



TC06362

Appeal number: TC/2015/07239

INCOME TAX – Deduction of trading losses – Provision of “hospitality at home” at villa in Tuscany – Whether trade “commercial” – Yes – Appeal allowed – s 66 Income Tax Act 2007

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JONATHAN BEACON

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
REBECCA NEWNS**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1 on 5 and 6
February 2018**

Jonathan Bremner, counsel, instructed by TFL Tax LLP, for the Appellant

John Nicholson of HM Revenue and Customs, for the Respondents

DECISION

1. Villa San Rocco (the “Villa”), a former monastery dating from 1326, in the rural hillside village of Bennabio overlooks the spa town of Bagni di Lucca and is within an hour’s drive of Florence, Lucca and Pisa in North West Tuscany. In 1992, when staying with a friend, who was successfully letting his villa in Bennabio to guests, Mr Jonathan Beacon (“Mr Beacon”), who had first seen the Villa in 1989, realised that it had the potential as the setting for a “Hospitality at Home” business, a concept he described as “better and different from a bed and breakfast or a hotel.” He explained that, “the experience is tailored to the exact requirement of the guests who have full access to all facilities, including for example the kitchens should they wish to cook a meal themselves”, giving them the feeling of it “being a home from home.” Mr Beacon said the such a feeling was further engendered by the location, architecture and garden of the Villa coupled with the exclusive nature of the stay with only the members of the party who had booked, and no other guests, staying at the Villa at any one time.

2. When Mr Beacon purchased the Villa, at a public auction in December 2003, it was run down and dilapidated. However, it was not until 2006, when he acquired legal title to the property in accordance with Italian law, that Mr Beacon was able to commence restoration work. During the period between purchase and his acquisition of the legal title there had been further deterioration in the condition of the Villa because of water damage, as the result of the movement of roof tiles, which had led to the collapse of two floors in the eastern half of the Villa. Extensive restoration work was therefore undertaken and in 2008 Mr Beacon’s son, Mr Jason Beacon (to whom, to avoid any confusion and without intending any disrespect, we shall subsequently refer as Jason), moved to the Villa to oversee the final stages of its restoration and together with Mr Beacon began to market the Villa. In August 2010, although the restoration was not fully completed until 2012, the Villa received its first guests.

3. In 2010-11 and 2011-12 Mr Beacon recorded losses of £218,967 and £139,936 respectively. He made a claim for relief against his general income for those years in his self-assessment tax returns, under s 64 of the Taxes Management Act 1970 (“TMA”).

4. On 30 May 2013 HM Revenue and Customs (“HMRC”) opened an enquiry, under s 9A TMA into Mr Beacon’s 2010-11 return. This enquiry was concluded, on 24 July 2015, by the issue of a closure notice, under s 28A TMA, amending Mr Beacon’s 2010-11 self-assessment tax return to deny the loss relief claimed on the basis that, although it was accepted that his business activities at the Villa did amount to a trade, such trade was not commercial as required by s 66 TMA. A discovery assessment, made by HMRC on 24 July 2015 under s 29 TMA, denied the loss relief claimed by Mr Beacon in 2011-12 on the same basis.

5. Mr Beacon now appeals against the amendment and discovery assessment. In doing so, as his counsel Mr Jonathan Bremner explained, he fully accepts the validity of the discovery assessment and takes no procedural issue in relation to it.

Law

6. Under s 64 of the Income Tax Act 2007 (“ITA”) a person who has made trade losses may make a claim for relief against his general income if he carries on a trade in a tax year and makes a loss in the trade in that tax year.

7. However, s 66 ITA 2007 provides:

Restriction on relief unless trade is commercial

(1) Trade loss relief against general income for a loss made in a trade in a tax year is not available unless the trade is commercial.

(2) The trade is commercial if it is carried on throughout the basis period for the tax year—

(a) on a commercial basis, and

(b) with a view to the realisation of profits of the trade.

(3) If at any time a trade is carried on so as to afford a reasonable expectation of profit, it is treated as carried on at that time with a view to the realisation of profits.

