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## **Furnished Holiday Letting Consultation**

The Tourism Alliance was established in 2001 as the voice of the UK tourism industry. It comprises 50 tourism industry trade and marketing associations that together represent some 200,000 business of all sizes throughout the UK (see Appendix 1 for membership list). The Tourism Alliance's mandate is to work with government on issues relevant to the growth and development of tourism and its contribution to the economy. It is therefore responding to this consultation in that capacity.

### **Introduction**

Tourism is generally agreed to be the UK's sixth largest industry. A recent study by Deloitte and Oxford Economics, *The Economic Contribution of the Visitor Economy*, found that the total direct and indirect contribution of tourism to the UK economy in 2009 was £115bn (8.9% of GDP) and that the tourism sector directly employs over 1.3m people.

The study went on to that total tourism spending in the UK economy in 2009 was £90bn, with overnight domestic tourism accounting for £22bn of this amount. This was an increase of £1bn (4%) over the previous year. However, it is notable that the performance of the self-catering sector of the tourism industry far exceeded the growth rate for the sector with growth of 21%. There are a number of reasons for this strong performance including the high levels of investment in the sector over recent years, improvements in the quality of self-catering properties and shifting patterns in consumer expenditure on holidays in the UK.

What it does mean is that rural and seaside communities, where the vast majority of self-catering businesses are located, gained an additional £375m which helped retain and increase employment in these areas. Using the calculations in the Deloitte and Oxford Economic study, this additional revenue is sufficient to increase employment in these areas by 7,500 full time equivalent positions.

With this in mind, the Tourism Alliance is very supportive of the Government's move to retain the Furnished Holiday Letting Rules. Retaining the rules will encourage further investment and deliver continued economic and employment-related benefits to rural and seaside areas.

## Answers to the Main Issues Raised in the Consultation Paper

### 1. Impact of Raising the FHL Rules Thresholds

The Tourism Alliance agrees with the Government's position that the FHL Rules should only be available to legitimate self-catering businesses that are intended to be operated for profit and provide economic benefits to local communities. As such, the Alliance accepts the Government's aim of increasing the thresholds in order to reduce potential abuse of the rules by the owners of second homes – although it should be noted that there is no evidence of widespread abuse at the current threshold levels.

A survey of 30,000 self-catering operators undertaken by the Tourism Alliance indicates that raising the threshold for which a property is available for letting from 140 to 210 days and the minimum period for which a property must be let from 70 to 105 days per year will adversely affect around 20% of self-catering operators. While the actual level of impact will be lower as operators currently operating at between 10-14 weeks occupancy will be incentivised to operate for longer periods, it should be noted that the level of impact will not be evenly distributed across the UK. Operators in more remote locations (eg., Cornwall and West Wales) and/or with shorter summer seasons (eg., Scottish Highlands) will be disproportionately affected and it is these communities that are more dependent upon tourism than areas closer to urban centres.

Some businesses may be affected where a local planning (or for holiday and caravan parks, site licence) restriction obliges a closed period. Historically, these restrictions have been introduced to prevent residential occupation and ensure the tourism nature of the business. However, a holiday park with an open period of say, *'Friday before Easter until the last week in October'* (fairly typical) could not meet the 30 week availability requirement in years with a late Easter and this seems inherently unfair. In these circumstances, some flexibility may be needed to allow any revised threshold to be satisfied.

There are also a host of FHL businesses offering non-winterised units of holiday accommodation. These genuine tourism businesses include:

- letting caravans without heating or double glazing
- the growing 'glamping' market:- furnished holiday letting in teepees, yurts, shielings etc.

#### **The Tourism Alliance therefore proposes that;**

1. Compliance with thresholds be averaged over a rolling four year period to take account of start-up businesses and periodic refurbishments.
2. 'Void periods' are included which are effectively ignored when making the FHL calculations (a similar structure of 'void periods' existed within Schedule A prior to 2001 for the purposes of determining whether property was let at a 'full rent').
3. Where planning, site licence or other statutory requirement obliges properties to be closed for part of the year, the thresholds are applied pro-rata.
4. That derogations, such as those being piloted for reduced fuel duty in, be applied to threshold levels for businesses in remote areas to ensure that they are not adversely impacted.

## 2. Impact of Limiting Loss Relief

As stated above, the Alliance fully supports moves to ensure that the FHL Rules only apply to genuine self-catering businesses and are not used to support the ownership of second homes.

The primary purpose of loss relief is to provide financial help to businesses when it is needed the most – ie., when the loss has actually been incurred. This usually occurs when a business is being established, in times of heavy investment or when an adverse event occurs.

By not being able to offset for FHL losses against other income, this relief will not be available at precisely the time when self-catering operators most need it, thereby defeating the primary purpose of having the FHL Rules and posing a significant barrier to new entrants into the sector. An analysis of 218 self-catering businesses undertaken by the Alliance found that start-up businesses spend an average of £35,000 on renovation and improvement work before they open so that the property meets the high standards demanded by tourists today.

