

## Business taxes

### 135. HMRC removes Thoroughbred Breeders' Association agreement on stud losses

HMRC's guidance in its *Business Income Manual* at BIM55725 'Farming: Stud farms: losses in stud farms' covers the availability of loss relief in the breeding of horses. It is used by all equine tax advisers. With regard to the application of the hobby farming loss restriction rule to stud farming, a concession was confirmed in a letter sent in 1982 to the Thoroughbred Breeders' Association (TBA). Prior to an update on 23 November 2020, the text of this agreement was contained in BIM55725 as follows:

"The requirement that the business should be potentially profitable (in other words, the question of whether S68(3) ITA 2007 or S49(3) CTA 2010 is satisfied) is important and should be checked in all cases."

Such a drastic change indicates that HMRC no longer accepts the 'long-term' nature of stud farming.

"It has always been recognised that some ventures are by their nature unlikely to show a profit by the sixth year of trading and section 397(3) [now either S68(3) ITA 2007 or S49(3) CTA 2010] provides for loss relief to be continued after the fifth year where the claimant is engaged in a particular farming activity of an intrinsically long term profit making nature we have long accepted that the breeding of thoroughbred horses is such a long term venture, and provided that a stud farming business is potentially profit making, we would not normally seek to invoke section 397(1) [now either S67(2) ITA 2007 or S48(2) CTA 2010] until after 11 years from the start of the business."

Without warning, this TBA agreement that allowed for 11 years of stud losses was removed from BIM55725 on 23 November 2020 with the reason for the change described as 'To bring content up to date'.

Stud farm losses are subject to the 'hobby farming' rules in the same way as farming. To quote BIM55725:

"The guidance on farming losses at BIM85600 onwards applies equally to stud farming and other long-term ventures. Under self-assessment for the 6th plus (ie 6th, 7th, etc) consecutive year of losses, farmers should assess the reasonable expectation of profit test as set out at BIM85640 and BIM85645."

The tests concerning a reasonable expectation of profit are found in s68(3), Income Tax Act 2007 (ITA 2007) and s49(3), Corporation Tax Act 2010 (CTA 2010). The *Business Income Manual* points to evidence of commerciality. To quote again from BIM55725:

The ability to claim tax relief for losses for 11 years from the start of the stud business becomes even more onerous for both tax advisers and stud farms. It is suggested that the 1982 agreement (now 40 years old) must not be forgotten and argued with determination at a time when HMRC's attempts to deny sideways loss claims are so vigilant.

Contributed by Lucy Knighton ACA, Managing Director, and Julie Butler FCA, Founding Director, of Butler & Co Alresford Limited

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