



**Draft Legislation to Repeal the Furnished Holiday Lettings
Rules from 2010-11**

Draft Legislation and Explanatory Note
9 December 2009

Contents		Page
Introduction		3
Chapter 1	Draft Legislation	4
Chapter 2	Explanatory Note	14

Introduction

Landlords with income from furnished holiday accommodation in the UK are currently treated as if they are trading for certain tax purposes, as long as they satisfy certain tests, under the Furnished Holiday Lettings (FHL) rules.

Landlords with income from furnished holiday accommodation elsewhere in the European Economic Area (EEA) could not qualify for this treatment. They were treated instead in the same way as landlords of other types of overseas property, under the property income rules. This difference may not be compliant with European law.

At Budget 2009, the Government announced its intention to include legislation in Finance Bill 2010 to repeal the FHL rules from 2010-11.

HM Revenue and Customs (HMRC) published a technical note, [Furnished Holiday Lettings in the European Economic Area](#), at Budget 2009 explaining that until the FHL rules are repealed, HMRC will accept that the FHL rules also apply to the commercial letting of furnished holiday accommodation elsewhere in the EEA.

HMRC published a technical note, *Withdrawing the Furnished Holiday Lettings Rules from 2010-11*, at the Pre-Budget Report 2009, which explains in more detail how FHL landlords will be affected by the repeal.

This document contains draft legislation for the repeal of the FHL rules.

Comments

HMRC would welcome comments about this legislation. In particular we welcome comments on how effectively the draft legislation implements the Government's decision to repeal the FHL rules from 2010-11.

Please send your comments, by 26 February 2010, to –

Jenni Rich

HMRC CT & VAT

100 Parliament Street

London

SW1A 2BQ

or email: jenni.rich@hrcm.gsi.gov.uk.

Chapter 1 - Draft Legislation

This section contains the current draft of the legislation.

1 Furnished holiday lettings

Schedule contains provision for ending the special tax treatment of furnished holiday lettings.

SCHEDULE

Section 1

FURNISHED HOLIDAY LETTINGS

PART 1

INCOME TAX

FA 2004

- 1 In FA 2004, in section 189—
 - (a) in subsection (2)—
 - (i) in paragraph (b), at the end insert “and”;
 - (ii) omit paragraph (ba);
 - (b) omit subsections (5) and (6).

ITTOIA 2005

- 2 In ITTOIA 2005 omit—
 - (a) [section 308A(4);]
 - (b) section 313(3);
 - (c) Chapter 6 of Part 3.

ITA 2007

- 3 In ITA 2007 omit—
 - (a) section 117(2);
 - (b) section 127;
 - (c) in section 836(3), exception D.

Commencement etc

- 4 This Part, and Part 5 so far as it relates to income tax, have effect in relation to the tax year 2010 to 2011 and subsequent tax years.
- 5 (1) This paragraph applies if the following conditions are met.
 - (2) Condition A is that a person (“P”) carries on, or carried on, a UK furnished holiday lettings business in a pre-commencement tax year.
 - (3) Condition B is that—
 - (a) P makes, or has made, a claim under section 83 of ITA 2007 in respect of losses made in the notional single trade in a pre-commencement tax year, and
 - (b) in accordance with Chapter 2 of Part 4 of ITA 2007, some or all of the loss in respect of which the claim is made (“the unrelieved loss”) would (but for this Part of this Schedule) fall to be deducted from profits of the tax year 2010-11.

- (4) Relief may be given to a person under section 118 of ITA 2007 as if the unrelieved loss were a loss –
- (a) made in a UK property business carried on by P, and
 - (b) made in the tax year 2009-10,
- but only by deducting the unrelieved loss from profits of a UK property business or overseas property business in the tax year 2010-11 and subsequent tax years.
- (5) In this paragraph –
- “notional single trade” means a single trade of the kind mentioned in section 127(3) of ITA 2007;
 - “pre-commencement tax year” means the tax year 2009-10 and each previous tax year;
 - “UK furnished holiday lettings business” has the same meaning as in section 127 of ITA 2007;
 - “UK property business” has the same meaning as in ITA 2007.
- (6) In relation to the tax year 2006-07 and each earlier tax year, this paragraph (in particular any reference to ITA 2007 or to an expression used in ITA 2007) is to have effect with such modifications as are necessary.