The analysis also found that it took the majority of start-up self-catering businesses take three years to become profitable. So while these businesses will be able to claim accelerated capital allowances, the removal of sideways loss relief means that it will take between four and five years before the business is able to benefit from this allowance.

Removing sideways loss relieve therefore removes initial tax relief right when a start-up business needs it most, during the initial years when expenditure is at its highest and income is at its lowest. This will be a considerable disincentive to new entrants to the industry and could be very damaging to the long-term viability of the sector which has a typical churn rate of over 10%.

Perversely, the proposal to restrict loss relief to future income of the same furnished holiday letting business introduces a limitation that is more restrictive than applies to properties which do not satisfy the requirements of the FHL Rules. Those non qualifying businesses would at least be able to offset their loss against other property income if available.

This impact of preventing sideways loss relief would be keenly felt by those operating self-catering properties on farms and estates where the financial operation of the farm is treated as a whole with revenue from one part of the property's operations are used to establish a new activity.

The need is, therefore, to construct loss relief in such a way that it retains its original purpose of supporting the establishment and development of genuine businesses while ensuring that it is not being available for second home owners.

The Tourism Alliance would contend that raising the thresholds for self-catering businesses effectively achieves this outcome by ensuring that properties have to be run commercially to achieve the increased threshold. To achieve the increased thresholds, properties need to be let for the whole of the summer period and over the Xmas break. Very few second home owners would be prepared to buy a property if they were not able to use it during these peak periods.

Also, the concession of being able to claim relief for losses against other income sources is only available to genuine trading businesses and there are already restrictions included within section 66 Income Tax Act 2007 to deny

sideways relief for those businesses that are not set up on a commercial basis and with a view to realising profits. This would prevent second home owners letting properties at non-commercial rates simply to reach the threshold.

Nevertheless, to ensure that loss relief is limited to genuine self-catering businesses we propose that, providing that a business has been set up on a commercial basis with the view to realising profits, then loss relief would be allowed for the first four years of that business and that it be available for only one of every four subsequent years to facilitate relief for irregular major refurbishment expenditure to help owners maintain standards and quality of accommodation.

For reporting purposes, the Tax Return pages could be amended such that the FHL business owner has to make declarations (by box entry) with regards to the following:-

- That the business has been set up with a view to realising profits and is actually capable of achieving profits within a certain timescale.
- The number of weeks the property (or properties if the averaging basis applies) has been let in the tax year (or first 12 months if new).
- The number of tax years in which the business has been trading.
- The number of consecutive years that the business has suffered losses (before capital allowances are taken into account).

By including such statutory declarations which form part of a person's tax return, there would be a measure of self policing under the self assessment system which could subsequently be tested under enquiry and penalties applied in respect of any mis-declarations via the existing penalty regime.

**The Tourism Alliance therefore proposes that;**

1. Sideways loss relief be allowed for the first four years of operation of a self-catering business in order to encourage investment in the industry.
2. Sideways loss relief be allowed in one of each four subsequent years to help enable businesses to undertake substantial refurbishment projects.
3. Tax Return pages are amended to require owners of self-catering businesses to make declarations regarding the viability of the business and its trading performance.

### **3. Introducing Capital Allowance Disposal Events**

It is difficult to predict the impact of a requirement to undertake a Capital Allowance Disposal Event each time a property fails to achieve the FHL thresholds. However, such a requirement would increase the regulatory burden on businesses (most of which are SMEs) and increase the complexity of the tax regime at a time when the Government is committed to seriously tackling both of these issues.

The Tourism Alliance therefore believes that the Treasury should seek to find a mechanism by which thresholds are averaged over a number of years to prevent the triggering of unnecessary disposal events. Indeed an even simpler solution would be to disclaim any capital allowances in non qualifying years and carry the pool forward until the FHL business achieved the

thresholds, with allowances being claimed on the brought forward valued under the prescribed rules of the day.

**The Tourism Alliance therefore proposes that;**

1. Thresholds are averaged over a rolling 2-3 year period so as not to unnecessarily trigger disposal events.
2. If thresholds are not averaged over a rolling period, a pooling system be introduced to carry forward the capital allowance.

**4. Guidance**

A final issue that needs to be considered is the guidance that is provided to businesses, accountants and HMRC officers on the interpretation and application of the new Rules. As has been noted previously, self-catering businesses vary considerably in their nature and business models – from individual static caravans in a holiday park through to renovated outbuildings on farms to stand-alone cottages. The guidance that accompanies the legislation therefore needs to be developed in a way that ensures that it is applicable to range of business models that employed in the sector.

At the meeting with Officials on 21 July 2010, HMRC offered to undertake a non-statutory consultation with the industry when developing this guidance. The Alliance would like to reiterate that such a consultation is fundamental to formulating high quality guidance that achieves the aims of both the Government and the industry.

Thank you for the opportunity to comment on this consultation. If you or your officials have any queries or require clarification, please don't hesitate to contact me.



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