8. As Henderson LJ (with whom David Richards and Arden LJ agreed) observed in *Samarkand Film Partnership No 3 and others v HMRC* [2017] STC 926, at [84]:

“The conditions therefore embody two tests: a test of commerciality, and a profits tests. ... broadly speaking it [The profits test] requires the trade to have been carried on with a view to making profits.”

He went on to say, at [90]:

“... that considerations of profitability cannot be divorced from an assessment of the commerciality of a business. In my judgment it is wrong to regard the profitability and commerciality tests in the legislation as mutually exclusive, and they necessarily overlap to an extent which will vary from case to case.”

9. In *Wannall v Rothwell (Inspector of Taxes)* [1996] STC 450 Robert Walker J (as he then was), in what Henderson LJ at [89] of *Samarkand* described as “helpful observations”, said, at 461, in respect of to a claim by the taxpayer for loss relief under similarly worded predecessor legislation:

“I was not shown any authority in which the court has considered the expression "on a commercial basis", but it was suggested that the best guide is to view "commercial" as the antithesis of "uncommercial", and I do find that a useful approach. A trade may be conducted in an uncommercial way either because the terms of trade are uncommercial (for instance, the hobby market-gardening enterprise where the prices of fruit and vegetables do not realistically reflect the overheads and variable costs of the enterprise) or because the way in which the trade is conducted is uncommercial in other respects (for instance, the hobby art gallery or antique shop where the opening hours are unpredictable and depend simply on the owner's convenience). The distinction is between the serious trader who, whatever his shortcomings in skill, experience or capital, is seriously interested in profit, and the amateur or dilettante. There will no doubt be many difficult borderline cases

well for the commissioners to decide; and such borderline cases could as well occur in Bond Street as at a car boot sale.”

10. With regard to the requirement of s 66(2)(b) ITA, that the trade be carried on with a view to the realisation of profits of the trade, and s 66(3) ITA, which treats that requirement as having been satisfied if trade is carried on so as to afford a reasonable expectation of profit, as Nugee J observed at [35] in *Seven Individuals v HMRC* [2017] STC 874:

“It is true that these provide that if a trade is carried on so as to afford a reasonable expectation of profit, then the profit limb is deemed to be satisfied (s 384(9) ICTA and s 66(3) ITA). But it does not follow that if there is no reasonable expectation of profit, the profits limb cannot be satisfied. What is required by s 384(1) ICTA/s 66(2)(b) ITA is that the trade is carried on 'with a view to the realisation of profits in [or of] the trade'. That requirement is looking at the aim or purpose of the relevant person, which is (primarily at least) a subjective question, rather than whether profits could reasonably be expected, which is an objective question. The two are not therefore synonymous—indeed if they were the deeming provisions in s 384(9) ICTA/s 66(3) ITA would be of no effect.”

11. It is common ground that the purpose of s 66 ITA is to give relief for losses and that the requirements of s 66(2) ITA can be satisfied notwithstanding the trade has suffered losses. In *Acornwood LLP v HMRC* [2014] SFTD 694 the Tribunal (Judge Bishopp and Mr Law) noted that:

“369. The legislation requires that the trading activity be carried on with a view to profit, but says nothing about the scale of the profit (nor, realistically, could it do so) and it requires only an aim to profit, and not the realisation of profits. One may set out with a clear business plan, with adequate capital and other resources, and with a commitment to devote the necessary time to the trade, yet still fail because of unexpected market conditions, because the choice of commodity was ill-judged or because of misfortune. As we see it, the legislation (which, after all, is aimed at relieving losses) is not intended to penalise those who, despite their best efforts, are unsuccessful, but rather to exclude those who, despite their desire for profits, do not conduct their trading activities in a manner which, all things being equal, are conducive to the generation of profits.