PART 2

CORPORATION TAX

CTA 2009

- 6 (1) CTA 2009 is amended as follows.
- (2) Omit –
- (a) section 202(5);
 - (b) [section 248A(4);]
 - (c) section 252(3)(a);
 - (d) Chapter 6 of Part 4.
- (3) In section 748 –
- (a) in subsection (4) –
 - (i) in paragraph (a) for “an ordinary property business,” substitute “a UK property business, or”;
 - (ii) omit paragraph (b);
 - (b) omit subsection (5).
- (4) In Schedule 4, omit the entry relating to commercial letting of furnished holiday accommodation.

CTA 2010

- 7 Omit section [65] of CTA 2010.

Commencement etc

- 8 This Part, and Part 5 so far as it relates to corporation tax, have effect in relation to accounting periods starting on or after 1 April 2010.
- 9 (1) This paragraph applies if the following conditions are met.

- (2) Condition A is that a company (“C”) carries on, or carried on, a UK furnished holiday lettings business in a pre-commencement accounting period.
- (3) Condition B is that—
- (a) C incurs a loss in the notional single trade in a pre-commencement accounting period, and
 - (b) some or all of the loss (“the unrelieved loss”) is not deducted in accordance with Chapter 2 of Part 10 of ICTA from profits of the company’s last pre-commencement accounting period.
- (4) The unrelieved loss may be set off under section [62] of CTA 2010 as if the unrelieved loss were a loss—
- (a) made in a UK property business carried on by C, and
 - (b) made in the company’s last pre-commencement accounting period, but only by deducting the unrelieved loss from profits of a UK property business or overseas property business in post-commencement accounting periods.
- (5) In this paragraph—
- “notional single trade” means a single trade of the kind mentioned in section 127(3) of ITA 2007;
 - “post-commencement accounting period” means an accounting period starting on or after 1 April 2010;
 - “pre-commencement accounting period” means an accounting period starting on or before 31 March 2010;
 - “UK furnished holiday lettings business” has the same meaning as in section 127 of ITA 2007;
 - “UK property business” has the same meaning as in [CA 2009].

PART 3

CAPITAL ALLOWANCES

CAA 2001

- 10 (1) CAA 2001 is amended as follows.
- (2) In section 15—
- (a) in subsection (1)(b) for “an ordinary” substitute “a UK”;
 - (b) omit subsection (1)(c);
 - (c) in subsection (3)(a) for “an ordinary” substitute “a UK”.
- (3) Omit sections 16 and 17.
- (4) In section 28(1) and (2) for “an ordinary” substitute “a UK”.
- (5) In section 33(8)—
- (a) in paragraph (b) for “an ordinary” substitute “a UK”;
 - (b) omit paragraph (c).
- (6) In section 35(1)(a) for “an ordinary” substitute “a UK”.
- (7) In section 63(3)—
- (a) in paragraph (b) for “an ordinary” substitute “a UK”;
 - (b) omit paragraph (c).

- (8) In section 248 –
 - (a) in the heading for “**Ordinary**” substitute “**UK**”;
 - (b) for “an ordinary” substitute “a UK”.
- (9) Omit section 249.
- (10) In section 536(5)(a) –
 - (a) in sub-paragraph (i) for “an ordinary” substitute “a UK”;
 - (b) omit sub-paragraph (ii).
- (11) In Schedule A1 –
 - (a) in paragraph 5(1) omit “other than a furnished holiday lettings business”;
 - (b) in paragraph 11(1) omit “or a furnished holiday lettings business”;
 - (c) in paragraph 12(1) omit “other than a furnished holiday lettings business”;
 - (d) in paragraph 20 –
 - (i) in sub-paragraph (a) omit “or a furnished holiday lettings business”;
 - (ii) in sub-paragraph (c) omit “(other than a furnished holiday lettings business)”.
- (12) In Part 2 of Schedule 1, omit the entries for –
 - (a) “furnished holiday lettings business”;
 - (b) “ordinary property business”.

