calls for bereaved PAYE and self assessment taxpayers;
- authorisation in bereavement cases to make it easier for someone else to act for the deceased; and
- settling the tax affairs of a self assessment taxpayer in-year instead of at the end of the year.

We understand that up to now, HMRC could not deal with about 50% of forms R27 when first received and it became clear that they placed a heavy burden on the personal representative. We have also learned that of the bereavement calls received, 34% were about filling in form R27 while 15% were to check the progress of a form R27 already received by HMRC.

The Tax Faculty welcomes news that HMRC intends to reduce the amount of information it asks for by making better use of the data it already holds, such as pay and tax details from RTI.

Agents are reminded of the need to complete agent authorisation form 64-8 in deceased cases from the date of death.

Contributed by Audrey Donegan

BUSINESS TAX

201. IS THE TRADE COMMERCIAL?

The recent case of *Judith Thorne v HMRC* TC03851, an equestrian breeder and farmer, provides evidence that HMRC is questioning whether a trade is commercial under s66, Income Tax Act 2007 for the purpose of sideways loss relief. HMRC did not dispute the existence of the trade but whether it had been carried out on a commercial basis with a view to the realisation of profits.

The requirement to show a trading profit can be achieved was reinforced at the First-tier Tribunal (FTT) in the 2013 case of *Glapwell Football Club Ltd v HMRC* TC02904. Similar to the case of *Thorne*, there was emphasis on the need for commerciality (s44, Corporation Tax Act 2010) in order for a loss claim to be substantiated. The point has been further highlighted in *Richard Murray* TC03474 where a racehorse breeder and trainer had claims for losses disallowed due to there being no evidence of commerciality.

This would appear to show a strong indication that sports and equine businesses are being highlighted as potential entities requiring investigation to prove commerciality where loss relief is claimed.

In the case of *Thorne*, HMRC referred to *Wannell v Rothwell* [1996] 68 TC 719 and argued that with regard to the equestrian side of the business, Ms Thorne was not seriously interested in profit and was effectively "an amateur". There was confusion with regard to the trade of asparagus farming also run by Ms Thorne. HMRC considered that these were one composite trade and the FTT agreed. Ms Thorne argued that the reasonable expectation of profit test had been met and HMRC had incorrectly concentrated on the equine business.

The FTT found that in the five years up to the tax return in the appeal, the equestrian breeding business had made no profit and faced escalating costs. The judges said that although the asparagus venture had some prospect of profits, they could not see how, on the facts, the equine business could make a profit in the future, and found Ms Thorne's evidence unsatisfactory on that point. Since it was a composite trade, loss relief was denied under s64(1) and (2), ITA 2007 to set against other income.

In the case of *Murray*, the appellant was a racehorse breeder and trainer. HMRC enquired into the return and decided the losses were not allowable because Mr Murray was not trading on a commercial basis. The judges considered that, although there may have been a reasonable expectation of profit at the start of the taxpayer's business, by 2010/11 with the combination of the economic downturn, high running costs and consistent losses, there was no hope of profit being achieved. The lack of any income helped support their view and the loss claim was disallowed.

Clearly tax loss claims are under very close scrutiny, and advisers must review the commerciality of their client's business together with the validity and detail of all loss claims made. There should be business plans and other evidence to prove a profit can be achieved.

Contributed by Julie Butler, Butler & Co

202. WHAT'S DEDUCTIBLE? AN ENTERTAINING QUESTION

The cost of business entertainment isn't tax-deductible. The following question from a client and the answer to it bear repetition.

Question: I am a business consultant. I know 'entertainment' has to be added back but I often use coffee shops as meeting venues. It's cheaper and much more convenient to buy a couple of coffees and croissants and have the meeting there than to rent a meeting room or a serviced office. But over a year, the costs do mount up: can I claim tax relief on the basis that this isn't in truth or in substance 'entertainment' but simply a cost of hiring somewhere to meet?

Answer: Sadly not. The law denies relief for "expenses incurred in providing hospitality of any kind". As a matter of fact the expense that you incur is that of buying a coffee and croissant, which are provided to