



BUSINESS RATES TREATMENT OF SELF-CATERING ACCOMMODATION

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ICAEW welcomes the opportunity to comment on the *Business rates treatment of self-catering accommodation* published by Ministry of Housing, Communities and Local Government on 7 November 2018, a copy of which is available from this [link](#).

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KEY POINTS

1. It has always been possible to register a holiday property as a business if it is available for letting but generally owners have avoided doing this in the past as business rates were more expensive than council tax. The availability of small business rates relief (SBRR) reducing the liability to nil has swung the balance in favour of business rates.
2. To qualify for business rates the property must be available for commercial letting, that is with a view to make a profit; it is likely that many owners currently claiming business rates would fail on the commerciality grounds if it was checked. The government is concerned that many of the properties claiming business rates *“are not genuine businesses”* and they *“may reduce their tax liability by declaring that a property is available for let, but making little or no realistic effort to actually let it out. It has been suggested, for example, that a property-owner may restrict the periods during which bookings can be accepted, ask for unrealistic rents or fail actively to market the property at all.”* The current commerciality criteria if applied would exclude such properties from business rates.
3. The consultation raises an important question: what is the government’s policy intention in respect of applying business rates and SBRR to the letting of self-catering accommodation? Is the main intention to help only businesses in the local areas bringing prosperity to the area? If so, then the criteria as to when a self-catering accommodation is classed as a business probably need to be clarified and a clear test applied – as appears to have happened in Wales (see below). If, on the other hand, the main intention is to bring prosperity to an area, is the current condition that the letting needs to be classed as a business actually too restrictive? For example, visits by an extended family to a privately-owned holiday property for six months of the year with a few weeks of third party lets in the other six months is unlikely to be treated as a business, but it might bring more prosperity to the area than a property let for only 10 weeks and unoccupied the rest of the time.
4. Wales already has a restriction to qualify for business rates, the property must actually be let for 70 days, and the position is under review in Scotland. There is no indication in the consultation as to whether or not the days let restriction has led to fewer properties being eligible in Wales than is the case in England where the commercial test is the only criteria. Would those properties in Wales excluded under the 70 day rule have been excluded under the commercial criteria anyway?
5. The criteria suggested of let for 70 and available for 140 days is different to the requirements for income tax to qualify as a furnished holiday let (105 days and 210 days) so the taxpayer may need to keep parallel sets of records in order to keep track of days let and the flexibility each set of rules may allow, for example for multiple properties and exceptional conditions such as a foot and mouth epidemic.
6. The business rates rules are already designed to block second homes that are not commercial enterprises but in practice do not appear to be enforced. There is a danger that adding additional criteria will increase the admin burden on the compliant. If, as currently appears to be the case, the rules are not policed, then any changes may not have much of an impact and merely increase compliance costs.
7. The proposal to shift more properties into council tax and suggesting that the local authority could then offer discounts shifting the burden from central government to local government would require further consideration.
8. The income tax conditions for furnished holiday lets and the local government conditions for business rates are included as Appendix 1.

ANSWERS TO SPECIFIC QUESTIONS

Question 1

Do you have any views on the current criteria?

9. The current criteria for England does not actually require the property to be rented out at all, it simply has to be available to let for commercial letting for at least 140 days. In Wales it has to be actually let for at least 70 days. On a close examination those properties that are in fact personal holiday homes for the owner rather than for third party customers would fail the current criteria on the grounds that the property is not a commercial venture, ie, there is no intention of running a profitable business.
10. The cost of checking if a property is being used for a commercial venture or not may not be a viable proposition for the local council. As the system operates currently, local councils have little incentive to police the system because, although business rates are higher than council tax, the Government compensates local authorities for much of the additional cost for providing SBRR. It is counter intuitive to expect a local authority to use its resources to check if the rules are being followed which could result in lower revenue streams coming in to the authority.

Question 2

Do you have any views on the possible criteria set out above?

11. The current criteria requires the properties to be available to be commercially let and actually letting it commercially for 70 days is simply a way of measuring the commerciality of the venture. The income tax rules for furnished holiday lets require the property to be available for commercial lets for a minimum of 210 days each year and actually let for 105 days (increased from 140/70 from 2012/13) so are stricter than the proposed criteria for business rates.

Question 3

Do you have any views on how the criteria set out above could be evidenced?