Commencement etc

- 11 This Part, and Part 5 so far as it relates to capital allowances, have effect –
 - (a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2010, and
 - (b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2010.
- 12 (1) A person is not to be taken, by virtue of this Part, to have brought plant or machinery into use for the purposes of a qualifying activity.
- (2) A person is not, by virtue of this Part, required by section 61 of the CAA 2001 to bring the disposal value of any plant or machinery into account.
- 13 (1) This paragraph applies if the following conditions are met.
- (2) Condition A is that, before the commencement of paragraph 10 (“the relevant commencement”), a person incurred expenditure that is qualifying expenditure.
- (3) Condition B is that, if the expenditure had been incurred after the relevant commencement, by virtue of section 35 of CAA 2001 it would not be qualifying expenditure.
- (4) Part 1 of this Schedule does not prevent the expenditure from continuing to be –
 - (a) regarded as qualifying expenditure after the relevant commencement, and
 - (b) taken into account accordingly for the purposes of capital allowances.

- (5) In this paragraph “qualifying expenditure” means qualifying expenditure for the purposes of Part 2 of CAA 2001.

PART 4

CHARGEABLE GAINS

TCGA 1992

- 14 Omit section 241 of TCGA 1992.

Roll-over relief: general

- 15 In as far as section 241 of TCGA 1992 applies for the purposes of sections 152 and 153 and sections 155 to 157 of that Act (roll-over relief on replacement of business assets), the chargeable gains repeals have effect in relation to cases where either or both of the following conditions are met—
- (a) the disposal of (or of the interest in) the old assets is a post-commencement disposal of (or of an interest in) FHL assets;
 - (b) the acquisition of (or of the interest in) the new assets is a post-commencement acquisition of (or of an interest in) FHL assets.

Roll-over relief: replacement by depreciating assets

- 16 In as far as section 241 of TCGA 1992 applies for the purposes of section 154 of that Act (roll-over relief on replacement of business assets by depreciating assets), the chargeable gains repeals have effect in relation to cases where one or more of the following conditions are met—
- (a) the disposal of (or of the interest in) asset No 1 is a post-commencement disposal of (or of an interest in) FHL assets;
 - (b) the acquisition of (or of the interest in) asset No 2 is a post-commencement acquisition of (or of an interest in) FHL assets;
 - (c) the acquisition of (or of the interest in) asset No 3 is a post-commencement acquisition of (or of an interest in) FHL assets.

Roll-over relief: furnished holiday letting becomes private residence

- 17 Where a pre-commencement acquisition of (or of an interest in) FHL assets falls within section 241(6)(b) of TCGA 1992 (gain rolled-over into the acquisition of a FHL asset), this Part does not prevent section 241(6) of TCGA 1992 (disposal of the asset after it has become a private residence) from applying to a post-commencement disposal of (or of an interest in) the assets.

Relief for gifts of business assets

- 18 In as far as section 241 of TCGA 1992 applies for the purposes of section 165 of TCGA 1992 (relief for gifts of business assets), the chargeable gains repeals have effect in relation to post-commencement disposals of assets (and interests in assets).

Entrepreneurs' relief

- 19 (1) In as far as section 241 of TCGA 1992 applies for the purposes of section 169S(1) of TCGA 1992 (entrepreneurs' relief), the chargeable gains repeals come into force immediately before the start of the commencement day.
- (2) Accordingly, from that time, each FHL business is to cease to be a business for the purposes of Chapter 3 of Part 5 of TCGA 1992 (entrepreneurs' relief).
- 20 (1) Paragraph 19 does not prevent a post-commencement disposal from being a disposal of business assets –
- (a) under section 169I(2)(b) of TCGA 1992 if –
 - (i) the disposal is of (or of interests in) assets,
 - (ii) the business which ceased to be carried on was a FHL business, and
 - (iii) that business ceased to be carried on before the commencement day (whether by virtue of paragraph 19 or otherwise);
 - (b) under section 169I(2)(c) of TCGA 1992 by virtue of condition B in section 169I(7) being met if the disposal is of (or of interests in) shares in or securities of a company which –
 - (i) ceased to be a trading company without continuing to be or becoming a member of a trading group (as mentioned in section 169I(7)(a)), or
 - (ii) ceased to be a member of trading group without continuing to be or becoming a trading company (as mentioned in section 169I(7)(b)),because a FHL business ceased to be carried on before the commencement day (whether by virtue of paragraph 19 or otherwise).
- (2) Paragraph 19 does not prevent a post-commencement disposal from being a disposal of trust business assets under section 169J of TCGA 1992 –
- (a) by virtue of the relevant condition in section 169J(4) being met if the period of 1 year mentioned in section 169J(4) ended before the commencement day;
 - (b) by virtue of the relevant condition in section 169J(5) being met if –
 - (i) the business which the beneficiary ceased to carry on was a FHL business, and
 - (ii) that business ceased to be carried on before the commencement day (whether by virtue of paragraph 19 or otherwise).
- (3) Paragraph 19 does not prevent a post-commencement disposal from being a disposal associated with a relevant material disposal under section 169K of TCGA 1992 if –
- (a) the business of the partnership or company which has ceased (as mentioned in section 169K(4)(b)) was a FHL business, and
 - (b) the cessation of that FHL business occurred before the commencement day (whether by virtue of paragraph 19 or otherwise).

