

Furnished Holiday Lettings: Life after Pawson

Now that the [Pawson](#) case has been put to bed, what do Furnished Holiday Letting (“FHL”) owners need to be focussing on?

They might need to revisit the revised qualifying tests for FHL status which came into effect from the 6th April 2012. These new tests have to be met for both UK FHL properties and FHL properties elsewhere in the European Economic Area (“EEA”). All three tests must be met. They are as follows:-

(a) the FHL must be available for letting to the public as holiday accommodation for at least 210 days (it used to be 140 days) in a year (usually a tax year);

(b) the FHL must in fact be let as holiday accommodation to the public for at least 105 days (it used to be 70 days); and

(c) the pattern of letting should be such that periods of larger accommodation do not exceed 155 days during the year.

Averaging and grace period

For those FHL owners with a number of holiday properties, it is still possible to adopt an average rate of occupancy across all properties so as to qualify under the new letting conditions. However, post 6th April 2012 it is not possible to treat UK FHLs and other EEA FHLs as one business for the averaging claim. In effect, two separate averaging claims will be needed.

For those FHL owners for whom the new tests are causing some difficulty, there is now a “grace period” which is available to supplement the letting condition. If lettings fail to meet the 105 day test, an election may be made in the first year in which the property fails to qualify as an FHL. The election can only be relied upon for a maximum of two consecutive years. The election allows a non-qualifying FHL year to be treated as a qualifying year if the FHL qualified in the previous year. This is a concession and it is only available where there was a genuine intention to let the properties in the relevant year. So, greater attention to the marketing of FHLs will be needed, not only to achieve the enhanced qualifying conditions, but also the concession.

The averaging and grace period elections should give FHL owners some time to adapt the marketing of their business to the new rules. The struggle to do so should be worth it, if only to benefit from the generous Capital Gains Tax reliefs available on a sale. It is worth noting that a qualifying FHL property will benefit from Entrepreneurs’ Relief. So, on a sale, the CGT bill would be reduced to 10% rather than 28% on disposals within the lifetime allowance of Entrepreneurs’ Relief, currently £10 million. (Remember, however, that ER must be claimed and it is easy to slip out of the qualifying conditions. It is important to consider the ownership of the property, the timing of the disposal and the question of whether the relevant criteria relating to withdrawal from the business, in this case holiday letting, have been met.)

For further information and advice, please contact [Neil Irvine](#) in the first instance, on 01775 842 507.