BLOODSTOCK TAXATION GUIDE

THE HORSEMEN'S GROUP

Produced by
The Thoroughbred Breeder's Association
Bloodstock Taxation Group
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Foreword

Welcome to the first edition of the Bloodstock Taxation Guide published on behalf of the Horsemen's Group and available in soft copy on both the Horsemen's Group and TBA members website. It is an indication of the changing face of the UK bloodstock industry that the Horsemen's Group are the third different organisation to be associated with the Guide after the Horseracing Advisory Council and the British Horseracing Board.

However, taxation remains an important issue for all participants in the industry. It is a measure of the pace of change in taxation matters that the gap between editions of the Taxation Guide continues to reduce; it is only four years since the Guide was last produced but the new edition of the Guide shows a large number of changes – particularly in the VAT section. The authors have tried to create a current tool for the Industry, through the use of direct links to the HMRC website.

The Guide is primarily focussed on the breeding and owning of racehorses but we have also included sections of specific interest to trainers and jockeys. We are grateful for the efforts of the National Trainers Federation – in particular Rupert Arnold and his team – and the taxation advisors to the Jockeys Association of Great Britain (Terry Boothby of Griffins) in preparing and checking those sections, and for allowing them to be included in this Guide. Any questions regarding the content of these sections should be directed in the first instance to the authors.

As before, the main purpose of the Guide is to provide a general outline of the major direct tax and VAT issues to be considered by those working in the industry and their professional advisors. The Guide is not intended to provide a definitive answer to every tax query that may arise and the advice of a qualified practitioner should always be sought before acting on the information in the Guide.

As indicated above, we have had to deal with a large number of changes and I am indebted to my fellow members of the Thoroughbred Breeders' Association Bloodstock Taxation Group for their efforts in producing the Guide. Thank you therefore to Terry Dockley, Philip Freedman, Chris Kennard, Penelope Lang, Robin Platt and Louise Kemble. Of course even with all the hard work put in by the members of the Group their contributions still need to be converted into the finished product. This has been done with skill, patience and understanding by Shelley Oxford of Smith & Williamson Ltd.

I hope you find the Guide useful.

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BLOODSTOCK TAXATION GUIDE

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PART 1 – DIRECT TAX ISSUES

1 Bloodstock Breeding

1.1 Basic principles

Income Taxes, National Insurance and Corporation Taxes are collected by H M Revenue & Customs (HMRC).

Bloodstock breeders fall into one of two broad categories for tax purposes: breeders who own horses and own or lease a stud farm; and those who own horses but keep them at a public stud or livery yard.

One of the major taxation issues facing the breeder, in common with many in the bloodstock industry, is whether HMRC consider it to be a commercial business and tax it as a trade rather than a hobby. If the business is considered as a hobby, this will result in a denial of relief against other taxable profits if a loss arises but it could still lead to a tax charge if the business becomes profitable. The factors which will be considered by HMRC in determining whether a trade is being carried on are considered in detail in Appendix VI. It should be noted that the factors which will be considered are the same whether the breeder is carrying on a large or small operation.

The breeder who occupies a stud farm, whether leased or owned, is more likely to be regarded as carrying on a trade and therefore taxed in the same way as a farmer – that is, as if he were breeding, for example, cattle or sheep. The starting point when considering the taxation of the bloodstock breeder is Section 9, Income Tax (Trading and Other Income) Act 2005 (ITTOIA), which states that the profits of a farming trade will be taxed as trading income. Farming is defined for tax purposes as the occupation of land wholly or mainly for the purposes of husbandry. Husbandry includes 'the breeding and rearing of horses in connection with those activities'.

If the trade is treated as "farming", then it will be covered by section 9 ITTOIA 2005 . Should the bloodstock trade (for example pinhooking) not be held to be farming then it may be covered by Section 10 ITTOIA 2005. This sub-section gives further guidance on the way in which the trade will be taxed and states that if land is occupied for a purpose other than farming, but is managed on a commercial basis with a view to the realisation of profits, the profits will also be taxed as trading income. The treatment for tax is the same regardless of whether the breeding trade is covered by Section 9 or 10.

The bloodstock breeder who does not occupy a stud farm may also be treated as if carrying on a bona fide trade under the general charging provisions of Section 5 ITTOIA 2005. However, it may be more difficult for such a breeder to convince the Inspector of Taxes that this is, in fact, the case.

Once it is established that a breeder is carrying on a trade, it is necessary to calculate the profits on which he should be taxed. Accounts will be prepared as for any trader, taking credit for horses sold or transferred to racing. Deduction is then made for the cost of sales and other overhead expenses.

It is not uncommon for stud farmers to incorporate other types of farming, and horseracing, within their accounts. Horse racing has not traditionally been regarded as a taxable activity and therefore the profits and losses of a business that includes both breeding and racing have to be split so that any profits/losses relating to the racing element are eliminated from the taxable result. In exceptional circumstances where racing can be demonstrated to be a necessity to proving the worth of the breeding stock, it may be possible to argue that the two activities constitute one trade or that, at least, some of the costs of racing should be allowed as a deduction for tax purposes. This is discussed further in Part 1 Chapter 3.

There are some specific points worth noting in connection with stud farm accounts.