Relief for loans to traders

- 21 In as far as section 241 of TCGA 1992 applies for the purposes of section 253 of TCGA 1992 (relief for loans to traders), the chargeable gains repeals have effect in relation to post-commencement loans for the purposes of FHL businesses.

Substantial shareholdings exemption

- 22 In as far as section 241 of TCGA 1992 applies for the purposes of Schedule 7AC to TCGA 1992 (exemption for disposals by companies with substantial shareholding), the chargeable gains repeals have effect in relation to post-commencement disposals.

Other commencement

- 23 To the extent that the chargeable gains repeals do not have effect in accordance with paragraphs 15 to 22, the chargeable gains repeals come into force on the commencement day.

Interpretation

- 24 In this Part—
- “chargeable gains repeals” means—
 - (a) paragraph 14, and
 - (b) Part 5 of this Schedule so far as it relates to chargeable gains;
 - “commencement day” means—
 - (a) 1 April 2010 (in the case of corporation tax), or
 - (b) 6 April 2010 (in the case of capital gains tax);
 - “FHL assets” means assets used for the purposes of a FHL business;
 - “FHL business” means a business which is treated as a trade by virtue of section 241 of TCGA 1992 (furnished holiday lettings businesses);
 - “post-commencement”, in relation to an acquisition, disposal or loan, means one that is made on or after the commencement day;
 - “pre-commencement”, in relation to an acquisition or disposal, means one that is made before the commencement day.

PART 5

MINOR REPEALS

- 25 Omit—
- (a) in FA 1996, in Schedule 20, paragraph 62;
 - (b) in FA 1998—
 - (i) in Schedule 5, paragraph 42;
 - (ii) in Schedule 21, paragraph 8;
 - (c) in FA 2002, in Schedule 8, paragraph 3;
 - (d) in ITTOIA 2005, in Schedule 1, paragraphs 195, 196, 441, 527, 528 and 574(3);
 - (e) in ITA 2007, in Schedule 1, paragraphs 325, 473(2), 508, 509 and 510;
 - (f) in FA 2008—
 - (i) in Schedule 2, paragraph 37;

- (ii) in Schedule 3, paragraph 3;
- (g) in CTA 2009, in Schedule 1, paragraphs 172, 173, 477 and 478;
- (h) in CTA 2010, in Schedule [1], paragraph [321].

Chapter 2 - Explanatory Note

This section contains the draft Explanatory Note based on the current draft of the legislation.

SUMMARY

1. This legislation repeals the FHL rules. As a result of this repeal, letting furnished holiday accommodation will no longer be treated as a trade for certain tax purposes, instead the normal tax rules for property income businesses will apply.

