



TC02498

Appeal numbers: TC/2012/00925 & TC/2012/00927

Capital Gains Tax – furnished holiday lettings – 12 month period – chargeable period

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MR DAMIAN HORNER
MRS EMMA HORNER**

Appellants

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE ALASTAIR J RANKIN
MS CELINE CORRIGAN**

Sitting in public at Tribunals Unit, 3rd floor, Bedford House, 16-22 Bedford Street, Belfast, BT2 7DS on 14 November 2012

Mr Colum McLoughlin with Mr Joseph Murray both of McLoughlin & Co, Chartered Accountants for the Appellant

Mr John Corbett instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

Background facts

1. Mr and Mrs Horner bought property at 27 West Strand Avenue, Portrush,
5 County Antrim in September 2004 intending to let the property for short term holiday lets.
2. The property was first let in the week commencing 9 July 2005. During the first 12 months to 8 July 2006 the property was actually let for 64 days including Saturday 8 July 2006.
- 10 3. Saturday 8 July 2006 was the first day of a 14 day letting period.
4. The last letting ceased on 9 December 2006 and the property was sold in June 2007.
5. The agreed gain before any reliefs was £106,880.00 for each of Mr and Mrs Horner
- 15 6. Mr and Mrs Horner appealed the assessments to capital gains tax on the grounds that the property was actually let for more than 70 days in the first year of letting and that any reliefs should be spread over the full period that the property was available to be used for the purpose of the trade (furnished holiday lettings)

Legislation

- 20 7. The rules governing taper relief are contained in Schedule A1 Taxation of Chargeable Gains Act 1992 (TCGA 1992). Section 241 provides that property used for furnished holiday lettings qualifies as a business asset for taper relief purposes but only for periods when it is either commercially let or is available to be so let.
8. The definition of furnished holiday letting is contained in section 325 of Income
25 Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) sub-section (b) of which states that during the relevant period the property must be commercially let as holiday accommodation to members of the public for at least 70 days.
9. Section 324 ITTOIA 2005 defines the relevant period as: in the first year of
30 lettings, 12 months from the date when letting began; in the final year of lettings, 12 months ending on the date when letting ceased; and in other years, the year of assessment.
10. Section 241 of TCGA 1992 states that the provisions relating to furnished holiday lettings shall apply in any chargeable period.

Application of legislation to the facts

11. The first letting began on 9 July 2005 and so the first 12 month period ended on 8 July 2006. During this period the property was let for 64 days including 8 July which was the first day of a 14 day letting. If the 14 days starting on 8 July are included then sub-section (b) is satisfied. If they are not included then sub-section (b) is not satisfied.

12. The last letting ended on 9 December 2006 and in the 12 months ending on that date the property was let for a total of 105 days. Accordingly sub-section (b) is satisfied.

Appellants' arguments

13. In property law, the term 'letting' refers to a single act whereas 'occupancy' covers a period of time. Accordingly although the property was occupied for 64 days in the first year it was let for more than 70 days if the 14 days let starting on 8 July 2006 is included.

14. Income from furnished holiday lettings is taxed under the schedule A rules with the result that if 8 July had been the last accounting date for an assessment of income the entire rent for the 14 day let would have been included in an assessment for the year ended 8 July 2006.

15. Each letting period is indivisible with the result that all 14 days of the let commencing on 8 July 2006 should be included in the calculation required for sub-section (b) of ITTOIA 2005.

16. Taper relief for furnished holiday lettings should be spread over the entire period the property was available to be used for the purposes of the trade (furnished holiday lettings), this being the chargeable period.

Respondent's argument

17. Section 324 ITTOIA 2005 is quite clear. The relevant period is '12 months beginning with the first day in the tax year on which it is let' (section 324(2)) and '12 months ending with the last day' (section 324(3))

Decision

18. The argument that all 14 days of a let commencing on 8 July 2006 should be included in the calculation of the number of days the property was let during the period 9 July 2005 to 8 July 2006 must fail as the legislation clearly states that the property must be let for at least 70 days during the 12 month period.

19. The fact that the legislation also uses the word occupation to define longer periods of letting does not require the interpretation of letting to be different from a literal interpretation of the statute.

20. There are many examples of different tax treatments in the legislation in respect of the same matter. The fact that Schedule A income tax rules may have required all the income from the 14 day let to have been included in the first 12 months does not mean the same approach is required for capital gains tax purposes where the
5 legislation is clear and precise.

21. Section 268 of TCGA 1992 defines ‘chargeable period’ as a year of assessment.

22. Accordingly both grounds of the appeals are dismissed.

23. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal
10 against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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ALASTAIR J RANKIN
TRIBUNAL JUDGE

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RELEASE DATE: 22 January 2013