1.2 Transfers to and from the stud

If, in general, breeding horses is a taxable activity and racing is a separate non-taxable activity then the transfer of horses from the stud to racing and from racing back to the stud will be accorded special tax treatment. This matter was considered in the 1955 case Sharkey v Wernher (36TC275) and the principles from the case were later enacted by Finance Act 2008 Schedule 15 Part 1 which inserted the rules in ITTOIA 2005 Part 2. The case established that a horse must be valued when it leaves the stud to go into training. The market value of the horse at that time will determine the profit or loss realised by the stud from breeding and this will be reflected in the bloodstock accounts. Therefore, even though the horse has not been sold, any profit or loss from breeding is taxable or allowable when it leaves the stud and commences its racing career. Such profit or loss will have been realised “in kind” rather than in cash so that tax will be payable on any profit even though the breeder will not yet have received any proceeds from the sale of the horse to meet the tax liability.

When the horse returns to the stud it is brought into the bloodstock accounts at its market value. To use an extreme example, if a horse left the stud at a value of say £500,000, became an extremely successful racehorse and returned to the stud at a value of £3m, the increase in value of £2.5m during its racing career will have accrued tax-free to the owner. Conversely if the horse is worth less when it returns to the stud then a non-allowable loss will have accrued.

1.3 Valuation of stock – Cost or market value

Generally, horses treated as stock are to be included in the accounts individually at the lower of cost and market value (see Business Income Manual 55710), with the valuation being made at each year end. Mares will usually have been either purchased or transferred from training, although it is not uncommon for them to go to stud without having been raced. Horses purchased will be brought in at cost, while those transferred from training will be brought in at the market value on the date of the transfer. Where a horse has been bred and reared by the breeder and never raced, it should be brought in at the cost of rearing and keeping the horse. The accounts will reflect these amounts in stock unless the current market value of the animal is lower, in which case this value will be substituted. A number of factors will influence the market value of a horse and these include its pedigree, its past performance, its racing career, market conditions and breeding prospects.

The net movement in the value of stock is included in the profit and loss account and hence stock values can significantly affect the taxation position. HMRC therefore tend to examine such values in detail and it will often be worth seeking a written independent valuation in certain cases. There is a specialist bloodstock section in the Shares and Assets Valuation Division of HMRC (see Business Income Manual 55705).

When considering the valuation of foals and yearlings, the following points are relevant:

Foals

At birth the following costs are normally transferred to stock in respect of the foal:

a) Nomination fee (alternatively, they may also be carried forward)
b) Maintenance costs of the mare for the previous year

Business Income Manual 55710 states that HMRC accept that stallions can be depreciated in certain circumstances, but that this treatment is not generally accepted for mares.

Because of the inherent uncertainty that a foal of any value will be produced, some of these costs will have been included as a deduction in the previous period's accounts. The costs of a foal is increased by its cost of keep from the date of weaning until sale or transfer into training. This also applies to foals purchased, from the date of purchase.

There is a current rule of thumb basis of £75 per week for the valuation of the maintenance costs of a foal, which has been agreed between the TBA and HMRC. However, in practice, alternative bases can be used, provided that they are appropriate to the circumstances and can be supported by documentary evidence, for example, keep invoices.

Yearlings

As with foals their cost is increased by the expenses incurred in their maintenance until they are sold or transferred into training.

The valuation of stallions and stallion shares is dealt with in Chapter 2.

1.4 Valuation of stock – the herd basis

As an alternative to the treatments set out above, where horses are kept for breeding, the owner may elect for them to be treated as a single herd, that is, as a capital asset in accordance with Section 111 ITTOIA 2005. However the herd basis is not normally recommended for horses and indeed Business Income Manual 55720 notes that such elections are unusual for horses.

1.5 Capital allowances

The cost of the stud land does not give rise to a trading deduction for bloodstock breeders. A breeder may however qualify for tax deductions on subsequent qualifying expenditure. These deductions, known as capital allowances are outlined in greater detail in Appendix II.

1.6 The use of tax losses

As previously indicated, losses from a commercial breeding trade are generally allowable for tax purposes while losses from racing are not - unless exceptionally there is a case for the racing to be treated as an extension of the breeding operation.

Where applicable, breeders trading as individuals are able to set the loss from breeding for the tax year against other income for that year or, if this is insufficient, against the income of the previous tax year. If the breeder pays tax on their other income at the current top marginal rate of 50% then the net cost of the breeding loss to him is only 50% after tax relief. If there is insufficient income in these two years to use up the losses, or no claim is made, the losses can be carried forward and set against profits from the same trade, without time limit. In the first four years of a trade breeding losses can be carried back and set against the income of the trader of the previous three years.

There is a restriction to the amount of losses that “non active partners” or sole traders can set against their other income in a particular tax year. Section 103 Income Tax Act (ITA) 2007 set a £25,000 cap on the loss relief that could be claimed, with a non active partner or sole trader defined as one spending on average of less than ten hours a week personally engaged in the activities of the trade. S74 ITA 2007 extended the loss restriction to non active traders as well as partners.

A company carrying on a trade of breeding can claim relief for the loss from breeding against its other income in the period or can carry back the loss against the profits of the preceding period (if the breeding trade was carried on during that period). Alternatively, if the company is part of a group or consortium, the loss can be passed on and set against the profits of the same period of another group or consortium company. As with an individual, any unused losses can be carried forward and used against future profits of the same trade without time limit.

