

# INHERITANCE TAX PROTECTION - THE NEED TO KEEP RECORDS FOR LONGER THAN THE STATUTORY REQUIREMENT

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***The recent case of Golding [2011] UK FTT 351 has raised very interesting points for farmers and one of them is the need to keep records for longer than the statutory time, ideally it would seem from the start of trading.***

## History matters

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 very much looked at, and how can the history be argued unless the accounts and the accounting records and other information are 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 this case 67 years ago.

Two other inheritance tax cases do not actually just look at the last two years for Business Property Relief (BPR) or seven years for Agricultural Property Relief (APR) but look back over a longer period to establish the business matrix, a business model or to provide replies to HMRC and, if necessary, the First Tier Tribunal. The cases of **Balfour (Brander (Representative of Fourth Earl of Balfour) v HMRC Commissioners 2009 UK FTT101)** and **Farmer (Farmer v IRC 1999 STC (SCD) 321)** both looked at eight years of records to establish 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.

## Keep the Records

The message of these Tribunal cases does seem to be to stop the "shredder" when it comes to farms, estates and potential inheritance tax relief claims. With regard to any business where BPR is going to be claimed and there is a possible worry over questioning section 105(3) of the Inheritance Taxes Act (HTA) 1984 or establishment of a business, records could be needed.

With the possibility to keep records in an electronic format there is no excuse! This will be the way forward for IHT protection – encourage clients to retain all records since the commencement of trading.

## HMRC's stance

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.

There is no escaping the fact that to support arguments that have been presented in recent Tribunals, records to provide evidence have 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.

With this ability to keep records electronically the approach to record keeping of the key documents will have to be possibly for the life and the history of the business. Your client's strategy for record and document keeping needs to be reconsidered in order to protect future claims for APR and BPR.

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