370. Thus we take the draftsman to have used the phrase 'on a commercial basis' to mean in accordance with ordinary prudent business principles, and not in the manner of the amateur or dilettante to which Robert Walker J referred. No business is certain to succeed, and the making of a loss, or of only modest profits, is not necessarily an indication that its proprietor has not pursued the trade on commercial lines. But if, as Mr Blair [counsel for HMRC] demonstrated, it can be shown that at the moment the business was started the prospect of recovering the capital invested, even without a surplus, was dependent on the realisation of an unrealistically high profit with the consequence that loss was, if not certain, then much more probable than not, it does not seem to us that it can fairly be said that those embarking on the trade can have entertained a serious profit

motive, and their claim to have intended to conduct the trade on commercial lines must, at the least, be doubtful. The amateur may be content to make a loss since the pleasure of the activity is reward in itself; the ordinarily prudent commercial person would not enter into a partnership whose business was more likely than not to result in a loss.”

12. The decisions in *Walls v Livesey (Inspector of Taxes)* [1995] STC (SCD) 12, *Kerr (Re Grantham House) v HMRC* [2011] UKFTT 40 (TC) and *Kitching v HMRC* [2013] 384 (TC) illustrate how the Tribunal and its predecessor, the Special Commissioners, have distinguished between trades undertaken in accordance with ordinary prudent business principles and those that have not.

13. In *Walls v Livesey* an experienced commercial property analyst, in accordance with his five-year business plan (based on advice from holiday letting specialists), purchased two flats in 1990 with the intention of letting them as holiday accommodation. The business plan envisaged stable and gradually falling interest rates over the five-year period. However, the opposite occurred together with an economic recession which had a severe impact on holiday lettings. Additionally, occupancy rates were lower than expected due to the incompetence of the taxpayer’s agent and further losses arose because of defective building work. The Special Commissioner (D A Shirley) held that the lettings were made on a commercial basis and with a view to the realisation of profits finding, at [8] that:

“Essentially [the taxpayer] was blown off course by the adverse economic circumstances obtaining in the United Kingdom and elsewhere which few would have predicted objectively prior to the event.”

14. *Kerr* concerned the lease of a National Trust property, Grantham House, by a taxpayer who intended to make a profit by opening the house and gardens to visitors and hold functions there. Under the terms of the lease he was required to pay rent of £45,000 per annum and to maintain the house and gardens which he did at a cost, including wages, of approximately £22,000. Because of a delay in negotiating the lease he was only able to open the house and gardens for two days in autumn 2006 and in the absence of any paying customers his total turnover was £80. Having found the taxpayer had carried on a trade the Tribunal (Judge Radford and Mr Agboola) said, at [38]:

“As to whether the trade was commercial with a view to making a profit we find that the Appellant did all that he could with the intention of making a profit. We find that he was severely hampered by the length of time it took to obtain the lease but nevertheless we find that the anticipated activities when carried on as a trade would clearly be and were commercial.”

15. In *Kitching* a chartered accountant who, in addition to his full-time employment, operated a specialist sports retail business. In considering his claim for loss relief for 2007-08 to 2009-10, the Tribunal (Judge Cannan and Mr Ratcliffe) noted that Mr Kitching was, “genuinely convinced” that when he started to work in the shop full time and had more time to develop the business that it would be profitable but could not be satisfied that his expectations of profit were reasonable. The Tribunal found, at [56], that

“The reason Mr Kitching has persevered with the business is because it offers him an exit from his employment. He has held the view for a long time that he will eventually have to leave employment as an accountant. He has intended to keep the business running for the time when that day comes. Indeed it is something he has looked forward to as and when his financial and family responsibilities permit.”

Accordingly, the Tribunal concluded, at [66]:

“... that in applying the second condition [of s 66(2)(b) ITA] we are concerned with whether Mr Kitching carried on the trade in 2006 to 2009 with a view to realising a profit. That is a subjective test, but we must focus on whether Mr Kitching expected to realise profits carrying on the business in the same way in which it was carried on at that time. We have found that he must have known that if the business was carried on without his full-time involvement it could not make a profit. In the circumstances the second condition was not satisfied in 2006 to 2009.”