If an individual or company is carrying back losses to a prior period or a company is passing on losses to another group company, a claim must be made to HMRC. These claims must be made within twelve months from 31 January following the end of the relevant tax year (for individuals) or two years from the end of the relevant accounting period (for companies). No claims are needed where losses are carried forward.

As losses from farming and breeding often continue for a number of years, specific legislation was brought in to restrict relief for losses in these circumstances. This is found in Section 67 ITA 2007 which states that if a tax loss (before taking into account capital allowances) from farming has been made for the past five fiscal years the above-mentioned reliefs against income in the current or prior periods shall not be available for losses sustained in any future year. Sub-section 3 provides something of an escape: where at the end of a tax year a ‘competent person’ would reasonably expect to make profits in the future, but could not at the start of the loss-making period reasonably have expected to make profits before then, loss relief will not be restricted.

In practice, HMRC accept that bloodstock breeding is a more long-term activity than farming and extend the five year period to up to eleven years from the commencement of the trade (concession since 1982 following HMRC and TBA meeting). If a profit is then made losses can be made for a further five years before the provisions of Section 67 ITA 2007 may again apply.

On the other hand, the Inspector of Taxes may decide to review the case if losses continue to be made. If, in doing so, he considers that the activity has not been carried on commercially from the outset, he may attempt to deny tax relief for the losses of past years and raise assessments to recover any tax due as a result.

2 Stallions and Syndicates

2.1 Introduction

As mentioned earlier, bloodstock is a high risk, long-term business. Mares do not generate income until their progeny are sold, a period of at least 18 months; meanwhile the owner must pay for their upkeep, together with the nomination fees. As a result losses are likely to be made in the early years. Stallions on the other hand produce income sooner, normally within a year of returning to stand at stud. The initial value of the stallion will depend on its success during its racing career as well as its pedigree and a stallion can be an extremely profitable asset from the outset, particularly where the stallion has a large book of mares.

The owner of a successful colt has a number of choices at the end of its racing career. It can be sold and, as the racing activity is not taxable, the proceeds will be received tax-free. Alternatively, the stallion can be retired to stud where it will enter the accounts at its market value on retirement, so that if it is sold by the stud at a later date, any increase in its value during its racing career would be tax-free. The stallion will generate income indirectly by covering mares belonging to the owner and directly through the sale of nominations to other breeders. This income can be generated in both the Northern and Southern Hemispheres, i.e. during two breeding seasons in one year.

A stallion's value on retirement from racing is determined by its future earning potential. A stallion which, from the outset, stands in both Northern and Southern Hemispheres will therefore have a higher value than if it was restricted to one hemisphere. By way or example, a new stallion, standing at £15,000 per nomination, covering 100 mares in each of the two hemispheres, might be valued at £9,000,000, whereas a stallion standing at a higher figure, say £25,000, covering only 75 mares in, say the Northern Hemisphere only, might only be valued at £5,600,000. As the future value of the stallion and its income producing life is uncertain, the owner may prefer to realise capital and still receive an element of future taxable income through nomination fees, as well as retaining the right to send his mares to the stallion. This can be achieved by selling the stallion to a syndicate of which the original owner is a member. However, more commonly in the past few years, an owner has sold a majority stake to a major stallion stud, either retaining a small minority share or simply a number of non-transferable annual breeding rights.

2.2 Valuation of stallions as stock

As discussed in section 1.3 above, horses treated as stock should be included in the accounts individually at the lower of cost and net realisable value. The value of the horse therefore has to be considered at each year end. However, as far as stallions are concerned HMRC generally accept a rule of thumb method of valuation where they allow the cost of a stallion to be written off in equal instalments until the stallion reaches the age of 10, with the write off being included in each year's profit and loss account. The aim of this method is to give an acceptable approximation to the net realisable value of the stallion. The method is not appropriate in the following circumstances:

- where the actual value of the horse is known at the balance sheet date; or
- where it gives an obviously unreasonable result, for example where the value of the stallion has increased, or fallen at a significantly different rate than under the rule of

thumb method.

2.3 Establishment of syndicates

Traditionally syndicates were formed with forty members, forty being what was felt to be the optimum number of mares that a stallion could cover during the breeding season without being subjected to undue strain. Stallions today often cover many more than 100 mares, but thus far syndicate sizes have not increased in proportion.

As each syndicate share normally entitles the owner to only one nomination there will usually be a significant number of surplus nominations available for sale. One or two may be required to cover the syndicate costs, but most will give rise to extra income for the members of the syndicate. The tax treatment of both the proceeds from the sale of nominations and the sale of syndicate shares is considered below.

2.4 Taxation of syndicates

Traditionally a syndicate has itself been taxed on the income from the sale of surplus nominations as an unincorporated association; however, a fairer reflection of the role of the syndicate is to treat the syndicate as a fiscally transparent entity with the income being taxed on the syndicate members in the appropriate proportions. It may be easier to justify the transparent treatment where either the syndicate operates as a Limited Liability Partnership or all syndicate members are involved in the syndicate management. Both treatments are discussed below.

2.5 Syndicates as unincorporated associations

Where a syndicate is taxed as an unincorporated association it is taxed as if it were a company. This is based on the principle that syndicates represent a pooling of economic interests under the control of a syndicate manager and committee, which have the power to accumulate or distribute any surplus income. In other words, it is similar to shareholders owning a stake in a company managed by a Board of Directors. The technical support for this view is not beyond question.

