

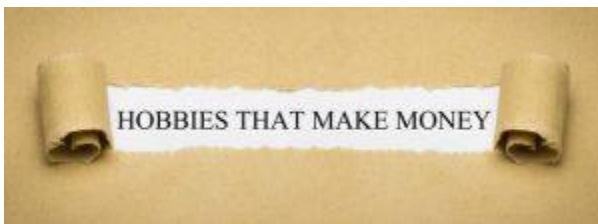
# The equine business and the “Gravel Road”

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It could be argued that there is much similarity between the passion for horses and music. Against this background, it is important to note that HMRC is vigilant for cases where input VAT is claimed on private activities. However, a recent case **Gravel Road Records (TC05598)** shows there is a difference between a “hobby” and a “failure” with regard to business activities.

## Hobby or business?

Many businesses involving horses have a high commercial potential but do sometimes fail to make a profit. The Gravel Road case explains the need to show evidence of “intended business” to avoid unrecoverable tax charges. The facts are that Gravel Road spent considerable sums creating a recording studio, but delays in completion of the work caused their planned customers to go elsewhere at a time when the recording industry then went into decline. Gravel Road Records had to cease trading before making any supplies and disposed of the facility. HMRC assumed that the business had spent the money on a ‘hobby’ activity, i.e. for private pleasure.

## Evidence and the test for business activity

HMRC could neither show nor provide evidence of any use of the recording facility for private recording purposes and it did not appear to try to do so. Instead, HMRC went through the Lord Fisher (High Court in **CEC v Lord Fisher [1981] STC 238**) tests for what constitutes a business activity, ignoring the fact that the Court of Appeal had recently cast doubt on these in Longridge (Longridge on the **Thames v HMRC [2016] EWCA Civ 930 (2016)**).

The tribunal upon review of the facts could see no evidence of hobby use, but plenty of evidence of an intended business use. Examples of business intent were the high level of cost and the involvement of equity investors. The taxpayer won, having endured the problems of having to go through the business failure in depth at tribunal level.

## What does this mean for equine businesses?

The tax lesson for anyone in the equine industry starting a true commercial business is that HMRC might try to say the operation is not commercial. It is imperative to have a business plan in place and third party evidence where appropriate.

In the Gravel Road case the investor had no interest in music and only wanted to make a profit on its investment. It was considered by the tribunal that it was the original intention and evidence that was important rather than the end result.

This case is a useful reference for tax advisers to quote in situations where HMRC challenge input VAT claims on the cost of either abortive or loss making projects. The “original intention” question is one that equine businesses have to consider with regard to both VAT and income tax. Often the equine business is started with an “original intention” of a hobby not a business, however when there is a genuine business the evidence of intention must be retained and tied into the business plan. It is vital to retain evidence of all areas of commerciality.



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