16. It is therefore necessary to consider Mr Beacon’s trade in the light of these authorities to ascertain whether, during the years in question, it was undertaken on a commercial basis and with a view to the realisation of profits.

Evidence and Facts

17. We were provided with three bundles of documents which included exterior and interior photographs of the Villa, accounts summaries, summary of package booking for the Villa, a business plan prepared by Mr Beacon for HSBC and correspondence between the parties. In addition, we heard from Mr Beacon, his son Jason and Mr Stuart Rosenberg, Mr Beacon’s accountant who prepared the trading accounts for the Villa for the years ended 31 March 2011 and 2012 and has acted for Mr Beacon from around December 2006. We found all three, whose evidence was not seriously challenged, to be credible and reliable witnesses.

18. Mr Beacon explained that the Villa, which from the fourteenth century had been a monastery, was sold in 1688 to a wealthy family from Lucca as a family home. They demolished the top half of the monastery and built a state of the art Baroque villa and constructed a formal garden and private chapel which still exist today. By 2003, when Mr Beacon acquired it at a public auction, the Villa was in a dilapidated condition. At that time Mr Beacon was a substantive NHS Trauma and Orthopaedic Consultant who also had a private surgical practice. He retired from the NHS, aged 60, in 2006 but continued in private practice until 2011 allowing him to generate as much funding as possible for the restoration and refurbishment of the Villa from private sources.

19. In addition to Mr Beacon’s private funds a loan, in the sum of €250,000, was obtained from the Monte di Pasha di Senna Bank specifically for the necessary repairs to the roof as this was allowable under Italian legislation. Further finance to complete the renovation, which commenced in 2006 when Mr Beacon acquired the legal title to the Villa, and the necessary start-up costs for the business was obtained in 2007 by way of a loan obtained from HSBC Private Bank (“HSBC”) which had approved the business plan, containing detailed financial and operational projections, comparative

business model analysis and in depth local research, prepared by Mr Beacon and Jason in association with Mr Beacon's manager at HSBC.

20. Jason, who had lived in Florence for several years and spoke fluent Italian, moved to the Villa in 2008 to oversee the restoration work. Initially, as there was only one working WC and basin, Jason stayed in the workshop (see below) using a camping stove and microwave for cooking and slept on the floor. During this time Jason, together with Mr Beacon, began marketing the Villa. They attended various events and fairs, created and maintain an active website and social media presence, advertised in the national press, created and dispersed targeted mail shots to prospective client groups and held promotional events at the Villa such as fairs, gastro events, concerts etc. Prospective clients were invited to visit the Villa for what Jason described as "recce weekends" to experience the facilities on offer.

21. In addition, a professional PR agent was instructed for a six-month period resulting in a centre page feature in the *Guardian Weekend Magazine* in October 2012 describing a journalist's experiences at the Villa when she and her sister stayed for a ski-boarding weekend. In the article, extolling its virtues and that of the surrounding area, the Villa was described as "a beautiful mix of lavish, opulent and quirky antique furniture, Tuscan travertine limestone and slipper baths, with murals painted by artistic friends decorating the walls."

22. However, notwithstanding the initial marketing efforts to which, Mr Beacon explained in evidence, there had been a limited response the first guests were the result of "word of mouth". Both Mr Beacon and Jason had told their friends and acquaintances and, in Mr Beacon's case his patients who would ask what his retirement plans were, about the Villa. Indeed, the first paying guests to stay at the Villa were Mr Beacon's medical secretary and her family.

23. The facilities at the Villa comprise 12 themed guest rooms which are named rather than numbered and include, for example, the Victorian Suite with its nineteenth century furniture, the Russian Room with a double bed and hangings made by a Russian woman who stayed at the Villa, the Napoleon Room named because of the Napoleonic connections to the area (the arranged marriage of Napoleon's sister to the king of Lucca) and the simply furnished Monk's Room designed with the monastery in mind. All the bedrooms have antique furniture of themed designs, such as a 1740 chaise long, a fourposter bed or 1654 headboard and all have their own bathrooms with WC, basin and shower. Some have bidets and others a bath in the boudoir.