The tax treatment in such circumstances is as follows:

2.5.1 Purchase of shares

The share in the stallion syndicate will be treated as stock and valued each year at the lower of cost and net realisable value, with any write down in value being allowed as a deduction in calculating trading profits. As set out in 2.2, HMRC normally accept a rule of thumb method for valuing a share: the cost of the share is written off by equal annual instalments until the stallion reaches the age of ten.

2.5.2 Sale of shares

The net proceeds of sale will be treated as trading income, with a deduction being given for the written down value of the share at the date of sale.

2.5.3 Income from shares

There are two types of income than can be generated from the ownership of the share:

- income from the sale of the nomination attached to the breeder's basic annual breeding right from the share; and
- the member's share of the income from the sale by the syndicate of surplus nominations.

2.5.3.1 Income from sale of annual breeding right

Any income will be included as trading income with any write down in value being allowed as a deduction in calculating trading profits.

This treatment also applies where the member sells any bonus nominations to which they are entitled.

2.5.3.2 Income from sale of surplus nominations

As mentioned above, an unincorporated association is effectively taxed in the same way as a company and therefore any surplus income generated by the syndicate will be taxed in the syndicate and will be subject to the rules on distributions when it is distributed to the members. The syndicate has to produce annual accounts for each stallion and the profits shown in those accounts will be subject to corporation tax. As with a company, the syndicate members will be taxed on any distribution of these profits as if they were dividends received, and will therefore receive a tax credit.

2.6 Syndicates that are fiscally transparent

A syndicate is fiscally transparent where it has been set up for the mutual benefit of the members directly and where the syndicate committee acts only as an agent for the members. Whether this is the case will depend on the wording of the syndicate agreement which needs to be carefully considered. It should make it clear that all the risks and rewards of ownership are to be met by the members, in the relevant proportions, and that all gross income generated from the sale of surplus nominations will be distributed automatically to the members at agreed intervals, with the syndicate manager having no discretion in this matter. Where a syndicate is fiscally transparent the income and expenses will be treated as accruing directly to the members, in proportion to their holdings, rather than to the syndicate.

The tax treatment of such a syndicate in relation to purchase/sale of shares, income from shares and income from the sale of annual breeding right is the same as for an unincorporated association.

2.6.1 Income from sale of surplus nominations

The tax treatment here is significantly different to that of an unincorporated association. Any income from the sale of surplus nominations will be distributed in full directly to the syndicate members and taxed in full on those members. The syndicate expenses will be met directly by the members who will receive a deduction for these costs against their taxable income. Their net income will then be taxed as income depending on the circumstances of the member, as previously outlined.

2.7 Foal Sharing

This is where the owner of the (share in the) stallion agrees with the owner of the broodmare to split, in varying proportions, usually 50:50, the resulting proceeds from the sale of the foal or yearling which is the outcome from the mating concerned. Each person's share of the proceeds will be taxed in the normal way as income in their accounts.

The allocation of the costs of upkeep, insurance, etc of this joint venture are normally set out fully in the "foal sharing" agreement.

2.8 Gifts of free shares or nominations

Trainers and jockeys may receive free shares, nominations, or breeding rights on the syndication of a stallion when it retires to stud. The income which arises from this source is taxable in the recipient's hands - including the value of a share in a stallion given to a trainer or jockey - as income arising from the particular profession of trainer or jockey.

2.9 Free nominations in respect of keep

In order to reduce the costs of the syndicate committee in respect of keep it is often agreed that in lieu of this expense, the stud farm at which the stallion stands will receive free nominations.

Any income which arises to the stud farm from the sale of the nominations will be taxed in the normal way as part of its trading income.

The VAT implications of free nominations are discussed in the VAT section of this book.

2.10 Dual hemisphere stallions

As mentioned above, many stallions shuttle between the Northern and Southern Hemispheres, travelling from the UK in July/August and returning in December/January.

The taxation treatment of the income earned while in the Southern Hemisphere is dependent on the arrangements under which the stallions stands.

It is customary for the stallion to be leased to the stud in the Southern Hemisphere. In order for the income arising to the UK stallion owner not to be taxed in the Southern Hemisphere and possibly be subject to withholding taxes, the terms of the lease need to reflect a rental rather than trading arrangement. In other words, the stallion should be leased for a fixed rental to the Southern Hemisphere stud for them to exploit, with the risks and rewards associated with the transaction being transferred to the lessee, i.e. the income and expenses arising from the moment the stallion enters quarantine to his return to the UK. Any arrangement whereby the lease rental is linked to the total nomination income is likely to lead to the stallion owner being deemed to trade in the Southern Hemisphere jurisdiction.

Independent professional advice should always be sought before engaging in such a transaction.

3 Racing

3.1 Basic principles

The major taxation issue facing anyone involved in the racing of horses is whether this constitutes a taxable activity. As discussed in Chapter 1, in order for an activity to be treated as a separate taxable trade, it must be managed on a commercial basis with a view to the realisation of profits. As far as racing is concerned, the majority of horses are not profitable as only a relatively small number win enough to cover the cost of their training. S30 ITTOIA 2005 specifically states that animals kept wholly or mainly for racing or other competitive purposes should not be treated as trading stock and thus the racing activity cannot constitute a taxable activity. Where there are racing activities that do not form part of an owner/breeders activities, as discussed below, the income and expenses incurred for the purposes of that activity should be confined to a separate racing account and excluded from any tax calculation.

