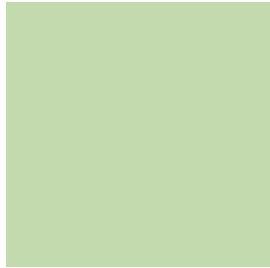
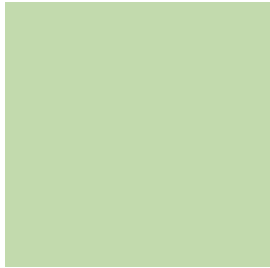


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CHARTERED ACCOUNTANTS



# LANDED ESTATES UPDATE

## Important IHT Case Victory for Taxpayer

Farmers and estate owners who have diversified will be particularly interested in the outcome of the Balfour Case, which was published on 17 August.

The Upper Tax Tribunal has published its findings in the appeal by HMRC against Mr Brander as Executor for the late Lord Balfour. HMRC's appeal, permitted on a point of law only, was dismissed, thus confirming the earlier decision in May 2009 by the First-tier Tribunal that valuable 100% Inheritance Tax Business Property Relief (BPR) should be available on land, houses and cottages let to third parties as well as the taxpayer's trading property used in his estate business activities.

For BPR to be available there has to be a business activity which is predominantly non-investment based. Thus, the owner of an in-hand farm would expect to receive 100% relief from IHT on the land and other properties associated with that activity. On the other hand, an estate owner who only lets his properties would not be granted any BPR, although they may be eligible for Agricultural Property Relief on appropriately let farmland and ancillary other property.

However, many situations on the traditional landed estate or diversified farm will be a combination of in-hand activities and lettings of property, many of which will have, historically, been occupied for the purposes of the in-hand farming operations.

The Balfour Case concerned the activities on the Whittingehame Estate, East Lothian, which extended to about 1,900 acres and consisted of two in-hand farms, three let farms, woodland, sporting rights, two sets of let commercial buildings and 26 let houses and cottages.

This case also involved a complex set of ownership factors, with Lord Balfour having been the liferenter (the Scottish equivalent to a life tenant) up until November 2002 and then the freeholder until his death in June 2003. The business activity throughout the relevant period was conducted either by Lord Balfour personally as a sole trader or by a partnership of which he was a member. It should also be noted that as Lord Balfour's health deteriorated his external land agents took on the day-to-day administrative matters, but importantly continued to report on all matters directly to Lord Balfour.

Central to the decision at the First-tier Tribunal was Lord Balfour's involvement, despite the split ownership in the earlier years; he managed all the activities for the benefit of the estate as a whole. Other important factors were that the cottages had previously been part of the estate's farming operations and the predominance of the trading activities

of farming, shooting and forestry over the letting activities, which were considered to be ancillary.

On the basis of this case, and the case of Farmer v IRC, which was heard over 10 years ago, BPR should be available if property letting is carried on as part of a single business but is not the main activity. The decision in this case will be comforting news to owners of traditional landed estates who carry on a range of activities under the guise of one business, and those farmers who have diversified away from pure agricultural operations on their property; both can expect to qualify for BPR if their circumstances are similar to those in the Balfour Case. Whether HMRC takes the case further remains to be seen.

To discuss the impact of this case, please do not hesitate to contact your usual Saffery Champness partner directly.

### The Landed Estates Team August 2010

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