Eligibility could be claimed by each property owner. The property owner should already be keeping records for their self assessment so a form could be designed for submission to the local authority providing details of availability and actual lettings. As with self assessment the claims could be subject to checking by the local authorities for up to 12 months after submission.

Question 4

Do you have any alternative suggestions that would similarly strengthen the criteria?

12. To ease the administrative burden the claim to business rates could be for a fixed period of, say, three years based on the criteria for the year before the claim or, if it is a new venture, the first year of operation forecasts with a review at the end of that year. This would prevent property owners flip flopping between the two systems depending on which is the cheaper option each year.

Question 5

Do you have any views on the option of backdating business rate bills and reimbursing council tax payments?

13. Where a new holiday letting venture is liable to council tax in the first year but based on that year's activity it qualified for business rates the owner should have the option to make a claim to business rates for that year and be reimbursed for the council tax paid.

14. It does seem an unnecessarily bureaucratic and cumbersome approach to have to adopt. The objective should be to have a simple and straightforward property tax applied to holiday lettings.

Question 6

Are there any issues regarding the administration and enforcement of the approach outlined in paragraphs 8 - 17?

15. As with all measures there should be a cost/benefit analysis, there is no point implementing a measure that will cost more to police and implement than it will collect.

Question 7

Do you have any other comments on the options set out above to strengthen the criteria for holiday lets to become liable for business rates rather than council tax?

16. There is an argument that the eligibility criteria for furnished holiday lettings and business rates treatment should be aligned to a single set of criteria, removing any doubt from the property owners minds as to which conditions they are supposed to be meeting.

APPENDIX 1

INCOME TAX CONDITIONS FOR FURNISHED HOLIDAY LETS (FHL)

Occupancy conditions

Accommodation can only qualify as a FHL if it passes all 3 occupancy conditions.

How to use the occupancy conditions

- for a continuing let, apply the tests to the tax year - that is from 6 April one year to the 5 April the next
- for a new let, apply the tests to the first 12 months from when the letting began
- when your letting stops, apply the tests to the 12 months up to when the letting finished

The pattern of occupation condition

If the total of all lettings that exceed 31 continuous days is more than 155 days during the year, this condition is not met so your property will not be an FHL for that year.

The availability condition

Your property must be available for letting as furnished holiday accommodation letting for at least 210 days in the year (140 days for the tax year 2011 to 2012 and earlier).

Do not count any days when you are staying in the property. HM Revenue and Customs (HMRC) do not consider the property to be available for letting while you are staying there.

The letting condition

You must let the property commercially as furnished holiday accommodation to the public for at least 105 days in the year (70 days for the tax year 2011 to 2012 and earlier).

Do not count any days when you let the property to friends or relatives at zero or reduced rates as this is not a commercial let.

Do not count longer-term lets of more than 31 days, unless the 31 days is exceeded because something unforeseen happens. For example, if the holidaymaker either:

- falls ill or has an accident, and can't leave on time
- has to extend their holiday due to a delayed flight

If you don't let your property for at least 105 days, you have 2 options (known as elections) that can help you reach the occupancy threshold:

- the averaging election - if you have more than one property
- a period of grace election - if your property reaches the occupancy threshold in some years but not in others

Averaging election

If you let more than one property as a FHL, and one or more of these properties does not meet the letting condition of 105 days, you can elect to apply the letting condition to the average rate of occupancy for all the properties you let as FHLs. This is called an averaging election.

ELIGIBILITY FOR BUSINESS RATES

Extract from Local Government Finance Act 1988 s66

(2AA) Subsection (2B) applies only in so far as this Part applies in relation to England.

(2B) A building or self-contained part of a building is not domestic property if—

- a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more, and
- b) on that day his interest in the building or part is such as to enable him to let it for such periods.

(2BA) Subsection (2BB) applies only in so far as this Part applies in relation to Wales.

(2BB) A building or self-contained part of a building is not domestic property if each of the following paragraphs apply in relation to it—

- a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more;
- b) on that day the relevant person's interest in the building or part is such as to enable the person to let it for such periods;
- c) the whole of the building or self-contained part of the building was available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more in the year prior to the year beginning with end of the day in relation to which the question referred to in paragraph (a) is being considered;
- d) the short periods for which it was so let amounted in total to at least 70 days.