It must be noted that what is a trade for income tax purposes is not necessarily the same as a business for VAT purposes.

In the case of an owner breeder, racing is often an integral part of a stud farm's activities and should be taxed as part of the breeding activity, yearlings being transferred from stud to racing and returned to stud after their racing career. The argument runs that the horse will need to be tested on the racecourse to determine whether it has the appropriate physical qualities such as speed, stamina and courage to justify its retention for a breeding career. Where this is the case, a breeder's racing activities may exceptionally be regarded as an integral part of his breeding trade for tax purposes; the expenses of racing become an allowable deduction and winnings taxable in calculating trading profits. HMRC may accept by exception that fillies should be treated in this way as statistically a higher percentage return to their breeders' stud operations.

In most circumstances, HMRC generally regard the prospect of profit from racing to be too remote and so do not accept that it is a taxable trade. Rather, they regard it as a hobby or recreational activity or, in the case of a company, a non-taxable activity. This means that the costs of training are not tax deductible and any prize money is non-taxable.

If there is any doubt as to the correct tax treatment, advice should be obtained.

There is one other occasion when HMRC may attempt to combine the breeding and racing activities. This is when they consider the breeding of horses to be a hobby, and merely ancillary to the racing activity. In this situation, they will not allow relief for the breeding expenses since these expenses would be considered to have arisen from a non-taxable activity.

Although the hobby breeder is not trading, HMRC may, in certain circumstances, still raise an enquiry into the treatment by the individual of the occasional profit which they may make under the Self Assessment regime. HMRC are however expected to take a consistent view when considering profit and loss making years. The offsets against general income and capital gains as detailed in S64 & S71 of ITA 2007 are restricted where breeding activities are not considered to be both carried on a commercial basis and with the view to making a profit. The usual carry forward of trade losses (S83) should however still be available. It is advisable therefore that full records are maintained to provide concrete evidence of a trade being carried out commercially with a view to making a profit in such a situation. A business plan, continually updated, is very helpful in this regard.

3.2 Business and Racing

Horse racing today is a high profile sport and one of the most televised. Many companies are using racing to promote their products through advertising and sponsorship. It is therefore worth considering at this point the tax treatment of expenses incurred in connection with racing by businesses which do not operate a racing or breeding trade. Common examples of such expenditure include owning and running a racehorse, sponsorship and advertising. These types of expenses are almost always examined very carefully by HMRC.

The general rule for deductibility is in Section 54 CTA 2009 and Section 34 ITTOIA 2005. These sections state that expenditure will be deductible if it is wholly and exclusively incurred for the benefit of the trade of the business. Therefore, in general, a business will be able to obtain tax relief for racing expenses, and conversely will be taxed on any race winnings, where it can satisfy HMRC that the expenditure is incurred to promote the trade, for example by increasing awareness of its location, products and brands. Advertising and sponsorship may satisfy this criterion.

Successfully claiming a deduction for racing expenditure will be more difficult when the owners/managers of the business themselves have a known interest in racing, particularly where the company is a private company. HMRC will probably argue that the expenditure has been incurred because of the personal interest of the owners rather than for the benefit of the trade. This is discussed further below.

There is also the risk that there may be a taxable benefit on the employee or owner where HMRC regard the business's racing expenditure as a perk for that person. This is particularly likely to be the case where the business in question is a close company as defined by Section 439 CTA 2010 – that is, very broadly, where five or fewer persons control the company - where it is more likely that a director shareholder will be able to influence the spending of the company.

3.2.1 Advertising

Given the above, it is unlikely that a business will be able to claim a deduction for the cost of keeping and training a racehorse unless it can show that the expenditure is for the purpose of advertising its products. This will be dependent on the particular facts. In such circumstances any prize money from the horse will be taxable. In any case, the cost of purchasing a horse is unlikely to be deductible since it represents capital expenditure, whilst on the other hand leasing a horse is a revenue expense.

The factors that will determine whether advertising expenditure is incurred wholly and exclusively for the benefit of the trade include:

- What is the purpose behind the expense – is it to provide a corporate entertaining package or is it genuine advertising?

- What is the form of the advertising and is it in keeping with the company's size, structure and image?

- Is there evidence that the horse is being used for advertising purposes? Where the horse is named after the business or its products then the expenditure is more likely to be accepted as advertising. This will be a question of fact and you should ensure you keep good records.

- Is the advertising likely to generate more business and has the decision to advertise in this way been based on commercial principles?
- Is the amount spent reasonable in relation to the benefits claimed from the advertising or promotion?

3.2.2 Sponsorship

In 1994 owner-sponsorship was introduced in racing. This allowed owners to be sponsored and the sponsor to advertise on the jockeys silks, breeches, horse rugs etc.

Before entering into any sponsorship agreement, businesses should consider how such an agreement can be best structured for tax so that the maximum relief is obtained.

Claiming a deduction for a sponsorship payment should in theory be no different to claiming a deduction for advertising expenditure. In structuring sponsorship there are a number of basic principles which should be followed.

1. The sponsorship agreement should be entered into by the trading business whose trade is to benefit from the sponsorship and not, for example, by a non-trading holding enterprise. Equally, where a horse or race is to be named after the company it should be named after said business in the sponsorship agreement and the sponsorship should have a clear benefit to that particular business.

