PRACTICAL POINTS

BUSINESS TAXES

048. EQUINE LOSS EVIDENCE

Closely following the First-tier Tribunal (FTT) case of *Cliff v HMRC* [2019] UKFTT 564 (TC) featuring equine loss claims (see Practical Point 220 in the November issue of *TAXline*) comes negative findings from the British Horseracing Authority (BHA), which has published *Review of the buying and selling practices of Bloodstock and Racehorses.*

The review presents negative statistics regarding the profitability of breeders. Many would argue that this is bad timing after the decision in *Cliff* to disallow loss claims due to incorrect disclosure and lack of evidence of trading – there were no business plans or business forecasts prepared by Mr Cliff.

A quote from the BHA report: "At the lower end, the Review Team has seen that return on capital for breeders is only 1-3%, which has meant that as many as 66% of breeders are expected to have been unprofitable in 2017 when compared to 45% in 2013." Such generic statistics for the smaller breeder mean not only are there lots of potential loss claims by these breeders, there are also questions on proof of commerciality with a view to a profit. There have been many unsuccessful equine loss claims in the past (eg, *McMorris* [2014] UKFTT 1116 (TC) and *Thorne* [2014] UKFTT 730 (TC)).

Tax advisers must learn from this information to check the validity of all tax loss claims and to encourage clients to produce evidence to support results and profit potential (eg, to undertake not just business plans but rolling business plans responding to actual trading results). With the breeding statistics just produced, there is greater need for all breeders and stud farms to look at the structure and profit potential.

The negative cost of production potentially exceeding sales and evidence to show a profit can be produced is key. There is a difference between breeders who board out their mares and stud farms that have their own land.

The latter is farming for tax purposes and the former is not. The stud farm can take advantage of the 'hobby farming' rules, but there must still be evidence that the stud operation is trading commercially with a view to a profit. At the top end of all equine sports (eg, racing, show jumping, dressage, etc) there are strong profits, but the problems can be at the lower end due to margins and sometimes inexperience. Equine profits can be achieved – there must be full allowance for private usage and a full understanding of the weak areas and rectification action.

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