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Supporting self-catering in Scotland

## Self-Catering Guidance for Members

### Furnished Holiday Les: An in-depth Look at Inheritance Tax Relief (BPR)

#### An update on Business Property Relief for a FHL Business.

The number of tax cases where the tribunal has allowed a claim for Business Property Relief (BPR) on the value of a Furnished Holiday Let (FHL) Business are few and far between. We previously reported on **Pawson**, and more recently **Ross**, both of which denied Inheritance Tax (IHT) relief in the form of BPR, on the basis that a FHL business was wholly or mainly a business of holding investments.

However, we were delighted to report a successful claim for BPR in **Graham**, where the taxpayers FHL business provided a range of facilities for guests, and the personal care lavished on guests by the proprietors distinguished it from other 'normal', actively managed, FHL businesses.

The facilities available to guests included the use of a games room, bicycles, a sauna, laundry, a BBQ area, and a heated swimming pool. Guests were greeted with refreshments on arrival, a welcome pack with a 'What's On' guide for the area. Each property was well equipped with furniture, linen, and consumables (tea, coffee, toilet rolls, soap etc), with extra towels provided for the pool. Mrs Graham and her daughter were widely available to provide regular advice, ideas, and assistance to guests during their stay.

The **Graham** case was in 2018 and we were quickly reminded that this was an exceptional case when, in 2020 in **Cox**, the taxpayers claim for BPR was dismissed, despite the taxpayer providing evidence for the additional services undertaken by the owner. These services included the provision of books, DVDs, information leaflets and sporting equipment, childminding services, transportation, and provision of breakfast and supper to guests. The grounds of the property were also used for a wedding and as a venue for the Crail Festival with free attendance provided for guests staying in the property.

The judgement in favour of HMRC found that no services were provided on a regular basis and especially not in the two years preceding the death of the owner, which is the relevant period for the relief. The FTT judgement also found that the types of services provided were insufficient to tip the balance in favour of this being a non-investment business.

To tip the scales further to the side of disallowed BPR claims, we now report on the case of Mr Bruce Firth v HMRC [2022] (**Firth**). In this case Mr and Mrs Firth appealed against HMRC's notice of determination which denied BPR claimed against shares in a business which provided 4-star, gold standard rated serviced apartments.

Mr Firth argued that the activities provided were predominantly non-investment because their services offered a guest experience much like a luxurious hotel and not a standard serviced apartment. They were apartments in larger buildings in cities which could be let for two nights or more.

The FTT concluded that the taxpayer was "over egging the pudding" because the services they provided were in no way exceptional. The services included—

- The aparthotel offered services such as breakfast and romance packages but there was limited evidence of the time spent by employees providing these services. Staff time was more actively engaged in setting rates, dealing with bookings, and maximising occupancy;
- The provision of food only made up around 3-4% of the business's turnover;
- Reception services were available for c. 32.7% of the week;
- Limited car parking and out of hours services were available and the guests were discouraged from using out of hours services due to potential large charges;
- Out of hours service was not even available between breakfast and dinner times for six days of the week and not available from 7am to 10am and 2pm until 6pm; and
- The witness's evidence of a 'concierge service' included examples such as a shower gel refill on request during out of hours. It was considered that this was unlikely to be a common request due to the large, fixed shower gel containers installed.

The FTT summarised what they find to be investment or non-investment—

*"In summary, we find that on the investment side of the spectrum are the activities such as marketing, benchmarking, pricing, bookings, making the apartments ready for guests, dealing with complaints and requests, maintenance, repairs, insurance, and business rates. On the non-investment side of the spectrum are the welcome pack, the provision of cleaning if requested, linen, towels, shower gel, furniture, white goods, DVD player and TV, Wi-Fi, food, and the ability to purchase extra packages".*

The FTT found that both the quality and quantity of additional services offered did not outweigh the investment elements of the business (the total value properties was in excess of £9.43m). The tribunal referred to **Ross**, that the 'test is a qualitative test of the nature of the business, not merely a quantitative test about the extent of the activities carried out by those who run it'.

The FTT were not provided with evidence about how many calls there were to the out of hours service or how many requests there were for additional cleaning or towels etc. The out of hours service was effectively a call centre because it had been outsourced. They did not have evidence of completed guest feedback forms. The list of evidence that the tribunal were not provided with is extensive.

This case is an important reminder that taxpayers should keep detailed, but relevant, evidence to support their claims for BPR. It does not simply do to provide additional services; they must be exceptional to the norm, and they must be evidenced.

However, **Graham** does still offer a glimmer of hope that there are some FHL businesses that are eligible for a BPR claim. If you would like to discuss this case and how it relates to your business, please get in touch.

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**Date of guidance:** January 2023

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