2. The expenditure has to be revenue in nature in the hands of the payer since no deduction will be given where the business is incurring expenditure on fixed assets, for example, on the acquisition of a racehorse, or a share in a racehorse. Provided that it is for the recipient to decide how the money should be spent, then even if the recipient chooses to acquire a racehorse the cost to the business should still be deductible as a revenue expense.

3. As mentioned above, the main benefit of the expenditure must be to the trading business which then needs to show that the sponsorship payment falls into the same category as its normal marketing and promotional activities. A deduction will be available if the business can show that the sole purpose of the payment is to help market its products and services and that any benefit to an employee or director is purely incidental.

The question of what is considered incidental was examined in McQueen v Revenue & Customs Commissioners 2007 STC (SCD) 457 where the owner of a coach company promoted the trade by racing a liveried rally car personally. In that case the personal satisfaction of Mr McQueen was considered to be incidental to the promotional activity so it could be considered that the mere enjoyment of racing will not conclusively rule out a deduction. In this particular case Mr McQueen claimed that he was interested in sailing yachts, so rallying was not necessarily his primary hobby.

That the motive for a payment is important was made clear in the 1996 Special Commissioners case Executive Network (Consultants) Ltd v O'Connor. Here a company was making payments to the controlling shareholders wife's riding school business and claiming a deduction on the basis that they were sponsorship payments. The deduction was disallowed on the basis that it was not wholly and exclusively for the purpose of the company's trade, even though the sponsorship had generated new work. The Special Commissioners determined that 'personal benefit played a part in the decision to make the sponsorship payments', particularly as the amount of the payments was strongly influenced by the losses being made by the wife's business.

Even where there is no personal or family connection care needs to be taken where there is any benefit to the racehorse owner or trainer who is receiving the sponsorship funds, whether or not this is of primary concern to the sponsor. The case of Interfish Limited v Revenue & Customs Commissioners UKFTT TC520 considered sponsorship payments by the company to a Rugby Club. The director of Interfish had considerable involvement with the Club. The fact that the Club was seen to receive considerable benefit from the payment was deemed to prevent a deduction under s54 CTA 2009. The fact that Interfish's business benefited as a consequence of the benefit to the Club did not stop any benefit to Interfish being considered a secondary purpose.

As noted in the judgement, the requirement of being wholly and exclusively for the purposes of the sponsor's own trade is a restrictive one.

"It would be surprising if the provision allowed the deduction of sums laid out for the immediate purpose of promoting the trade of someone other than the taxpayer, particularly in circumstances where the "knock on" benefits to the taxpayers trade, whilst real, are intangible and hard to quantify. If then by dint of a close acquaintance sums paid over in sponsorship can be seen to directly relate to specific costs, payment of which benefits the horse owner, this could well lead to the restriction of any tax deduction".

A final consideration is that it may be advantageous if the horseracing sponsorship is not the only promotional activity and that it forms just one part of a marketing programme. It is therefore helpful if the reason for the sponsorship is documented beforehand, for example, in the minutes of management meetings.

More recently, in Chepstow Plant International & Another v Revenue & Customs [2011] UK FTT 166 (TC) the company paid training expenses for several horses. HMRC sought to have the expenses treated as a benefit to the director in whose name the horses ran. The director could show he had no real interest in the horses and indeed never visited the trainer. It was held that as he did not have a personal interest he was not receiving a personal benefit, so was not liable to personal tax or national insurance.

Further details on race sponsorship are contained in the British Horseracing Board's publication: Racehorse Owner's Sponsorship Code of Conduct'

Sponsorship and corporate entertaining

A further benefit to a business of sponsorship, other than marketing and advertising its products, is that it may provide the business with a structured corporate entertaining package, for both staff and clients. As a general rule a business will only get a tax deduction for entertaining expenses that relate to the entertaining of staff (although the staff could face personal tax liabilities – see below). For this reason, sponsorship deals that include an entertaining package should be carefully structured so that the entertaining element, if any, can be separately identified and the size of any disallowable expenditure identified. It may be preferable to agree an allocation of cost, showing how much of it relates to entertaining, with the provider of the packages, rather than leave it to

HMRC to suggest an apportionment on an inappropriate basis. Remember that the marginal cost to the racecourse of providing badges, and even a box, may be little or nothing if, as is regularly the case, racecourse attendance is less than capacity.

There is often a fine line between what constitutes entertaining clients and what in effect is the rewarding of staff and the tax treatment is very different in each case. Where an employee is involved in entertaining clients then this is claimed as client entertaining and the business will not get a deduction for the expense. There will also be no benefit taxable on the employee. The opposite is true where the business is solely entertaining employees, for example by paying for a day at the races. In this case the business will be able to claim a tax deduction for the expense but the employee may be taxable on the benefit received. This issue is considered further in chapter 5.

Further guidance is provided in the HMRC Business Income Manual (sections BIM 45005-45090).

The VAT treatment of advertising and sponsorship is dealt with later in this book.

4 Trainers

4.1 Introduction

Trainers fall into three basic categories, those training their own horses, those of relatives under a permit, and those training horses for the general public. A trainer may have a number of horses, from one to two hundred, in his yard. Many trainers operate as a sole trader, however, some are salaried employees of an individual or employees/directors of a company. The reasons for this are discussed below.