DETAILS OF THE SCHEDULE

2. Part 1 of the Schedule repeals the FHL rules for income tax purposes from 5 April 2010. FHL income will no longer be included within relevant UK earnings for pension relief purposes. Those letting furnished holiday accommodation will no longer be excluded from claiming the Landlords Energy Savings Allowance. Letting furnished holiday accommodation will no longer be treated as a trade for the purposes of loss relief, instead the normal property income rules will apply. Furnished holiday accommodation will no longer be excluded from the normal rules on jointly held property.
3. An ordinary property business is defined as a UK property business excluding any FHL. Following the FHL repeal, letting furnished holiday accommodation will be treated in the same way as other property businesses, therefore the Schedule replaces the term “ordinary property business” with the term “UK property business” throughout the remaining tax legislation.
4. Paragraph 5 of Part 1 provides transitional arrangements for FHL losses that arose before 5 April 2010, and which have not been relieved at that date. Such a loss will be treated as a property business loss that was incurred in the tax year 2009-10. The loss may be deducted from the profits of the property business in 2010-11 and subsequent tax years, until the loss has been fully relieved.
5. Part 2 of the Schedule repeals the FHL rules for corporation tax purposes for accounting periods starting on or after 1 April 2010. Letting furnished holiday accommodation will no longer be treated as a trade for the purposes of loss relief, instead the normal property income rules will apply.
6. Paragraph 9 of Part 2 provides transitional arrangements for FHL losses that arose in an accounting period starting before 1 April 2010, and which have not been relieved at that date. Such a loss will be treated as a property business loss that was incurred in the last accounting period starting before 1 April 2010. The loss may only be deducted from the profits of the property business in accounting periods starting on or after 1 April 2010, until the loss has been fully relieved.

7. Part 3 of the Schedule repeals the FHL rules for capital allowances purposes. The repeal will apply to expenditure incurred on or after 6 April 2010 for income tax purposes, or on or after 1 April 2010 for corporation tax purposes.
8. Following the repeal, FHL will no longer be a qualifying activity for capital allowances purposes. Instead, letting furnished holiday accommodation will form part of a UK property business or an overseas property business, which are both qualifying activities for capital allowances purposes.
9. Paragraph 12 of Part 3 provides transitional arrangements for assets within an FHL capital allowance pool at the date of repeal. It ensures that the cessation of FHL as a separate qualifying activity will not result in FHL assets being treated as disposed of and reacquired at market value, instead such assets will be transferred to the relevant property business pool at their written down value at the date of repeal.
10. Paragraph 13 of Part 3 provides transitional arrangements for qualifying capital expenditure on plant and machinery incurred prior to the date of repeal for the purposes of an FHL business. It ensures that, following the repeal, capital allowances will still be available on such expenditure even where the asset is used in the FHL property (a dwelling house).
11. Part 4 of the Schedule repeals the FHL rules for capital gains purposes.
12. Paragraph 14 removes section 241 from the Taxation of Chargeable Gains Act 1992 (TCGA). Section 241 provides that a furnished holiday lettings business is treated as a trade for the purposes of several reliefs from tax in respect of chargeable gains.
13. For most purposes the repeal of section 241 takes effect from 1 April 2010 for corporation tax purposes, and from 6 April 2010 for capital gains tax (CGT) purposes. These dates are collectively referred to in Part 4 of the Schedule as the “commencement day” (paragraph 24).
14. Specific provisions are required in order to provide certainty as to the effects of the repeal in relation to various reliefs to which Section 241 refers. These specific provisions are contained in paragraphs 15 to 22, which provide specific commencement provisions in relation to particular reliefs referred to in Section 241.
15. Paragraph 15 deals with roll-over relief. Roll-over relief has the effect of eliminating or reducing the chargeable gain arising on disposals of certain assets used for the purposes of a trade, provided that the proceeds of the disposal are invested in whole or in part in qualifying assets used for the same or a different trade. The investment must be made within a four year period beginning one year before the date of the disposal of the old assets. The amount of gain relieved as a result of the reinvestment is deducted from the acquisition cost (for chargeable gains purposes) of the new assets, so that on a future disposal of the new assets the chargeable gain that arises will include the amount of gain that was rolled-over.

16. Paragraph 15 has the effect that the repeal:

- prevents roll-over relief in respect of the gain on the “post-commencement” disposal of an asset used for the purposes of an FHL business where that disposal takes place after the commencement date (except that, if the person carrying on the FHL business carries on a trade concurrently with or in succession to the FHL business, a part of the gain on a post-commencement disposal of an asset used before commencement day for the purposes of the FHL business may qualify for roll-over relief); and
- prevents a gain on the disposal of assets used for the purposes of a trade against the “post-commencement” acquisition of an asset used for the purposes of an FHL business.

The meaning of “post-commencement” is given by paragraph 24.

