



FINANCE BILL 2024-25 CLAUSE 25 AND SCHEDULE 5 - FURNISHED HOLIDAY LETTINGS

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Briefing for MPs on the **Finance Bill** by ICAEW Tax Faculty

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EXECUTIVE SUMMARY

1. This briefing relates to the measures included in the Finance Bill to abolish the furnished holiday lettings (FHL) regime.
2. We consider that the legislation, as currently drafted, has missed the opportunity to introduce legislative certainty about the boundary between trading and non-trading.

THE MEASURE

3. Clause 25 and Sch 5 to the Finance Bill contain various provisions to repeal the special tax rules relating to the commercial letting of furnished holiday accommodation with effect from 6 April 2025 for income tax and for capital gains tax, and 1 April 2025 for corporation tax.

OUR CONCERN AND OUR RECOMMENDATIONS

4. ICAEW is concerned that the abolition of the FHL regime reintroduces uncertainty as to whether a short-term holiday rental business should be treated as a trade for tax purposes and whether the landlord will be considered a self-employed earner for national insurance (NI) purposes.
5. The FHL regime was introduced inter alia to eliminate these uncertainties. The introduction of the FHL regime followed several cases that had resulted in uncertainty of treatment for short-term holiday rental businesses. ICAEW therefore considers that the abolition of the FHL regime is contrary to at least two of its Ten Tenets for a Better Tax System: namely Tenet 2: Certain; and Tenet 3: Simple.
6. The **Office of Tax Simplification's (OTS's) Property Income Review** published on 1 November 2022 made the following recommendation:
 "If the furnished holiday lettings regime is abolished the OTS recommends that the government consider whether certain property letting activities subject to income tax should be treated as trading and whether it would be appropriate to introduce a statutory 'brightline' test to define when a property trading business is being carried on."
7. The OTS also recommended that if such a test were introduced, the definitions for inheritance tax (IHT), capital gains tax (CGT) and NI should also be aligned to the income tax status. This is because there have been cases that highlight the difficulties in establishing whether such businesses are eligible for business property relief for IHT and incorporation relief for CGT.
8. To deliver certainty of treatment and to avoid unnecessary disputes, ICAEW requests that proper consideration is given to introducing a statutory test that sets out when a property trading business is being carried on for tax purposes and that the treatment is also aligned across IHT and CGT. To draw a parallel, the introduction of the statutory residence test has removed uncertainty and has been welcomed by taxpayers and advisers.

SUGGESTED AMENDMENT

9. We believe that the Finance Bill should contain a statutory test that sets out when property letting activities qualify as a trade for income tax, corporation tax, CGT and IHT.
10. The statutory test could be based upon the factors suggested by the OTS. These were:
 - a) minimum number of properties let (eg, in the range of 5–10 properties);
 - b) letting is on a short-term basis (ie, based upon the current tests for the FHL regime);
 - c) no personal use of the property let (with the exception of occupation for maintenance);
 and

- d) the level of personal time devoted to the property letting and services provided. A higher number of hours could apply if the services are provided by an employee or agent.

FURTHER INFORMATION

11. As part of ICAEW's Royal Charter, we have a duty to inform policy in the public interest.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).