A trainer's income mainly consists of training fees, although some trainers now operate racing clubs in which individuals pay an annual subscription for a share in a syndicate owning one of the trainer's horses, together with other benefits such as hospitality at the racecourse on race days. Trainers incur large overheads, notably in payment of staff and the purchase of feed, hay and tack. Other expenses such as veterinary costs and the costs of transporting horses to and from the races may be charged to the individual owner or may be borne by the trainer and then charged in an all inclusive training fee.

Trainers usually own the premises from which they train; indeed in the case of a smaller trainer the training operation may well be run in conjunction with a working farm. Alternatively, the trainer may lease premises.

4.2 Basic principles

The tax treatment of a trainer is largely dependent on whether HMRC consider that the operation is run on a commercial basis as a trade, or as a hobby. As the distinction affects the availability of losses for offset against an individual's other income, it is particularly relevant for the permit holder and the smaller trainer, who may be more likely to make losses. The general principles which will be considered by HM Revenue & Customs in determining whether a trade is being carried on are considered in greater detail in Appendix VI.

Where HMRC regard racing as a hobby, any costs incurred by a trainer in connection with training a horse they own should not be deductible for tax purposes. On the same basis any trainer's prize money received in relation to a horse he owns should not be taxable. It is, however, understood that some trainers do claim deductions for such costs, and presumably tax any trainer's prize money, and in these circumstances it should be ensured that details of all horses owned by the trainer are fully disclosed to HMRC. This is important for both a permit holder training his own horses and the commercial trainer, many of whom buy a horse at a sale without a specific order from an owner and may subsequently be unable to sell all or part of the horse.

HMRC accept that where a trainer buys a horse without an order, he may claim the costs associated with the horse provided that it is clear that he is making genuine efforts to pass the horse on to an owner. The trainer should keep evidence of his efforts to sell the horse. Any HMRC enquiry will consider this point.

If a trainer is only the part owner of a horse, (shares are often retained at the request of the owners) a proportion of the associated costs will be allowed for tax purposes provided the owner/owners actually pay a training fee. If the other party merely paid for part of the purchase cost of the horse and does not pay a fee, HMRC take the view that none of the costs are deductible for tax purposes.

Trainers should therefore ensure that they account for the costs associated with their own horses correctly, particularly if the training operation is run in conjunction with another business. Bear in mind that HMRC have mounted a number of enquiries into farmers registered as trainers who have included the expenses of training their horses in the accounts of the farming business.

4.3 Operating as a sole trader or as an employee

The decision as to whether to operate as a sole trader or a salaried employee will depend on both practical and commercial considerations. These are discussed in Part 1 Chapter 6. However, it should be noted that where a trainer operates through a company it is often in circumstances where the trainer is not the main shareholder of the company and instead the company has been set up to allow others to invest in the trading operations. This gives a trainer operating as a salaried employee the added advantage that he will be able to concentrate on the training of horses while others consider the financial affairs of the business.

A trainer operating as an employee should be aware of the provisions for taxing benefits provided to employees. These employee issues are discussed in greater detail in Part 1, Chapter 5, but the provisions relating to an employee's accommodation are particularly relevant to a trainer who is provided with a house as part of his employment. In normal circumstances the accommodation would represent a taxable benefit on the employee. However, if the accommodation is job related there is no taxable benefit, and it is likely that this will be the case here. This is discussed further in the guidance note to trainers on the provision of living accommodation for stable staff included in Appendix I.

4.3.1 Owning and Leasing Land

A trainer who has a lease on his yard will be able to claim a full tax deduction for the rent paid although if the rent includes a charge for the trainer's house, no deduction can be claimed for the proportion of the rent representing the house, excluding areas used as offices.

4.4 Capital Allowances

A trainer operating as a sole trader will qualify for capital allowances on expenditure on certain items of plant and machinery. Further detail on the availability of capital allowances is outlined in Appendix II.

4.5 Entertainment

One of the major concerns of any trainer is attracting new owners and retaining existing owners and a number of marketing strategies are employed, including the provision of hospitality for existing and potential owners when visiting the stables and at the racecourse.

The provision of entertainment to a customer is not deductible for tax purposes and therefore such costs are disallowed in computing the taxable profit of the trainer.

On the other hand, the cost of the provision of hospitality packages as a separate trade from, or adjunct/addition to, training, including charging a fee to individuals or companies taking up the packages, would be deductible.

4.5.1 Racing clubs

Increasingly the ownership of racehorses is open to a wider group of people through the establishment of racing clubs, where individuals pay a subscription for a share in horses owned by the club and usually for hospitality at the racecourse when the club's horses are running. Many trainers are now starting their own clubs as a means of introducing people to the experience of owning a racehorse.

A racing club organised by a trainer may be regarded as a separate trade but there is the possibility that HMRC might seek to challenge the tax deduction of the provision of hospitality for the club members on the grounds that this represents entertaining potential and existing clients. The possibility of an HMRC challenge would be reduced if the members of the club paid a specific charge for the provision of hospitality rather than this being included in their annual subscription.

5 Employee Issues

5.1 Introduction

Employment issues are relevant to all the sectors being considered in this book; breeding, racing and training, and the tax treatment of potential employee benefits is of particular importance.

Status

Before considering the treatment of employees it is important to review whether workers should be considered to be employed or self employed. Businesses will often have permanent or temporary employees but also require the services of self employed contractors on a regular or intermittent basis. In racing self employed contractors can include book-keepers, work riders, and farriers.

