THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ICAEW TAX FACULTY REPRESENTATION

TAXREP 11/11

DRAFT FINANCE BILL 2011: FURNISHED HOLIDAY LETTINGS

Comments submitted on 9 February 2011 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales on the proposed legislation on 'Furnished holiday lettings' published as part of the draft Finance Bill 2011 on 9 December 2010.

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DRAFT FINANCE BILL 2011: FURNISHED HOLIDAY LETTINGS

INTRODUCTION

1. This document sets out the comments of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) on the proposed legislation on **Furnished holiday lettings** (FHLs) published as part of the draft Finance Bill 2011 on 9 December 2010.

2. These comments were sent to the HMRC officer responsible for this topic on 9 February 2011.

3. They are also included in our comprehensive response to the draft Finance Bill 2011, which is published as TAXREP 5/11 and was submitted to the Exchequer Secretary to the Treasury and to the Permanent Secretary for Tax at HMRC on 9 February 2011.

4. Information about the Tax Faculty and the ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's ten tenets for a better tax system, by which we benchmark proposals to change the tax system.

WHO WE ARE

5. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

6. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.

7. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members of the Institute who pay an additional subscription, and a free weekly newswire.

KEY POINTS

8. We make a number of suggestions as to how the proposals could be improved. We recommend an averaging arrangement in the first three years of a new letting business. We also believe that there should be an opt-out election for those businesses who do not want the administrative burden of day counting when they would otherwise be in the system some years but outside in others.

COMMENTS ON THE DRAFT PROVISIONS

Implementation date

9. We welcome the additional time being given before the proposed changes are to take effect, 1 (or 6) April 2012. This will allow taxpayers to implement whatever changes are needed to their business models.

10. Of the proposed changes, the one which has caused most concern to our members is the increase in the number of days a property must actually be let from 70 to 105. This is particularly difficult for businesses whose letting season is very short. One side effect of increasing the number of days when a property is required to be let is that more properties will become marginal.

11. The old test of 70 days was roughly equal to the UK holiday letting season. 105 days will be more difficult to achieve. Many business models are based on charging higher rents for a shorter period. This may be because of local weather patterns, or may be due to local letting restraints imposed by planning authorities. It will be easier for a property owned and let in southern European states than in the north of England or Scotland.

12. We welcome the proposed averaging tests although we will be interested to see how this is to be implemented in the self assessment system. Presumably free standing claims will be necessary.

13. In relation to new section 326A (1) (d), the phrase 'there was a genuine intention to meet the letting condition' leaves scope for uncertainty. The same issue arises for a company in new section 268A (1) (d).

14. To avoid businesses which are at the margin falling in and out of the rules from year to year, we recommend a further change to the legislation. An opt-out election where those businesses which do not want the administrative burden of day counting, can choose to be simple property businesses rather than FHLs.

15. FHL treatment is not an optional tax treatment. Losses arising in a void period, for example from carrying out a major refurbishment, may lead to a property needing to be kept outside the FHL scheme in order to utilise the losses.

16. We would be pleased to discuss further how this could be applied.

Existing averaging rules

17. Section 326, ITTOIA 2005 contains averaging rules which can be used for under-utilised holiday accommodation. We presume these rules will be retained in the new regime. The existing rules require this relief to be given by way of a formal claim. We suggest that the administration associated with this relief would be reduced if it could be self assessed and just used by taxpayers whose lettings qualify.

New businesses

18. Achieving 105 days during the first 12 months of a new business will be very challenging. This will be particularly difficult in those areas of the UK where the letting season is more seasonal. It could cause a barrier to entry and reduce competition in the sector.

19. When a taxpayer first sets out to let holiday property they often have fewer lettings. These build up over time.

20. We suggest that there should be a three year period of averaging of days for new businesses, subject to the 'opt out election' described above. There could be a presumption that the business will qualify as a FHL, with clawback if it fails the test at the end of three years. This could be taken as three tax years for an unincorporated business or 36 months for a company.

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APPENDIX 1

THE 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.