



HM TREASURY



HM Revenue
& Customs

Furnished Holiday Lettings Consultation

July 2010



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Executive summary

- Subject of this consultation:** Proposed changes to the special tax rules for furnished holiday lettings.
- Scope of this consultation:** The consultation is on proposals to ensure the tax rules for furnished holiday lettings are fully compliant with EU law and are better targeted at businesses that are run commercially for profit rather than for personal use. The proposals are to:
- increase the minimum period over which a qualifying property is **available to let** to the public during a year from 140 to **210 days**;
 - increase the minimum period over which a qualifying property is **actually let** to the public during a year from 70 days to **105 days**;
 - **restrict** the use of **loss relief** from furnished holiday lettings so it can only be set against certain income from the same business.
- The consultation seeks views on the impacts of these proposals, and is an opportunity to influence the detailed policy implementation.
- Impact assessment:** The consultation stage impact assessment is at Annex B to this document.
- Who should read this:** Individuals or companies with furnished holiday lettings. Representative bodies for the tourism industry and tax professionals.
- Duration:** The consultation runs from 26 July to 22 October 2010.
- Enquiries:** Jacqueline Latter of the Personal Tax Team, HM Treasury will be leading this work and can be contacted using the e-mail address below.
- How to respond:** Responses should be sent to holiday-lettings-consultation@hmtreasury.gsi.gov.uk
- After the consultation:** The Government will publish its response by the end of the year and intends to implement the changes in the 2011 Budget.
- Previous engagement:** At Budget 2009 HMRC published a technical note “Furnished Holiday Lettings in the European Economic Area¹”. HMRC published a further technical document at the pre-Budget report 2009, “Withdrawing the Furnished Holiday Lettings Rules from 2010-11²”. This document was accompanied by an impact assessment on the effect of repealing the rules³. The June 2010 Budget reversed the repeal and announced that a public consultation would be held over the summer.

¹ <http://www.hmrc.gov.uk/budget2009/furnished-hol-lets-1015.pdf>

² <http://www.hmrc.gov.uk/pbr2009/withdrawing-lettings-rules-3760.pdf>

³ <http://www.hmrc.gov.uk/pbr2009/furnished-holiday-ia-3760.pdf>

1

Introduction

1.1 The Chancellor confirmed in the June Budget that the Government would not repeal the special tax rules for furnished holiday lettings. Instead, the Budget announced a public consultation on a proposal to change the existing rules in a way that both meets our obligations under EU law and does so in a fiscally responsible way.

1.2 This consultation document sets out the Government's proposal for achieving that aim by changing the qualifying conditions for businesses to be taxed as furnished holiday lettings and changing the way loss relief is given. Any changes will take effect from 1 April 2011 for companies or from 6 April 2011 for individuals. For the current tax year 2010-2011, the existing rules will continue to apply.

1.3 The consultation is being conducted in line with the principles outlined in the document "[Tax policy making- a new approach](#)"¹ published alongside the Budget. The document sets out three stages for policy development:

- stage 1 – set out objectives and identify options;
- stage 2 – determine the best option and develop a framework for implementation, including detailed policy design; and
- stage 3 – draft legislation to effect the proposed change.

1.4 This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

1.5 This consultation is being conducted in line with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process are at Annex A.

How to respond

1.6 The Government welcomes comments and responses to the questions in this consultation paper. Any responses should be e-mailed to

holiday-lettings-consultation@hmtreasury.gsi.gov.uk

by **15 October 2010**.

1.7 Jacqueline Latter (Personal Tax Team, HM Treasury) is leading this work and can be contacted using the e-mail address above.

Confidentiality disclosure

1.8 Information provided in response to this discussion document, including personal information, may be published or disclosed in accordance with the access to information

¹ http://www.hm-treasury.gov.uk/d/junebudget_tax_policy_making.pdf

regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

1.9 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.

1.10 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself, be regarded as binding on HM Treasury or HM Revenue & Customs. HM Treasury and HM Revenue & Customs will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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Background

2.1 The special tax rules for furnished holiday lettings allow property businesses that meet certain conditions to be treated as a trade for some specific tax purposes. These are:

- loss relief;
- capital allowances;
- Landlords' Energy Saving Allowance (LESA);
- certain capital gains reliefs (including business asset roll-over relief, entrepreneurs' relief, relief for gifts of business assets, relief for loans to traders and exemptions for disposals of shares by companies with a substantial shareholding); and
- relevant UK earnings when calculating the maximum relief due for an individual's pension contributions.

2.2 To qualify for this tax treatment, the following conditions must be met:

- the property must be situated in the UK or the European Economic Area (EEA);
- the business must be carried on commercially, and with a view to a profit;
- the total periods of "longer term occupation" must not exceed 155 days during the relevant period. A period of "longer term occupation" is a letting to the same person for longer than 31 continuous days. The relevant period is normally the tax year.
- the property must be available for commercial letting as holiday accommodation to the public **for at least 140 days** during the relevant period; and
- the property must be commercially let as holiday accommodation to members of the public **for at least 70 days** during the relevant period. A letting for a period of "longer term occupation" is not a letting as holiday accommodation for the purposes of this condition.

2.3 Historically, the tax rules were only available for lettings of UK properties.

2.4 However, recognising that the UK rules may not have been compliant with EU law, HM Revenue and Customs has applied these rules to properties situated elsewhere in the EEA from 22 April 2009, the date of the 2009 Budget.

