TR 93/26 - Income tax: issues relating to the horse industry

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Taxation Ruling
Income tax: issues relating to the horse industry

contents para

What this Ruling is about 1

(e) Stallion syndicates 57

(f) Stallion service fee receipts 73

Date of effect 78

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A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. This Ruling discusses the income tax treatment of stallion syndicates.

2. [Withdrawn]

3. [Withdrawn]

4. [Withdrawn]

5. [Withdrawn]

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7. [Withdrawn]

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39. [Withdrawn]
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41. [Withdrawn]
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43. [Withdrawn]
44. [Withdrawn]
45. [Withdrawn]
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51. [Withdrawn]

52. [Withdrawn]

53. [Withdrawn]

54. [Withdrawn]

55. [Withdrawn]

56. [Withdrawn]

(e) Stallion syndicates

57. Most stallion syndicate agreements generally specify that a stallion will be syndicated into 40 or more shares, which will be offered for sale to the public. A manager is appointed to look after the stallion on behalf of the buyers. The manager generally incurs all costs of the horse (such as feed, vetting, stabling and advertising, etc.). In return the manager receives "standing rights" (eg. 6 free stallion services rights each year). If excessive vetting and advertising is involved the syndicate members may be liable for the extra expenses as per the syndicate agreement. The members are bound by the syndicate agreement.

58. The stallion manager acts on behalf of the collective syndicate members and attempts to sell stallion services to other horse breeders. This is called income from "overs". As the stallion manager normally bears all costs of the horse, the syndicate should receive the gross profit from the sale of "overs".

59. A share in a stallion normally entitles the owner to have his or her mare served free of charge each year, or the service right might be sold by him or her each year.

60. The treatment of a syndicated horse depends on who owns the horse and whether there is a partnership for taxation purposes. This Ruling does not cover racing syndicates.

(i) Who owns the horse?

61. Stallion syndicate agreements specify who owns the horse. Normally the horse is not owned by the syndicate (partnership), but owned individually by the respective shareholders, who collectively lend their share of the horse to the syndicate in order for it to derive income from "overs".

62. In such a situation, only those members who are carrying on a business of horse breeding are entitled to write off their interests in the horse in their live stock accounts.

(ii) Is there a partnership?

63. If the syndicate is 'an association of persons carrying on business as partners or in receipt of income jointly', it will be a partnership for taxation purposes (see subsection 6(1) of the ITAA 1936).

64. A syndicate is not a partnership if it only controls a stallion for use in servicing mares nominated by the syndicate members.

65. However, if the stallion is used to obtain service fees which are split among all of the syndicate members, the syndicate members are in receipt of income jointly and are a partnership for taxation purposes.

66. If the syndicate is involved in the breeding and/or racing of stallions and mares owned by the syndicate, it is possible that the syndicate members are carrying on a business as partners.

(iii) If the syndicate is a partnership for taxation purposes

67. If the syndicate is a partnership for taxation purposes it must lodge a taxation return.

68. In the normal situation, where the horse is owned by the syndicate members rather than the syndicate, but the syndicate receives service fees income jointly, the syndicate should lodge a taxation return returning the overs income. As the horse is not owned by the syndicate, the horse may not be "written down" in the live stock accounts or depreciation schedule of the syndicate. The individual syndicate members should include in their assessable income their interest in the partnership income. The income from "overs" is assessable when derived by the syndicate, not when distributed to syndicate members.

(iv) 'Leasing" of a part interest in live stock

69. In general, leasing of horses is acceptable for income tax purposes provided the lease agreement complies with the guidelines on genuine leasing arrangements outlined in Taxation Ruling IT 28 and related rulings. However, some syndicate arrangements are entered into to finance the acquisition of a <u>part</u> interest in a horse breeding, racing or stallion syndicate. They involve a series of so called lease payments, but are not true leases because the subject of the "lease" is a part interest in the syndicate horse.

70. A true lease of property requires, among other things, that the property be leased to one party or to parties in common. A "lease" of a part interest in a horse may not enable the "lessee" to acquire a possessory interest in the horse. In these circumstances, a lease does not exist because the "lessee" acquires a chose in action and not a chose in possession.

71. In general, the taxation treatment of payments under agreements of this nature which create a chose in action is akin to the treatment of payments of principal and interest on a loan. Division 16E of the ITAA 1936 may apply to these arrangements in addition to the general income and deduction provisions of the income tax laws. Broadly Division 16E applies to financial arrangements which create a contractual liability to make payments (other than periodic interest) over a period in excess of 13 months and where the sum of the payments exceeds the consideration given under the contract.

72. If the so called lease agreement is a chose in action and satisfies the definition of a "qualifying security" in Division 16E then the payments are subject to the application of subsections 159GT(1) and 159GT(3). These provisions in effect deny a deduction for the actual payments and allow deductions for the "interest" component of each payment to the "lessee". The interest component is assessable to the "lessor".

(f) Stallion service fee receipts

73. Income from the sale of stallion service fees is generally assessable when the stallion owner invoices the mares owner; normally following a positive pregnancy test of the mare, in accordance with the principles expounded in the case of *Arthur Murray (NSW) Pty Ltd. v F. C. of T.* (1965) 14 ATD 98; 114 CLR 314.

74. [Withdrawn]

75. [Withdrawn]

76. [Withdrawn]

77. [Withdrawn]

Date of effect

78. This Ruling applies both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of

issue of Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

79. [Withdrawn]

80. [Withdrawn]

81. [Withdrawn]

82. [Withdrawn]

83. [Withdrawn]

84. [Withdrawn]

85. [Withdrawn]

86. [Withdrawn]

87. [Withdrawn]

88. [Withdrawn]

89. [Withdrawn]

90. [Withdrawn]

91. [Withdrawn]

92. [Withdrawn]

Commissioner of Taxation

12 August 1993

Previous draft:

EDR 88

Related Rulings/Determinations:

IT 28; TR 2006/10

Subject references:

- stallion service fees
- syndicated horses

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 159GT(1)
- ITAA 1936 159GT(3)
- ITAA 1936 Pt III Div 5
- ITAA 1936 Pt III Div 16E
- TAA 1953

Case references:

- Arthur Murray (NSW) Pty Ltd v. FC of T (1965) 14 ATD 98; 114 CLR 314

ATO references

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