24. Guests also have access to the Grand Salone which Mr Beacon understands dates from the Medieval period. Although it can easily seat 20 people the furniture can be pushed back giving room for local bands to play live music with room for 80-90 people to dance. The room can also be used for classes and meetings. In addition to the Grand Salone there is the Salloto (sitting room with fireplace) which can be used by small groups and which has an open fire during the winter. There is also a television room which also has a writing desk and a dining room with an antique table seating 20. There is full central heating and Wi-Fi throughout the Villa.

25. The Villa has two kitchens for food preparation which are also designed and used for cooking classes. There is also a utility room with washing machine, dryer and ironing board for use by the guests as well as a dedicated Yoga Room and two workshops with facilities for woodworking (including guitar making), book binding, art, painting or a darkroom for photography. Underlying the Villa are medieval monastic basement rooms which are accessed by a separate door and are used for storage of wood and garden implements and other maintenance equipment necessary for a large property.

26. The only “private” part of the Villa, which Mr Beacon emphasised was not his home, is the ‘staff-annexe’ which is accessed through a private door, the “green baize door” as Mr Beacon described it, in the main salon. The annexe comprises a bedroom, a WC/Shower Room and an office. If guests are in residence Mr Beacon will either use the makeshift canteen in the workshop to prepare his own food or, if the workshop is also in use, will “make do” in the office with cereal and sandwiches and visiting friends in the local pizzeria.

27. From the Villa four sets of French style double doors open out onto the 1688 formal gardens with four quadrants and centrally dressed stone fountain. There is a stone-arch grotto where guests can sit in summer and an outside table sitting 20 with a decorative gazebo to provide shelter from the sun. Steps lead from the rear garden to an elevated olive grove and splash pool with views over the surrounding valleys and mountains. At the front of the Villa there is a large courtyard with parking space for eight cars.

28. On the other side of the lane is the, still consecrated, chapel of San Rocco with its high roof and large altar which is used for weddings and religious events. Mr Beacon explained that when he acquired the Villa he had to negotiate with the Vatican regarding the sanctity of the ‘Orteggia di San Rocco (the chapel) which both wished to retain. Essentially Mr Beacon agreed to maintain the chapel and the Vatican agreed to provide a priest.

29. Mr Beacon has provided themed holiday accommodation at the Villa, eg yoga weeks, photographic weeks, special events such as weddings and birthdays and the Villa has been used as a conference venue. However, the main purpose of the business is the provision of holiday accommodation and themed activity weeks at the Villa with guests varying in number between three and four to 16 to 18. An example of such a themed activity is the annual guitar making course with Thomas Lloyd Guitars of Australia.

30. In a recent (2017) email to Mr Beacon Mr David and Mrs Angela Wilson, who have run the Enmore Hotel in Scotland for 26 years, who were invited by Mr Beacon to give advice on marketing, promotional and direct advertising for the Villa noted that:

“All aspects of the Villa are of a very high standard with many original reinstatements incorporated with great feeling for the locality and future clientele.

31. The Villa has been booked by some groups for three or four days and others for two weeks and occasionally more. There is a package price with accommodation, concierge services and the provision of tours of the local village and footpaths, talks on the history of San Rocco and the monastery, Villa and the village of Benabbio.

32. Packages are arranged on a bespoke basis and Mr Beacon, who acts as “Mein Host” based at the staff annexe during the guests stay at the Villa, can accommodate requests to arrange activities such as horse riding, walking, visits to Churches and sites of classical interest, art galleries and local museums. He arranges and sometimes accompanies guests on visits to the nearby cities such as Lucca and Florence, providing information on local transport as appropriate to enable them to enjoy and experience Italian life, culture and cuisine.

