

Tax efficient ownership in the business

A recent case has helped with the guidance concerning the tax position where a company pays training fees for racehorses.

This case has emphasised the whole issue of tax planning around racehorse ownership and costs in companies.

Benefit in kind

In the case of *Chepstow Plant International & Another v Revenue & Customs* [2011] UK FTT 166 (TC) the company financed the training expenses for several racehorses.

HMRC sought to have these expenses treated as a benefit in kind to the director in whose name the horses ran.

Defence

In the *Chepstow Plant* case the director could demonstrate that he had no real interest in the horses, for example he had never actually visited the trainer.

It was therefore held that the director did not have a personal interest and he was not receiving a personal benefit in kind and was therefore not liable to the relevant personal tax and national insurance on the payment by the company.

Personal name

The tax planning point raised by HMRC is why these horses were being run in the director's personal name and not in the name of the company?

There are the concerns of the allowability of the cost for corporation tax and also the potential benefit in kind for the director. *Chepstow Plant* is a positive case for using racing and the racehorse as a very effective means of advertising and entertaining for a company.

However the important positive planning point is that the racehorse should be run in the name of the business.

Advertising Services and Products

In order for a business to be able to claim the cost of the keeping and training of

racehorses as an allowable expenditure for tax purposes, it will have to show that the purpose of the expenditure was to advertise the products or services of the business.

Considerations would be what extra business can be generated and there should be business plans to support this. The commerciality needs to be translated into business projection and cost benefit analysis to the business.

Proof of commercial intent

In order to achieve proof of commercial justification there would have to be evidence that the horseracing expenditure is effectively advertising either the product or the services.

In doing so, it can help if the horse is named after either the business or its products. For those old enough to remember Harvey Smith in the 1970s riding horses with the name of Japanese hi-fi equipment which sounded unattractive to the show jumping enthusiast but to the company there was some very high profile television coverage from a very colourful character.

Although the television coverage of show jumping has now virtually diminished to rather obscure channels, the television coverage of racing has still managed to keep a strong position. There is less terrestrial coverage but there is a dedicated 'At the Races' channel included in the Sky package and a separate subscription channel "Racing UK" which has high coverage of race meetings.

Cost Effective Analysis Study

In addition to the business plans, the marketing report and the cost effective analysis study, there should be recordings in the Minutes of the business to record the reasoning and the decision to go ahead with the racehorse expenditure.

Such expenditure could invite an enquiry into the business accounts and,

as demonstrated by the *Chepstow Plant* case, P11Ds. Subjective intentions on the part of the directors at the time of the payment must therefore be fully documented and supported by a robust commercial rationale.

Successful marketing

There is no doubt that racing has proved to be a very successful marketing tool for a number of businesses.

The key is being able to prove this to HMRC and, as always, when HMRC question the tax allowability of the expenditure, to be able to support all the arguments with evidence and statistics. Any link into direct sales is obviously going to be a positive argument to present to HMRC.

Racehorse Sponsorship

There is considerable case law surrounding the allowability of expenditure on the sponsorship of sports activities.

As part of the Revenue's investigation into motive, there is the question of the controlling director's personal involvement in the sponsored activity and whether that involvement in the sport was pre-existing the sponsorship. This is seen as a test of the commerciality of the sponsorship arrangement.

Pre-existing interest

The pre-existing interest point is raised in the case of *Vodafone Cellular & Others v Shaw* [1997] 69TC376. This brings into question the issue of wholly and exclusively for the purpose of the trade where guidance is given in *Executive Network v O'Connor* SpC56 at BIM42558.

This leads on to the question of sponsorship which includes entertaining.

Sponsorship costs can include an element of hospitality. The hospitality element is disallowable even if it brings in large future revenues to the business and is extremely commercial. Guidance on

this point is provided in BIM45055:

The costs of sponsoring sporting, cultural or other events for the purpose of business promotion/publicity are not disallowable.

“However, it is common for sponsors of such events to be entitled to a certain number of free tickets ... as part of the sponsorship package. The cost of sponsorship is not allowable in full if the sponsor receives tickets or other benefits. “HMRC normally accepts a disallowance equal to the value of the tickets or other benefits received.”

HMRC Manuals BIM45055

The disallowability would be looked at in ICTA 88 section 577 or ITTOIA section 45.

The entertainment element

As a planning point, when sponsorship deals include an entertainment package, the entertaining element which is disallowable should be separately identified and the size of any disallowable expenditure quantified so that this can be added back in a fair and correct way.

The non-entertaining element can

then achieve tax allowability.

BIM37007 states that where a single sum is paid for a package that includes both hospitality and advertising then the sum should be apportioned so that the correct amount is disallowed as an effective way of achieving tax relief on the correct amount.

To achieve deductibility of the non-entertaining element, BIM37007 says that there must be:

*“A **definite part** or proportion of an expense [which] has been laid out or expended wholly and exclusively for the purposes of the trade”*

HMRC Manuals BIM37007

Factors that HMRC will consider when looking at the tax allowability of sponsorship are if the sponsorship failed to generate the sales anticipated and what steps were taken to improve matters.

Ideally there should be evidence that anticipated sales have been achieved and, if not, a documented action plan.

Summary

There is no doubt that horseracing can generate a commercial income stream

into a business and it is important that valid expenditure is treated as a tax allowable expense.

Documentary evidence is always key - details of why the sponsor chose this particular route or why the decision regarding the racehorse was made.

It could be important to see how the racehorse ownership or sponsorship is exploited in terms of nationwide and local media, other avenues and point of sale publicity. Details of the sponsorship must be on the business website as that is often HMRC's first point of review. □

Julie Butler F.C.A.

Julie Butler F.C.A. is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning ISBN: 0406966540, and Stanley: Taxation of Farmers and Landowners (LexisNexis)

Butler & Co, Bennett House, The Dean, Alresford, Hampshire SO24 9BH.
01962 735544.
j.butler@butler-co.co.uk
www.butler-co.co.uk