2.5 At Budget 2009, the previous Government announced the repeal of the special tax rules for furnished holiday lettings from April 2010 for UK and EEA lettings. This would have meant that the income and losses would have been taxed and relieved under the tax rules applying to property businesses.

2.6 The Government has listened to the views of businesses and the tourism industry and has decided not to proceed with the previous Government's proposal to repeal the special rules for furnished holiday lettings.

2.7 The Government has rejected a repeal of the special tax rules for furnished holiday lettings rules because of the adverse affect this would have on UK businesses and the tourism industry. However, the Government has also decided that it would not be fiscally responsible simply to extend the current tax rules to properties situated elsewhere in the EEA, without other changes. That is why it proposes to introduce changes to the qualifying conditions to ensure that properties that are let as a commercial or full-time furnished holiday lettings business will continue to benefit from the favourable tax treatment.

2.8 This consultation looks at proposals to change the special tax rules for furnished holiday lettings. The proposals balance the need to:

- make sure the rules meet our obligations under EU law;
- continue to provide support to commercial businesses; and
- ensure that the changes are affordable.

3

The Government's Proposal

3.1 The Government proposes to change the current rules so that:

- Furnished holiday lettings **in both the UK and EEA** are eligible to qualify as qualifying furnished holiday lettings within the special tax rules;
- The minimum period over which a qualifying property must be **available for letting** to the public in the relevant period is increased **from 140 days to 210 days in a year**;
- The minimum period over which a qualifying property is **actually let** to the public in the relevant period is increased **from 70 days to 105 days in a year**;
- **Losses** made in a qualifying UK or EEA furnished holiday lettings business may only be set against income from **the same furnished holiday lettings business**.

3.2 For companies, the proposed changes would take effect for accounting periods beginning on or after 1 April 2011. For individuals, the rules would apply for the 2011-12 tax year onwards.

3.3 Throughout this proposal the term 'business' refers to a business carried on by any person, whether individual, company or other.

Taxation of EEA and UK furnished holiday lettings businesses

3.4 Property businesses in the UK and the EEA are treated as separate businesses. A UK property business consists of every business a person carries on that produces income from land in the UK. Every business a person carries on that produces income from land outside the UK is treated as part of a person's overseas property business.

3.5 Profits or losses of an overseas property business are not combined with the profits or losses of a UK property business. A UK property business can include commercial lettings of furnished holiday accommodation and, if so, separate calculations are made of the profits from the furnished holiday lettings.

3.6 The same applies to furnished holiday lettings in the EEA. A person's UK furnished holiday lettings business will comprise every commercial letting of furnished holiday accommodation in the UK and a person's EEA furnished holiday lettings business will comprise every commercial letting of furnished holiday accommodation in the EEA. The special rules for a qualifying furnished holiday lettings business will apply to both a UK and an EEA qualifying furnished holiday lettings business.

Changes in qualifying conditions

3.7 The proposed changes would reduce the cost of extending the special tax rules to EEA properties.

3.8 The increase in the minimum period over which a property must be available for letting to the public aims to balance the need not to penalise UK businesses with the need to ensure that

the rules are better targeted at those who run furnished holiday lettings as commercial businesses.

3.9 The increase in the minimum periods over which the property is both available for letting and actually let to the public, from 140 days to 210 days and from 70 days to 105 days respectively, reflects the changes in the tourism industry since the furnished holiday lettings rules were introduced in 1984. The letting season has widened and allows for commercial letting throughout more of the year, with variation in school holiday periods, the peak summer season alone has expanded and more letting is seen over the Christmas and Easter periods. The existing 70 day limit is no longer in line with the modern tourist industry.

3.10 The other qualifying conditions would not change.

Questions:

- 1 How would increasing the minimum period over which a property is available for letting from 140 to 210 days impact on businesses?
- 2 Would the increase in the minimum availability period cause current suppliers to stop providing furnished holiday lettings? If so what would the impact be on:
 - the furnished holiday lettings industry that continued to operate; and
 - the tourism industry as a whole?
- 3 How would increasing the minimum period over which a property is actually let to the public from 70 to 105 days impact on businesses?
- 4 Would the increase in the minimum occupancy period cause current suppliers to stop providing furnished holiday lettings? If so what would the impact be on:
 - the furnished holiday lettings industry that continued to operate; and
 - the tourism industry as a whole?
- 5 Is the proposal likely to impact differently in different regions of the UK or the EEA, for example because of differences in letting patterns or the length of the tourism season? If so, what evidence is there to suggest a regional or national variation?

Changes in the use of losses

3.11 Under the current rules a loss arising from a qualifying furnished holiday lettings business is treated as a trading loss and may be set against other profits, income or gains.

3.12 To maintain the affordability of the special tax rules for furnished holiday lettings when extended to the EEA, the Government proposes that:

- a loss from a UK qualifying furnished holiday lettings business should only be available to set against future profits from that UK qualifying furnished holiday lettings business.
- a loss from an EEA qualifying furnished holiday lettings business should only be available to set against future profits from that EEA qualifying furnished holiday lettings business.

Questions

- 6 What would be the impact of the proposed restriction to loss relief on qualifying furnished holiday lettings businesses? What proportion of businesses would be affected by this restriction? What types of business would be most affected? What

