

Equine trades and personal interest

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A recent VAT case “Goodman Equine Ltd” (TC 2243) has emphasised that input VAT cannot be claimed when the operation trying to reclaim the VAT is not considered a business for the purpose of VAT.

The ruling gives guidance not just for equine businesses but also for any trading activity that involves a large amount of personal interest.

The facts

Goodman Equine Ltd was incorporated and registered for VAT in May 2008. The company described its business as show jumping and trading in horses. In its VAT return for the period to August 2008, the company claimed input tax of £73,167 in respect of the purchase of a horse called “Goodman For Fun”.

HMRC disallowed the claim on the basis that taxable income from various activities would be generated moving forward, and that Goodman Equine Ltd was not a business for the purpose of VAT. The company appealed.

Meeting the business tests

The key question before the First-tier Tribunal (FTT) was whether the company met the business tests in “CCE v Lord Fisher” [1981] STC 238.

The FTT judge was not satisfied that Goodman Equine Ltd was a serious undertaking when the business tests were considered. The company traded at a loss and relied on the financial support of its sole director. No horses had been sold, despite good offers having been received for the horses and there seemed to be no continuous business activity.

Rather than making sales on which output VAT was charged, the predominant activity of Goodman Equine Ltd appeared to relate to the “pleasure and social enjoyment of equestrian activities” by the director. The appeal by Goodman Equine Ltd was dismissed by the FTT.

For VAT purposes the lack of profit does not automatically indicate that a venture is not a business arrangement. There could, for example, be losses in building up the business.

In the “Goodman” case the attempts to sell the horse were considered by the FTT not to have been seriously undertaken. An equine business which makes an initial loss can be deemed to be

a serious undertaking provided there is proof of the business tests or the badges of trade also known as the indicators of a business.

Six indicators of a business

The “Goodman” case used the findings of the “Lord Fisher” case with regard to the indicators of a business. Let us now look at these indicators and how they apply to an equine business:

1. Serious undertaking earnestly pursued

All equine businesses should have a business plan to show a trading profit can be achieved and that strong regular sales are the goal. There should be evidence of the business plan being compared to the actual results and action to be taken about loss of sales or loss of profit. For example, evidence of increased marketing and advertising when problems are encountered should be available.

2. Occupation or function actively pursued with reasonable or recognisable continuity

There should be volume and frequency of transaction not just a random good result among a backdrop of high business costs.

3. A certain measure of substance as measured by the quarterly or annual value of supplies made

The business must have substance – there must be sales and the quarterly/annual measurement is a guide and should be compared to the projections and business plan which shows that a profit can be achieved and that the activity is a serious undertaking.

4. Conducted in a regular manner and on sound and recognised business principles

If the business is, for example, trading in horses, there should be regular sales with a good profit margin. If value is to be added to the purchase, for instance the horse improved ("schooled to a higher level" – "successfully reschooled to another discipline") then the sale proceeds must exceed the production cost ie, cost of the horse and the cost of improvement. In the case of any equine business full provision should be made for private horses so as to reflect the correct business.

5. Predominantly concerned with the making of...supplies to consumers with consideration

To state the obvious, there must be sales and sales at market value.

6. Are the supplies of a kind which, subject to differences in detail, are commonly made by those who seek to profit by them?

The question is whether it is normal for the equine activities involved in the business to be carried out as a business as opposed to a hobby? For example, riding schools and livery yards are considered to be potentially profitable whereas the ownership of high-quality competition horses is less likely to be a common business model.

Action points

HMRC are taking a close interest in all businesses that generate trading losses and all those businesses which contain personal interest. Obvious targets of attention are tax claims in respect of operations which include horses, yachts, planes, and sporting activities etc.

All equine businesses should be reviewed to ensure that they would pass the commerciality tests, not just for VAT purposes but also for the purpose of income tax and corporation tax claims. There must be evidence of the basic badges of trade and basic business guides and reviews eg, business plans, business analysis, structured marketing and the review of profit margins achieved.

Julie Butler FCA, Butler & Co

Julie Butler is the author of "Tax Planning for Farm and Land Diversification" (Bloomsbury Professional), "Equine Tax Planning, and Stanley: Taxation of Farmers and Landowners" (LexisNexis).

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