

IT 332 - Deductions for club fees : racing clubs : section 51AB



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TAXATION RULING NO. IT 332

DEDUCTIONS FOR CLUB FEES : RACING CLUBS : SECTION 51AB

F.O.I. EMBARGO: May be released

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CLUB FEES

51(1)

RACING CLUBS

51AB

SUBSCRIPTIONS

ENTERTAINMENT EXPENSES

FACTS

1. The relevance of section 51AB of the Income Tax Assessment Act to racing club membership fees has been considered following a suggestion that the section would not operate to prohibit the deduction of fees for membership of a club that regularly conducts horse-racing meetings on two racecourses in one of the capital cities.

RULING

2. From general observation, supported by an examination of some available background material, it seems likely that horse-racing clubs which operate racecourses in cities and large towns would have the following common features -

- (a) each would have as an object the conduct of race meetings on at least one racecourse owned or held on lease by the club;
- (b) each would need, in order to achieve that object, to secure extensive patronage of its race meetings by the general public;
- (c) each would have provided, in order to secure that extensive public patronage, facilities for the public to view races, take shelter, obtain refreshments, place bets, etc.;
- (d) each would have provided facilities of similar kinds for the exclusive use or benefit of its members and their guests;
- (e) each would be able to demonstrate that the number of non-members attending its meetings ordinarily exceeded the number of members attending, that revenue attributable to public patronage of the meetings ordinarily exceeded revenue attributable to member patronage and from membership fees and that, of the total outlays on establishing and maintaining the racecourse and its associated facilities and conducting the race meetings, the greater proportion would be reasonably

attributable to non-member aspects.

There is no reason to believe that, except for differences in scale, such features would not also be common to most clubs which operate horse-racing courses in the smaller towns and to clubs which operate dog-racing courses.

3. If this is a reasonable appreciation of the situation, there would be no warrant in the absence of exceptional circumstances for saying in relation to any such club that it - to quote the crucial part of the definition of "club" in section 51AB - "... was established, or is carried on, solely or principally for the purpose of providing facilities for the use or benefit of its members ...". It would be a more realistic approach to say that it was established, and is carried on, principally for the purpose of providing and operating a public amenity with the provision of facilities on the racecourse for the use or benefit of members being no more than an important adjunct. It is considered that the observations made by Owen J. in the course of his judgment in *Adelaide Racing Club Inc. v FC of T*, 114 CLR 517, support this view.

4. It may be accepted that a club which regularly conducts horse-racing or dog-racing meetings attracting extensive public patronage on a course that it owns or controls would not be a "club" as defined in section 51AB with the consequence that the section would not operate to prohibit the allowance of deductions in respect of fees paid for membership of the club. It should be emphasised, however, that a claim to deduct such fees should not be conceded unless the expenditure meets the tests for deduction under section 51. Cases in which racing club membership fees satisfy those tests would be rare.

5. Paragraph 4 may be qualified initially or at a later stage in relation to any particular racing club known to have unusual features likely to bring it within the scope of the definition of a "club" in section 51AB (e.g. a club that provides, in addition to normal race-day arrangements, day-by-day drinking etc. facilities for its members that are patronized by them to an extent that affects the relative significance of the public patronage of race meetings).

COMMISSIONER OF TAXATION