

“Business Property Relief on FHLs” E³ Consulting’s Overview of recent Pawson v HMRC First Tier Tribunal decision

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The First Tier Tribunal in the recent case of *Mrs N V Pawson’s Personal Representatives v HMRC [2012] UK FTT51* decided that inheritance tax business property relief (BPR) in respect to a furnished holiday cottage was permitted.

The case has generated a lot of interest and HM Revenue & Customs (HMRC) had clearly deferred a number of similar cases pending this decision. The tribunal rules require that any appeal had to be lodged with 56 days, so HMRC appear out of time, unless their appeal has been made, but not yet made it to the UTT listing of forthcoming hearings.

Only time will tell!

HMRC challenged whether the property in question, ‘Fairhaven’ near Thorpeness, Suffolk, qualified to be treated as “relevant business property” in accordance with Section 105 IHTA 1984. They contended that the use of the property did not constitute a business or interest in a business and that it was not carried on for gain. According they had determined that Mrs Pawson’s estate was liable to Inheritance Tax.

The second issue was whether, even if the use to which the property had been put amounted to the operation of a business or an interest in a business in principle and for gain, it was to be excluded from the term “relevant business property” by reason of section 105(3) of the Act on the basis that the business consisted wholly or mainly of “holding investments”.

However the principle findings of the Tribunal were:

- The exploitation of the property in question as a holiday cottage amounted to the operation of business, going well beyond an investment.
- The business was conducted with a view to gain even though it was not always profitable.
- An intelligent businessman would not regard the ownership of a holiday letting property as an investment due to the need to constantly find new occupants and to provide services unconnected with and over above those needed for the bare upkeep of the property.

Accordingly the Tribunal ruled that IHT was not applicable and that BPR would be available in respect to this holiday cottage, due to the nature of the additional services provided to the holiday makers staying at the cottage.

In addition to ruling in favour of the tax payer in the case the Tribunal was very critical of HMRC in that they were late in issuing their skeletal argument and attempted to exclude evidence from the Appellant. The Tribunal considered this “ill-conceived”, particularly in light of the subsequent fact that HMRC had deferred several other similar cases in anticipation of being able to rely upon this decision - whilst potentially denying the Tribunal opportunity to fully consider all the relevant facts of this case and in hope of achieving a result upon which they had wanted to rely upon in other cases - with an ‘artificially restricted’ precedent.

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case law update - FHLs