17. A gain on the “pre-commencement disposal” of a qualifying asset used for the purposes of an FHL business can be rolled over against the post-commencement acquisition (within the 4 year “window” for investment in a new asset) of a qualifying asset used for the purposes of a trade, but not against the post-commencement acquisition of an asset used for the purposes of an FHL business. Gains eligible for relief can be rolled-over against pre-commencement acquisitions of assets used in an FHL business, even if the gain being rolled over arises on a post-commencement disposal.

18. Paragraph 16 also deals with roll-over relief and sets out how the repeal applies where gains on disposals of assets used for the purposes of a trade have been deferred (“held over” rather than “rolled over”) because the disposal proceeds have been reinvested in qualifying depreciating assets (assets with an expected life of less than 60 years at the time of acquisition) used for the purposes of a trade. In such a case, the gain on the disposal is deferred until the earliest of three events:

- the disposal of the depreciating asset;
- the cessation of use of the depreciating asset for the purposes of the trade (this includes the case where the trade ceases to be carried on); and
- the end of a period of 10 years from the acquisition of the depreciating asset.

If, before the earliest of these events, a non-depreciating qualifying asset is acquired, the gain deferred against the acquisition of the qualifying depreciating asset can be rolled over against the acquisition of the non-depreciating asset. If this is done, the deferred gain does not come back into charge when any of the three events occurred. Instead the allowable cost of the new non-depreciating qualifying asset is reduced by the amount of the gain, in the same way as if the original gain had been rolled over immediately against the acquisition of the non-depreciating qualifying asset.

19. Paragraph 16 provides that, for the purposes of the rules on relief where a gain is deferred against the acquisition of depreciating assets, the repeal takes effect where any of three conditions are met. The effect of these conditions is that:
- the gain arising on a post-commencement disposal of an asset used for the purpose of an FHL business cannot be deferred against the acquisition of a depreciating qualifying asset (except that, where a trade is carried on concurrently with or in succession to the FHL business, part of the gain on a post-commencement disposal of an asset used for the purposes of the FHL business before commencement day may qualify for the relief);
 - a gain cannot be deferred against a post-commencement acquisition of a depreciating asset used for the purposes of an FHL business; and
 - a deferred gain cannot be rolled over against a post-commencement acquisition of a non-depreciating asset used for the purposes of an FHL business.
20. If a gain was deferred against the pre-commencement acquisition of a depreciating asset used for the purposes of an FHL business, the effect of paragraph 16 is that the repeal of the treatment of the FHL business as a trade does not bring the deferred gain into charge at commencement day. The deferred gain comes into charge on the earliest of:
- the disposal of the depreciating asset;
 - the cessation of use of the depreciating asset for the purposes of the FHL business (including the cessation of the FHL business); and
 - the end of a period of 10 years from the acquisition of the depreciating asset.
21. Paragraph 17 also deals with roll-over relief and retains the effect of subsection (6) of section 241 of TCGA. The paragraph has effect where:
- a gain had been rolled-over against the pre-commencement acquisition of a property used for an FHL business; and
 - that property is used as a private residence at some time before it is disposed of, so that all or part of any gain on the disposal of the property qualifies for private residence relief.
22. The effect of paragraph 17 is that the amount of the gain on disposal of the property that qualifies for private residence relief is reduced by the amount of the gain rolled over against the acquisition of the property. This ensures that the gain that was rolled over because at acquisition the acquired property was used for the purposes of an FHL business treated as a trade comes into charge when the property is sold, and cannot be eliminated by private residence relief because the property has later been used as a private residence, instead of for the purpose of the FHL business.

