Irish equine tax advantages – putting the boot into the UK system

by Julie Butler

Many tax advisers might not be aware of the impact that the bloodstock industry could have on their client base. The good news that the value added tax (VAT) scheme for racehorse owners will stay to 2005 reminds advisers to check that their owners are taking advantage of this relief.

The Irish tax advantage of stud fees

With Sir Alex Ferguson (the manager of Manchester United) owning the leading flat race horse of 2002, Rock of Gibraltar, and then sending him away to stud in Ireland, the Irish tax position on stud fees/nominations has been well publicised. Although this exposure made the financial pages of the tabloids it did not quite rank with stories concerning boots and changing rooms (which has no obvious associated tax relief). Stud fees are treated as 'tax free' in Ireland and do not have to be declared on tax returns. These tax breaks are the envy of the United Kingdom (UK) Thoroughbred Breeders' Association (TBA) and the Irish opposition party created a lot of hot air in the lead up to the Irish Budget in December 2002. The tax benefits remain intact. The Irish tax reliefs keep a large, passionate industry with vast employment in place. So what to the UK?

What other tax advantages do the Irish Stud and Racing Industry enjoy? Clear examples are the favourable Irish VAT treatment and all 'business rates'. Equine activities are not exempt from UK rates in the way that agricultural activities are exempt.

Representatives from the Irish bloodstock industry met with Irish Agriculture Minister, Joe Walsh, to discuss the possibility that the sector's lucrative tax breaks could be axed in Irish Minister for Finance, Charlie McCreevy's, Budget.

Reports in the Irish media suggested that in order to secure more funds, Mr McCreevy would be removing the bloodstock industry's tax exemption, with the imposition of a 12.5 per cent corporation tax on stallion fees. However, of all those potentially affected, it was the Republic's horse breeders that have been most vocal, and the industry launched a major lobbying campaign to protect its tax free status first introduced in 1969 during Charles Haughey's time as Finance Minister.

Speaking to the *Irish Examiner*, the Irish Thoroughbred Breeders' Association spokesman, Declan MacPartlin, warned that the abolition of the tax break would be more likely to impact on smaller breeders than on the industry giants and super-wealthy breeders who are the intended target of the move.

The UK tax position

The Inland Revenue's Inspector's Manual IM2350h: *Farming: stud farms: stallion syndicates,* states:

> 'Since the cost of buying a successful stallion outright is prohibitive for some bloodstock breeders, ownership may be shared in a syndicate. The usual form of syndication is into forty equal shares, representing the number of mares which, traditionally, was regarded as the standard for a stallion to cover in one season. Each syndicate member contributes towards the costs of keeping the stallion and is entitled to one 'nomination' each season per share owned. The member may use the nomination to cover one of his own mares, or it may be sold on the open market. The shareholders appoint a committee which deals with the day to day management of the stallion.'

It goes on to say that where the occupier of a stud farm owns a share in a stallion for the purpose of obtaining service for his own mares, the tax treatment will depend on whether he has made an election for the herd basis.

The proceeds of any sales of nominations are treated as trading receipts. Any contribution by the stud farmer towards syndicate expenses will be an allowable trading expense. However, in the following situations the sales of nomination are assessable under *Income and Corporation Taxes Act* 1988 (ICTA 1988), Sch. D, Case VI:

- the owner of the stallion share is not carrying on a trade of stud farming or horse breeding;
- the owner is carrying on such a trade, but does not use the stallion share for the purpose of obtaining service for his own mares.

So how would Sir Alex's stallion nominations income from Rock of Gibraltar be treated in the UK? As it is assumed that Sir Alex does not own a UK stud farm the fees would be taxed under Sch. D Case VI. Clearly there would be minimal expense claims. The tax saving by standing the horse in Ireland is considerable.

It is understood that the Rock of Gibraltar was an extremely good buy and at one point Sir Alex's share was valued at over

£30 million. So what is the UK tax treatment of the racing profits? Is the position all doom and gloom too?

Horse racing is tax free

Guidance is given in Inspector's Manual IM2350b *Farming: stud farms: overview.* It states:

> 'Horse racing, however, is not a taxable activity. Where, as is often the case, a stud farmer also races horses, considerable care may therefore be needed to ensure that the division between the two activities has been correctly made. In particular, attention should be given to any transfers of animals from the stud farm to training (that is, being kept for the purpose of racing) or vice versa.'

If a breeder transfers an animal to training and it is then returned to stud at a higher value after a successful racing career, then the uplift in the market value while it was in training is tax free. Furthermore the value at which the animal is returned to stud is relieved over the rest of its life. The valuations of animals at the dates of transfer to or from training are, therefore, significant.

Racehorse owners VAT scheme

Racehorse owners received some excellent news in December 2002 when the Treasury informed the British Horseracing Board (BHB) that the current VAT scheme will continue until a further review by Customs & Excise in 2005. Nobody should underestimate the importance of the VAT scheme not only to owners, but to the whole racing industry. Continuation of the scheme beyond 2005 will depend on a lot of factors, but both the level of sponsorship attracted by owners and how closely owners are deemed to be complying with the Code of Conduct relating to sponsorship are two very important issues.

In the coming months the Racehorse Owners Association (ROA), working with the BHB , will be putting the whole area of VAT and sponsorship under the microscope. In the meantime, it is very important that owners who are VAT registered, under the terms of the VAT scheme for racehorse owners, ensure they earn business income from either sponsorship or appearance money.

The tax advantage of the UK stud farm

The UK stud farms do have distinct UK tax advantages which should not be overlooked while envying the Irish position.

- A stud farm is farming (ICTA 1988, s. 31(1), and has all the associated reliefs of farming, agricultural property relief on land, stables and possibly the stud house (but note recent cases of *Antrobus* and *Higginson*), *Lloyds TSB (personal representative of Antrobus Deceased) v I R Commrs* SPC 336.
- Eleven-year loss rules (improvement on the five-year rule).
- Business reliefs for capital gains tax, especially business asset taper relief and rollover.
- Potential business property relief on cottages and outbuildings, see *Farmer (Exors of Farmer dec'd) v I R Commrs* [1999] STC 321.
- But note stud farming has problems on qualifying for enterprise investment scheme relief – other equine activities might qualify.

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made redundant then the claim must be made as soon as possible, and certainly no later than date of redundancy. The effect will be to backdate a claim by three months from the date it is actually made and thus increase the calculation of WTC payable at the end of the year. This is assuming that the income of the couple for the whole tax year comes within the relevant limits. Because this requires their joint income including taxable Social Security benefits to be below approximately £14,500 there will not be many occasions where this will be important.

To safeguard your position a protective claim should be made by 5 July 2003 for all employees whose income might go down.

Conclusion

Tax credits is a new tax regime. Because it is operated by the Revenue and the paperwork refers to tax, your clients will expect you to deal with it. The amounts payable or repayable will often be greater than the amounts payable under SA. It will be considered in any enquiry case. You must acquire the skills and the computer software to enable calculations to be made. You will have to deal with this credits system. However, because it applies for a couple it may be that the other partner has their own adviser. In those circumstances you will need to agree which adviser is to be responsible, and put into place a system of authorisation to pass information from one adviser to the other.

This is a completely new challenge with its own problems and rewards. It will be time-consuming, do not fall into the trap of completing three forms for the previous fee charged for one form.

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