribunal decision in *Mrs Irene Susan Jennings* ([2010] UKFTT 49 (TC)). HMRC do now accept that VAT refunds under the DIY Housebuilders Scheme may be claimed in respect of the construction of a new holiday home or the conversion of an existing building into a holiday home. Obviously a refund of VAT is subject to the conditions of the DIY Housebuilders scheme being met.

Clearly all those who have built a holiday home themselves and kept all the paperwork (including VAT invoices!) can go back and reclaim the input VAT and all those planning to build a holiday home and carry out the building work themselves can now reclaim the input VAT provided that they meet all the conditions.

With the Olympics fast approaching and much talk of the "green" advantages of the UK holiday as opposed to the overseas holiday it is anticipated that a large number of applications for planning permission will be seen in the months ahead.

It can therefore be debated was all the fuss surrounding the necessity for a furnished holiday let arrangement to be a business in the period since 22 April 2009 and the argument clearly is yes. The furnished holiday let rules that are currently under review apply only to the capital gains tax and the income tax rules. It will still be important that the furnished holiday let property could achieve business property relief (BPR) for inheritance tax purposes if appropriate. There are those who would question how can let property be a business? However, in order to achieve BPR the arguments are all about the level of service provided by the owner. The letting would have to be operated on the concept of a hotel or serviced caravan park with the possibilities of breakfast and other facilities being available.

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