23. Paragraph 18 deals with relief for gifts of business assets. It explains that post-acquisition gifts or disposals at under-value of assets used for the purposes of an FHL business cannot qualify for the relief under section 165 of TCGA. Section 165 relieves gains on certain disposals by an individual of assets used for the purposes of a trade carried on by that individual. As post-commencement an FHL business will no longer be treated as a trade, the relief will not be available in relation to post-commencement disposals of assets used for the purposes of such a business.
24. Section 165 of TCGA also provides reliefs for certain disposals of shares in or securities of a trading company or a member of a trading group, provided certain conditions are satisfied. The repeal may have the effect that a company that was treated as trading company or holding company of a trading group by reason of an FHL business being treated as a trade no longer satisfies this “trading” test. Where this is the case, relief under section 165 of TCGA will not be available in respect of disposals of shares in or securities of such a company on or after commencement day.
25. Paragraphs 19 and 20 deal with entrepreneurs’ relief. This relief reduces the effective rate of CGT charged on the first £1 million of gains arising to an entrepreneur on the disposal of their business.
26. Subject to various conditions, entrepreneurs’ relief is available to individuals where:
- all or part of a trade is disposed of as a going concern;
 - business assets are disposed of within three years of the cessation of a trade;
 - there is a disposal of shares in or securities of a company that is a trading company or the holding company of a trading group (the “trading condition”);
or
 - there is a disposal of shares or securities that takes place within three years of the company ceasing to satisfy the trading condition.
27. The relief can also be claimed in respect of certain disposals of assets by trustees, provided that the assets are used for the purposes of a business carried on by a beneficiary, or are shares in or securities of a company that satisfies certain conditions in respect of the beneficiary’s involvement with it.
28. The relief also extends to “associated” disposals. An associated disposal is a disposal of assets owned by an individual which have been used for the purposes of the business of a partnership of which the individual was a member or of a company which satisfied certain conditions. Such disposals can qualify for entrepreneurs’ relief if they are associated with the individual’s withdrawal from the business of the partnership or the individual’s disposal of shares in or securities of the company.

29. Paragraph 19 provides the general rule that for entrepreneurs' relief purposes the repeal has effect immediately before commencement day, at the end of 5 April 2010 (entrepreneurs' relief applies only in relation to gains chargeable to CGT, so the corporation tax commencement date is not relevant to paragraphs 19 and 20).
30. Paragraph 20 then explains the effects of this change for various aspects of entrepreneurs' relief.
31. Paragraph 20(1) deals with the main entrepreneurs' relief. Its effect is that where relief is available on disposals of assets within the period of three years following the cessation of a trade, this will be the case for disposals of assets used in an FHL business that actually ceased before commencement day, or that ceased to be treated as a trade immediately before commencement day by virtue of paragraph 19.
32. Similarly, entrepreneurs' relief will be available where shares in or securities of a company are disposed of within three years of the company ceasing to satisfy the trading condition before commencement day by reason of the cessation of an FHL business, provided the other conditions for the relief are satisfied. This will apply where the pre-commencement day cessation of the FHL business is either an actual cessation or the cessation provided for by paragraph 19.
33. Paragraph 20(2) provides a similar outcome to paragraph 20(1) in respect of entrepreneurs' relief due to trustees. Any pre-commencement cessation of an FHL business (whether actual or by virtue of paragraph 19) can result in disposals of business assets by the trustees in the following three years qualifying for entrepreneurs' relief, provided the other conditions are met. And, again providing the other conditions for the relief are met, where the disposal is of shares in or securities of a company, entrepreneurs' relief will continue to be available in respect of disposals within three years of the company ceasing to satisfy the trading condition because of a pre-commencement cessation of an FHL business (whether actual or by virtue of paragraph 19).
34. Paragraph 20(3) provides a similar rule for disposals associated with a material disposal of business assets. Such disposals will continue to qualify for relief provided that the cessation of the FHL business of the relevant partnership or company (whether actual or by virtue of paragraph 19) took place before the commencement day.
35. Paragraph 21 deals with relief for loans to traders. It provides that for the purpose of the rules relating to relief for loans to traders, or payments made as a result of the guaranteeing of a loan to a trader, the repeal has effect where the loan in question was made on or after commencement day.
36. Paragraph 22 deals with the substantial shareholdings exemption. It provides that, for the purpose of the corporation tax exemption for disposals of substantial shareholdings, the repeal has effect in relation to disposals on or after 1 April 2010.

37. Paragraph 23 provides that in any cases not covered by paragraphs 15 to 22 the repeal has effect from the commencement day,
38. Paragraph 24 supplies interpretation for various terms used in Part 4 of the Schedule.

BACKGROUND NOTE

39. The FHL rules may not be compliant with European Law. At Budget 2009 the Government announced its intention to include legislation in Finance Bill 2010 to repeal the FHL rules from 2010-11.