



FURNISHED HOLIDAY LETTINGS TAX REGIME ABOLITION

Issued 13 September 2024

ICAEW welcomes the opportunity to comment on the draft legislation, draft explanatory note and policy paper covering the furnished holiday lettings tax regime abolition published by HMRC on 29 July 2024, a copy of which is available from this [link](#). However, we note that our own process for preparing a response has been limited by the consultation period being significantly shorter than the 12 weeks recommended by the Cabinet Office in its [consultation principles](#).

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 short-term holiday rental business is a trade for tax purposes.

Clarity is required concerning several transitional rules and how existing rules apply in the transition.

As the abolition of the furnished holiday lettings regime has many knock-on effects, ICAEW recommends that HMRC issues guidance and raises awareness among the taxpayers affected.

This response of 13 September 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. ICAEW is concerned that the abolition of the furnished holiday lettings (FHL) regime creates 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 purposes. The FHL regime was introduced inter alia to eliminate these uncertainties. 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. The Ten Tenets are summarised in the Appendix.
2. On **20 March 2024**, we requested that consideration be given to introducing a statutory 'brightline' test as recommended by the **Office of Tax Simplification (OTS) in its 2022 property income review**. **HMRC rejected this idea** on the basis that such a test could favour those able to buy more properties. However, the number of units let was just one aspect of the suggested brightline test. Others included that the letting is on a short-term basis, that there is no personal use of the property let, and the level of personal time devoted to the property letting and services provided. A statutory test would help deliver certainty of treatment and avoid unnecessary disputes. ICAEW requests that this is given proper consideration.
3. However, if HMRC is unwilling to reconsider introducing a statutory test, then an urgent review of HMRC's existing guidance is required in light of the abolition of the FHL regime. For example, HMRC's guidance at **PIM4300** is not helpful. This guidance states, "An important difference is that in a hotel etc. the occupier of the room does not acquire any legal interest in the property." The same also applies to short-term holiday letting as most guests just have a licence to occupy – not a lease.

COMMENTS ON THE DRAFT LEGISLATION

Furnishing holiday letting businesses commencing in 2024/25

4. The special commencement rules in s324(2), ITTOIA 2005 and s266(2), CTA 2009 set the relevant period as 12 months from when the property is first let as furnished holiday accommodation rather than 12 months from the start of the tax year / accounting period. It is unclear how this rule will apply to new FHL businesses that commence in 2024/25 given that those definitions are omitted from 2025/26 onwards for income tax and accounting periods beginning on or after 1 April 2025 for corporation tax. Do such businesses still take account of the part of the 12-month period falling after 1/6 April 2025?

Commencement rule for roll-over relief

5. The purpose of the commencement rule at para 13(2)(a) of the draft legislation for roll-over relief is unclear. Is this commencement rule needed if the intention is that a gain on disposal of an FHL before 6 April 2025 can be rolled into the acquisition of a non-FHL qualifying asset on or after 6 April 2025, provided the acquisition is within three years of the disposal?

Anti-forestalling: disposals under unconditional contracts

6. The anti-forestalling rule in para 14 that applies from 6 March 2024 is arguably unfair as it says "no purpose of entering into the contract was to avoid the amendments made by Part 4...". But Part 4 was not published (in draft) until 29 July 2024.

Business asset disposal relief for business cessations

7. For businesses that cease before 6 April 2025, business asset disposal relief will continue to be available for three years provided the qualifying conditions were met – even if that three-year period extends beyond 6 April 2025 (para 19). However, it is not clear whether the intention is for this to apply to FHL businesses that cease by taking in a long-term tenant during 2024/25 and whether the repeal of the FHL rules is itself a deemed cessation at 5 April 2025. Clarity is required to avoid disputes.

Deduction for expenditure on energy-saving items

8. Rather than amending s313, ITTOIA 2005 and s252, CTA 2009 (relief for energy saving materials), could ss312–314, ITTOIA 2005 and s251–253, CTA 2009 be abolished on the basis that relief applied to expenditure incurred before 1/6 April 2015?

GUIDANCE, EDUCATION AND SOFT LANDINGS

9. Abolition of the FHL regime has many knock-on impacts for the taxpayers affected such as making pension contributions and what deductions they can make from their letting expenditure. ICAEW recommends that HMRC issues guidance and raises awareness among the taxpayers affected.
10. The OTS property income review also noted the widespread lack of awareness and understanding of the 50:50 rule for property owned in unequal shares by spouses and civil partners living together where the property is not an FHL. From 6 April 2025, the 50:50 basis will become the default basis for former FHLs owned in unequal shares by spouses and civil partners living together. If the owners wish to continue to be taxed based on their beneficial ownership of the property, they will need a declaration on Form 17 to be in place from the start of the 2025/26 tax year and delivered to HMRC within 60 days of the date of the declaration. ICAEW suggests that there should be a soft-landing to enable taxpayers a longer period to get Form 17 in place for the 2025/26 tax year.
11. In addition, ICAEW considers that HMRC guidance confirming the following would be welcome:
 - for disposals on or after 1/6 April 2025, it will be possible to make s198 capital allowance elections in respect of items on which capital allowances have been claimed prior to that date;
 - the abolition of the FHL regime does not change the VAT treatment (ie, the provision of holiday accommodation remains standard rated).

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>).