

Let property as a business

A fascinating news story was widely reported in the daily press in recent weeks concerning a couple who had taken up residence at a Travelodge hotel. Apparently they moved in many years ago and enjoyed the life of having their room cleaned for them and their meals cooked in a nearby restaurant that they decided to stay on a long term basis.

The news story brings into focus some of the illogical and partly inexplicable nuances in the tax treatment of let property. Much depends on how long the lettings are, and what else is provided along with the right to occupation.

According to the Inland Revenue, at one end of the scale the provision of full hotel accommodation counts as a trade, and no one would dispute that. At the other end of the scale, the letting of private domestic accommodation on shorthold tenancies is treated as a business for income tax purposes, but otherwise HM Revenue & Customs will say that it is certainly not a trade and is not even a business for any other tax purpose. The Revenue considers that it is not really any different than investing in a portfolio of shares on the stock market to receive an income from them and the prospect of future capital gains; that is not trading in shares, nor is it a business activity. And yet the letting of property can count as a business for VAT purposes and if it is transferred into new ownership this can be the transfer of a business as a going concern. Of course in the field of VAT this will be a case of commercial property letting, but in practice this might not in many circumstances be very different from the letting of private dwellings.

Nowadays Travelodge offers at many of its outlets a room for the night with a cleaning service and a certain amount of laundry thrown in. Meals are not provided in these cases. As we found from newspapers recently, it is not unknown for people to take advantage of this accommodation on a long term basis instead of privately renting a property. And yet no one would consider that Travelodge is not carrying on a business activity.

Its business, in terms of private property letting, is probably most comparable to furnished holiday lets. These are treated as a trade for income tax purposes, although because this has to be expressly stated in the legislation, the inference is that such lettings would not otherwise be a trading activity. Even so, they will normally be sufficient to amount to a business. This is important for inheritance tax purposes because there is 100% relief for the transfer of a business, so long as it is not wholly or mainly an investment business. So is inheritance tax business property relief available for furnished holiday lets? The Revenue's Inheritance Tax Manual contains the following comment at paragraph 25278:

'The Inland Revenue Solicitor has advised the office that in some instances the distinction between a business of furnished holiday lettings and, say, a business running a hotel or a motel may be so minimal that the courts would not regard such a business as one of "wholly or mainly holding investments" for the purposes of section 105(3), Inheritance Tax Act 1984.

'You should therefore normally allow relief where

- the lettings are short term (for example, weekly or fortnightly); and
- the owner, either himself or through an agent such as a relative or housekeeper, was substantially involved with the holidaymakers in terms of their activities on and from the premises

even if the lettings were for part of the year only.'

In practice, the Revenue is likely to take the view that business property relief is rarely available on furnished holiday lettings, either because insufficient services are provided or because the owner is not actively and personally involved.

The point about active and personal involvement arises frequently in relation to business property relief, and indeed in relation to agricultural property relief. The issues with the latter are slightly different and the Revenue has had some success at the Special Commissioners. However, in relation to business property relief, there is nothing to suggest that the owner of the business must personally conduct the business activities and it should be perfectly sufficient if those activities are carried out by a third party on the instructions of the property owner. The quotation from the Revenue's manual set out above supports this view.

According to the manual, it only then remains to be demonstrated that the property owner is 'substantially involved with the holidaymakers in terms of their activities'. Many furnished holiday lettings are akin to ordinary domestic property lets, except that the guests stay for a much shorter period and a certain amount of cleaning and laundry is provided. According to the Revenue, this will be insufficient to allow business property relief, even though one can be sure that if Travelodge were operated by a private individual one would not expect that owner to be denied business property relief in respect of the business.

In a case recently dealt with, business property relief was eventually granted in respect of a single property let as holiday accommodation. In this case the services provided were not much more than the basics of holiday lettings, but there was sufficient personal involvement by the owner to justify the claim to relief.

Parmentier Arthur can advise further in this area, not only in respect of cases where a chargeable transfer of the property concerned has already taken place, but also we can offer forward planning advice as to how a furnished holiday letting business may best be structured to secure business property relief in the future.

The firm also has extensive expertise in relation to tax planning for property investment companies and valuation work applicable to them.

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