Abolition of the furnished holiday lets regime

OMB Property Tax

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The CIOT and ATT commented on the draft legislation abolishing the furnished holiday lettings regime.

In July, the government published draft legislation to remove the specific tax treatment for income and gains from furnished holiday lets (FHLs) from April 2025. Legislation will be introduced in the next Finance Bill.

Both CIOT and ATT's central concern is that following abolition, there may be costly disputes and litigation in relation to claims for trading status. This is because of uncertainty in relation to the status of former FHL businesses where there is a high level of services and management and/or similarity to holiday accommodation currently accepted as trading by HMRC. For example 'aparthotels' are relatively common – these vary in levels of facilities but usually involve self-contained apartments with access to a range of facilities.

In the absence of the certainty of a 'bright line' statutory test, as suggested by the Office of Tax Simplification, the CIOT suggest that consideration might be given to a Hansard statement during the passage of the Finance Bill setting out the government's policy intention in relation to the status of furnished holiday accommodation. Together with enhanced and updated guidance, which the ATT also called for, this action would go some way to reducing the likelihood of challenge and provide greater certainty for the holiday letting sector of the policy intent.

In addition, the CIOT and ATT raised technical points on the drafting and practical issues arising from the abolition.

Business asset disposal relief

It is not clear from the drafting whether there is a deemed cessation as at 5 April 2025 for the purposes of business asset disposal relief as a consequence of the repeal of TCGA 1992 s 241. We suggested the draft legislation should be amended to clarify the position.

'Relevant period' for an FHL business starting in 2024/25

If a new FHL business starts in 2024/25, the relevant period of 12 months begins on the first day in the tax year (or accounting period) on which it is let and may therefore extend into 2025/26. We asked HMRC to confirm whether the relevant period in these circumstances will include any part of the 12 months period that falls within 2025/26 and therefore post-abolition.

Roll-over relief

The policy paper indicates that where the criteria for relief includes conditions that apply in a future year, those rules will not be disturbed. It is not clear whether this means acquisitions of qualifying assets post 6 April 2025 are qualifying replacement assets or not.

Anti-forestalling measure

One of the filters of this provision is that 'no purpose of entering the contract was to avoid the amendments made by Part 4 having effect in relation to the disposal'. Those amendments were only known once the draft legislation was published on 29 July 2024. However, we understand the intention is that the anti-forestalling measure applies from the date of the original announcement (6 March 2024).

Claims for relevant CGT reliefs in respect of disposals made after that date will require an accompanying statement that the anti-forestalling measure does not apply. The ATT suggest publication of a template statement which HMRC will accept for these purposes.

Form 17 (the 50:50 rule in Income Tax Act 2007 s 836)

While a property is in the FHL rules, the 50:50 rule in Income Tax Act 2007 s 836 is not in point because of exceptions for FHLs. This carve out will fall away immediately on 6 April 2025, so jointly held FHLs will immediately be within the 50:50 rule unless a valid form 17 (s 837 election) is made. If income and capital shares do not match, it is not possible to make the election.

It is not uncommon for one spouse to be able to justify a higher share of income due to doing more work. These sorts of splits will not be possible unless capital shares are changed to match. However, changing capital shares may not be practical; for example, if there is a mortgage on the property any transfer may trigger a stamp duty land tax charge even if nothing is paid for the transfer.

Even if capital and income shares do correspond, there is a practical problem: s 837 elections cannot be backdated. They are only effective from the date they are made. Strictly speaking, those who want their tax treatment to be undisturbed would therefore need to sign the form on 6 April 2025. Otherwise, income from

6 April to the date of the election will need to be split 50:50.

We are concerned that taxpayers will be unaware of the practical consequences and the need to make the election. It would be helpful if new guidance relating to abolition and transitional measures highlighted the need to consider a s 837 election.

Capital allowances

The CIOT suggest it would be useful to remind taxpayers of the Capital Allowances Act (CAA) 2001 s 56A small pool allowance, allowing for write off where there is £1,000 or less in the capital allowance pool. Guidance could also confirm that it is possible to make a CAA 2001 s 198 election where an existing FHL business is sold after the commencement date and the FHL business has an ongoing capital allowances pool.

Other suggestions

The CIOT suggest that as part of the guidance relating to the abolition of the FHL regime, the opportunity should be taken to confirm the VAT and business rates treatment post abolition to avoid any uncertainty for taxpayers.

The ATT call for clarification on the treatment of losses carried forward at 5 April 2025 in respect of FHLs within partnerships. Losses on partnership FHLs remain within the partnership and are not allocated to individual partners, so it is currently unclear how such losses will be relieved following abolition of the FHL regime.

The full CIOT submission can be found here: www.tax.org.uk/ref1353

The full ATT submission can be found here: www.att.org.uk/ref467

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