

dte tax investigations update



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Welcome to the latest edition of the DTE tax investigations newsletter. In this edition we look at:

Taxation of Rental Income Update

When preparing 2016/17 Tax Returns for accounting periods commencing after 31 March 2016, it is important to take on board the new rules with particular regard to expenses.

Failure to deal with matters correctly may result in unexpected tax arrears if your client has a HMRC compliance check.

Below is a summary of issues which you will find helpful: Please note the distinct definitions for furnished holiday letting and furnished letting.

New Rules from April 2016

INCOME on receivable basis.

PRE-LETTING EXPENDITURE – expenses to put the property into a fit state for letting is treated as capital expenditure. It is important to keep details of such expenditure as likely eligible for Capital Gains tax relief on sale of property.

Furniture and equipment

- a) Wear and tear allowance – for furnished lettings only – ceased 5 April 2016. (10% of rent less landlord expenses normally paid by tenants).
- b) Capital allowances – for furnished holiday lettings only.
- c) Renewals allowance – for furnished lettings only – ceased 5 April 2013.
- d) Replacement allowance – **Domestic Items Replacement Relief** for furnished lettings and unfurnished lettings from 6 April 2016 or 1 April 2016 (income tax or corporation tax respectively).
 - I. No relief for initial cost of asset.
 - II. Relief due for replacements provided they are substantially the same as the original.
 - III. Applies to beds, sofas etc, TVs, freestanding white goods, carpets, floor coverings, curtains, linen, crockery and cutlery.
 - IV. Integral features will generally be repairs. Integral features include; baths and showers, washbasins, toilets, boilers, radiators, fitted kitchen units including ovens etc.

Furnished Holiday Lettings – conditions (each fiscal year, or, if first year – first 12 month period)

- a) Available for let for at least 210 days.
- b) Actually let for more than 105 days (excluding lets of over 31 continuous days).
- c) Exclude lets to family and friends at reduced rates.
- d) Don't include lets of over 31 days, unless it is because of an unforeseen accident of the tenant due to an accident or flight delays.

Failure of Furnished Holiday Letting conditions

If the FHL initially fails the relevant conditions for a specific tax year you should consider:

- a) Averaging election.
 - i. Average conditions over all FHL properties (if more than one FHL owned).
- b) Period of grace election:
 - i. To make an election, you must be able to show that you had a genuine intention to let the property in the year. For example, where the lettings are cancelled due to unforeseen circumstances.
 - ii. If lettings don't comply for a second year, you are able to make a further election.
 - iii. If don't comply by 4th year (after 2 elections) it will no longer qualify as FHL.

Consequences of Furnished Holiday Letting failure

- a) Balancing adjustments required to capital allowance pools.
- b) Loss of Entrepreneurs Relief qualification, business asset rollover relief, relief for gifts of business assets, relief for loans to traders.
- c) Loss of treatment income as earnings for pension purposes.

If you are unsure of the appropriate treatment please contact me.

Directors Remuneration, Failure to Settle PAYE/NI, Company Placed in Liquidation

The recent case of Charles O'Rourke v HMRC TC6008 highlights an issue too often not considered when a company is placed in liquidation.

The Issue

Whether a director had acted reasonably in paying staff and suppliers rather than HMRC.

The Facts

The taxpayer was finance director of L, a company purchased out of administration in April 2006. It traded until March 2007 when it was put into liquidation. The director was responsible for settling PAYE tax and NI but failed to do so. He decided to pay staff and suppliers instead of HMRC.

HMRC accused the taxpayer of negligence and issued a personal liability notice for the company's unpaid NI. The taxpayer appealed.

The Decision (FTT)

The First-tier Tribunal accepted that the taxpayer appeared genuinely to believe that he had acted in the best interests of the company but said 'such a position verges on delusional'. The judge concluded that a reasonable man would consider the taxpayer had behaved 'wholly negligently'

The taxpayers appeal was dismissed.

For further help or advice please email Alan McCann at amccann@dtegroup.com or telephone 0161 767 1200.