

FarmTaxBrief

Practical guidance on effective tax planning and the law relating to agricultural land

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Farm business records – the life of the business

Recent tax cases combined with HMRC guidance on business records have highlighted that there is a greater need for farm businesses to aim towards improved records and to try and keep records for longer.

On 21 February 2011 HMRC introduced four new products to help Small and Medium Enterprises (SMEs) raise their business records to a higher standard. This followed a Consultation Document in December 2010, suggesting that poor record keeping was leading to a loss of tax in two million SMEs and proposed to launch a series of compliance checks on SME records.

The four new products are suitable for the self-employed, sole traders and small businesses. They have been produced in advance of the launch of HMRC's new Business Record Checks programme later in 2011, which will impose penalties for significant record-keeping failures.

Brian Redford, HMRC's Acting Director, Business Customer Unit, said:

'Later this year, HMRC will start a programme of Business Record Checks that will look at the adequacy and accuracy

assess how well they are being kept. If a farmer is thinking of starting a business the tool provides a checklist. If the business is established it will give feedback and advice on improvements you may need to make: www.businesslink.gov.uk/recordkeepingcheck

The recent case of *Golding v HMRC* [2011] UKFTT 351 has raised very interesting tax planning points but one key point arising is perhaps the need to keep records for longer than the statutory time, ideally it would seem from the start of trading. When looking at the business matrix and the general position on *Golding* it wasn't just a question of looking at what happened in the last two years – the history was a key point, and how can the history of the farm business be argued to help the taxpayer unless the accounts and the accounting records and other information is available to present that history? A large number of decades were actually considered and therefore there must be the records for this time, ideally from the start of the business – in the case of *Golding* his father transferred ownership in 1965.

Two other IHT cases did not actually just look at the two-year rule for BPR or seven years for APR. These cases look back over a longer period to establish the business matrix, a business model or to provide replies to HMRC and if necessary, the FTT. The cases of *Brander v HMRC* [2009] UKFTT 101 and *Farmer v IRC* [1999] STC (SCD) 321, both looked at eight-year records to establish the eligibility of the claim for BPR so that HMRC could review the questions of capital, profitability, turnover and number of employees and the split of all these items between the investment side of the business and the trading side of the business.

The message of these Tribunal cases does seem to be to stop the 'shredder' when it comes to farms, estates and potential IHT relief claims. With regard to any business

of business records in SMEs to bring about a major improvement in the standard of record-keeping. Now is the time to invest a bit of effort to make sure your business records are perfect.'

There is something for all farm businesses – from basic factsheets to online tools:

- Keeping records for a business – what you need to know: a basic guide with a helpful list of where to get more information: www.hmrc.gov.uk/factsheet/record-keeping.pdf
- A general guide to keeping records for a tax return: detailed guidance on record-keeping covering what type of records you may have to keep, common problems and examples for different types of business: www.hmrc.gov.uk/sa/rk-bk1.pdf
- Set up a basic record-keeping system: with examples of spreadsheets and information about setting up a record-keeping system: www.businesslink.gov.uk/recordkeeping
- Find out what records the business should be keeping: look at the records the business needs to keep and where BPR is going to be claimed and there is a possible worry over questioning of s105(3) IHTA 1984 or establishment of a business, records could be needed.

With the possibility to keep the records in electronic format, this could be the way forward for IHT protection – to keep records since commencement of trading. IHTM 24068 states that with regard to studs and APR 'an essential requirement is for an element of horse breeding carried on in a systematic manner with proper record keeping'. HMRC will therefore want to test these 'proper' records where a claim for APR is made.

There is no escaping the fact that to support arguments that have been presented in recent Tribunals to protect the taxpayer, records to provide evidence has to be kept for a long period of time – the complete protection since the start of the business. In the case of a farm and stud this will include livestock records etc that tie in to the traditional records.

With the ability to keep records electronically the approach to the keeping of the key documents will have to be considered as possibly for the life and the history of the business – back to 1965? The strategy for the record and document recording will have to be reconsidered in order to protect future claims for APR and BPR and generally to keep HMRC happy with regard to any possible business record checks.

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