33. The prices for such packages, described by Mr Beacon as the “going rate”, vary from around £2,700 per week between April and October and £2,200 from November to March. A heating charge is added in winter months and there is an extra charge for food which is tailored to guest requirements. For example, guests may decide that they wish to eat at the Villa and use the kitchen staff, cook for themselves or eat out at local restaurants or a mixture of all three. Those choosing to eat at the Villa can select from snacks in the Anti-cuchina to a formal dinner in the dining room (seven courses with three kitchen assistants for parties) or can dine al fresco under a decorative gazebo to provide shelter from the sun. Mr Beacon said that usually guests take half to two thirds of their meals at the Villa and for the rest eat out at local restaurants.

34. Although the business now revolves around Mr Beacon, who cooks, cleans, drives, assists group organisers and acts as tour guide employing such staff as appropriate (eg a part-time kitchen assistant), before his retirement from his medical practice in 2011 it was Jason who undertook such tasks with the assistance of a cook and a part time gardener. A manager has also been employed but was dismissed in 2012 because Mr Beacon was not satisfied with the standard of her record keeping.

35. In addition to the inevitable difficulties of establishing a business as a sole trader the tourist industry in the area, the “unknown Tuscany” which had become progressively popular from 2000 with a dramatic increase in tourists and fully booked villas and farmhouses charging up to £5,000 a week, suffered dramatically because of the 2008 banking crisis and subsequent recession. Mr Beacon explained that shops closed in Bagni di Lucca, many Tuscan hotels struggled to fill rooms and stay in business and that the neighbouring villa charging £5,000 a week is now closed for business.

36. One effect of the recession described by Mr Beacon was that the type of tourists visiting North West Tuscany changed. Instead of doing the “grand tour” and buying expensive paintings and souvenirs whilst staying in good hotels, the “new” tourists increasingly came from the Far East with little interest in buying property, antiques, fines wines, experiencing traditional hotels and enjoying buying classical Italian goods. Rather they were looking for cheap tour holidays staying in “on-line” accommodation enjoying supermarket type produce or were from cruise ships not needing accommodation and hospitality from local traders. The recession also, to use Mr Beacon’s words, “bit deeply” into disposable income, particularly from the UK,

American and North European markets adversely affecting potential guests who might otherwise have stayed at the Villa.

37. However, notwithstanding the difficult trading conditions the Hospitality at Home business at the Villa has proved popular and business has increased as a result. A recent (2017) email from an organiser of a bi-annual fine art workshop at the Villa who plans to continue to hold such workshops “so as long as Mr Beacon remains in business”, explains that:

“Many other Italian villas that we scouted for rent (during a business trip in 2012 looking for a new location for our workshops) were over gentrified, an individual’s personal home, or simply did not have the large spaces needed where are workshops that has a tendency to get messy can be successfully conducted. Mr Beacon has provided what we feel is the perfect setting for our workshops to take place as a result of his purchase, renovation and present staging of the Villa San Rocco. It is as Baroque villa dating back to its 13th century beginnings as a monastery, which is presently maintained, managed and supervised by Mr Beacon in such a way that it is highly conducive to our business needs and to our clients.”

38. Turnover has increased steadily from a standing start in 2010, £10,654 in the year to 31 March 2011, £12,011 in the year to 31 March 2012 to £44,000 in the year to 31 March 2017. Mr Beacon told the Tribunal that the Villa is currently “trading well and has bookings for 2017-18 and 2019 including a wedding in 2018.” He said that marketing aim was to get winter season business with skiing and bridge groups. He is also seeking to attract cycling and classic car groups to the Villa with the surrounding mountains being used by professional cyclists (Italian Tour de France riders) and its proximity to Modena, the home iconic sports cars such as Ferrari.

39. As a sole trader Mr Beacon is responsible for the business records which he accepts are “very simple”. He explained that he writes up the accounts on a monthly basis saying that:

“The accounting is in my head. I review the expenditure and income and make the financial decisions myself. Therefore, on each day I have a clear view of the overall financial situation and know my budgets and prices.”

40. Mr Beacon explained that each month he reviews each receipt to categorise the expenditure as household, travel, motor, entertainment, food labour and personal. The receipts are written in to a lever arch file and the annotated receipts and bills together with bank statements are sent to his accountants each January with his trading and personal finance records. Although Mr Beacon accepts that his records will need to be “substantially improved”, his accountant Mr Rosenberg description of Mr Beacon’s records as, “no different from small enterprises”, was not challenged.

Discussion and Conclusion

41. For Mr Beacon, Mr Bremner contends that it is clear on the evidence that the trade being carried on at the Villa during 2010-11 and 2011-12 was on a commercial basis and with a view to the realisation of profits of the trade and, accordingly, his appeal should succeed.

42. HMRC in their Statement of Case, which was reflected in Mr John Nicholson's skeleton argument, advanced the following arguments:

- (1) that despite being advised that there were commercial reasons for the purchase of the Villa, the reason Mr Beacon did so was his vision to return it "to its former glory";
- (2) that the Villa was, in addition to a business venture, to have a domestic use as a home for Mr Beacon;
- (3) that the Villa was acquired as a restoration project HMRC for the benefit of Mr Beacon and his family and something to leave to them;
- (4) that there was no business plan or clear commercial strategy;
- (5) that the prices sought from guests were below the commercial market rate for a property in the area;
- (6) that the Villa was Jason's home; and
- (7) that there was a lack of business records.

43. However, neither the vision of restoring the Villa to its former glory, its domestic use as a home for Mr Beacon and/or Jason, the restoration project nor the allegation that guests were charged non-commercial rates to stay at the Villa were pursued in cross-examination. In any event, these arguments were not supported by the evidence. Moreover, even if on the evidence the Villa had also been Mr Beacon's or Jason's home this would not in itself have precluded the trade, as is the case for many bed and breakfast establishments, from being carried out on a commercial basis with a view to the realisation of profits of the trade.

44. It is plainly wrong to say that there was no business plan. Clearly there was such a plan containing detailed projections, analysis and research which was approved by Barclays Private Bank in 2007 and a loan advanced to Mr Beacon because of it (see paragraph 19, above).

45. As for the alleged lack of business records, this is inconsistent with the unchallenged evidence of Mr Rosenberg that the records kept by Mr Beacon were no different to those of other small enterprises. Even if, as he himself recognised, Mr Beacon's records could be substantially improved, this is not enough to preclude the application of the loss relief provisions of s 66 ITA which are clearly intended to be applicable to trades of all types. We find support for this from the observations of Judge Wikeley of the Administrative Chamber of Upper Tribunal in *JF v HMRC* [2017] UKUT 334 (AAC), at [31], in a case that concerning an entitlement to working tax credit, that:

"... tribunals need to "get real". Empirical evidence demonstrates the heterogeneity of the many different forms of self-employment Self-

employed working tax credit claimants (typically) are not putting together business proposals of sufficient rigour to pass muster on a Masters of Business Administration course or to withstand scrutiny in an episode of *Dragons' Den*. Usually they are much more modest enterprises, as in the present case, and expectations about the documentary paper trail should be adjusted accordingly.”

46. In his closing submissions Mr Nicholson additionally contended that, like Mr Kitching (in *Kitching v HMRC*, see above) Mr Beacon had during 2010-11 and 2011-12 not carried out his trade at the Villa on a commercial basis “and with a view to the realisation of profits”, as required by s 66(2)(b) ITA, but had operated the business as an exit strategy from his medical practice. However, not only is this inconsistent with the evidence but the contention was not put to Mr Beacon in cross-examination to provide him with any opportunity to address it.

47. Indeed, all the evidence points to Mr Beacon carrying on his “Hospitality at Home” trade at the Villa during 2010-11 and 2011-12 in accordance with ordinary prudent business principles who, like the appellant in *Walls v Livesey*, was somewhat “blown off course” by adverse economic circumstances following the 2008 World recession which appears to have hit North West Tuscany and businesses such as Mr Beacon’s particularly hard.

48. Therefore, for the above reasons, we find that Mr Beacon did, during the years in question, carry on the Hospitality at Home trade at the Villa on a commercial basis and with a view to the realisation of profits.

49. Accordingly, we allow his appeal.

Appeal Rights

50. 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 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.

**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 27 FEBRUARY 2018