A worker's employment status, that is, whether they are employed or self employed, is not a matter of choice and it is important for both the worker and the engager to consider the employment status of the worker. For the self employed there are obligations to comply with the requirements of both national insurance and self assessment. For the employer there will be requirements under PAYE and also for example for compliance with the Working Time Directive and the National Minimum Wage legislation.

General guidance on employment status can be found at the HMRC website. However, of particular use is the Employment Status Indicator found at the following location:

http://www.hmrc.gov.uk/calcs/esi.htm

The following guidance is issued by HMRC in considering employment status. There may well however be no definitive answer so it is important to ensure evidence is available to support the engager's viewpoint should HMRC challenge the status of for example, self-employed work riders.

Employed or self- employed

Often it can be very difficult to decide whether someone is employed or self-employed.

As a general guide,; if the answer is 'Yes' to all of the following questions, then the worker is probably an employee:

- Do they have to do the work themselves?
- Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
- Can they work a set amount of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week, or month?

- Can they get overtime pay or a bonus payment?

If the answer is 'Yes' to all of the following questions, it will usually mean that the worker is self-employed:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

It is important to have evidence that self-employed contractors are paying tax and national insurance in their own right. Keeping details of their tax references is the minimum requirement.

Employees

In general, where an employee earning £8,500 or more (including the value of benefits) is provided with, by reason of his employment, any benefit that is not otherwise charged to tax as his income, then the cash equivalent of the benefit will be taxed as part of his earnings. The governing law is given in the general charging provisions of Section 201 Income Tax (Earnings and Pensions) Act ("ITEPA") 2003. This covers all benefits other than those that are specifically included elsewhere in the legislation, for example the provision of cars and car fuel, vouchers and living accommodation. As mentioned above, in general an employee will be taxed on the cash equivalent of any benefit received. The exception to this is where the benefit is provided 'in-house', for example, the provision of livery. In this case the employee will be taxed on the marginal cost to the business of providing the benefit, following the decision in the 1992 case Pepper v Hart.

Two areas where benefits arise, which are particularly relevant here are the provision of living accommodation and staff entertaining. These are considered below.

5.2 Taxation of Accommodation

A guidance note issued to trainers that deals with the tax treatment of living accommodation for stable staff is included in Appendix I.

This guidance note relates to stable employees. There is no formal agreement for Stud staff though many studs will have negotiated individual agreements. The general rules with regards to accommodation will apply where there are no separate agreements in place. These general rules are as follows:

If the accommodation is job related, there is no taxable benefit. Job related accommodation is that which is either:

a. necessary for the proper performance of the duties of the employee OR

b. both customary AND enables the better performance of the employees duties OR

c. where there is a special threat to security.

This applies to all employees except directors, however much they earn. Directors can only claim the exemption under c above.

If the accommodation is exempt the following amounts whether paid on behalf of or reimbursed to, the employee are also excluded:

- Council tax
- Water charges
- Sewerage charges

If other items are paid for or provided to the employee such as utility bills or furniture these are assessable on the employee but the assessable amount is restricted to 10% of the employee's earnings.

If the accommodation is not job related there will be a benefit assessed on the employee. The benefit will be valued at the greater of the gross rateable value and the rent paid by the provider of the accommodation, if applicable. There is an extra charge where the total cost of the property is greater than £75,000. Any rent paid by the employee towards the accommodation will be deducted when calculating the benefit.

Living expenses as mentioned above are not a taxable benefit for those earning less than £8,500 per annum, where the £8,500 includes all benefits as set out in Appendix I, provided the costs are met directly by the employers. There will be a taxable benefit for employees earning more than this amount. The value of the benefit will depend on whether the accommodation is job related or not. If the accommodation is not job related then the benefit will be valued at the cost of the expenses; if it is job related the benefit is valued in the same manner but is limited to 10% of the employee's net earnings.

5.3 Taxation of staff entertaining

As discussed in Chapter 4, employees may be subject to a taxable benefit where a company is involved in staff entertaining. The employee will be taxed on the cash equivalent of the entertaining expenditure. For example, when a company spends £50 on a night out for the employee, he will be taxed on a benefit of £50. (Expenditure on annual parties and functions is exempt provided expenditure does not exceed £150 per head. If the £50 is exceeded the whole benefit is taxable).

Under the guidance given by Pepper v Hart an employee can argue that he should be taxed on the marginal cost to the company. This will be relevant where a company provides staff entertaining as part of a sponsorship package. For example, a company may decide to sponsor a major racing event, by funding the prizes, publicity and marquees and may receive day tickets at no extra cost. If it makes these available to its employees, then the benefit to the employee is arguably nil. However, HM Revenue & Customs may question such an arrangement closely to determine whether the employees do actually receive a taxable benefit. Clearly companies must take great care in this area and document all their decisions and the reasons behind them. There will be many other issues to address as part of the overall decision making process.

Isolating 'marginal' costs is therefore a key area for tax purposes and companies need to decide whether it would be better to offer up a small PAYE liability calculated by establishing a marginal cost if tickets have been received at a bulk discounted rate well below normal market value. Alternatively, companies may decide to strip out all client entertaining and staff-related costs from the sponsorship package.

5.4 Taxation of Bonus Payments and Pool Money Received by Stable Staff

The share of prize money allocated to the yard for distribution among the stable staff is known as Pool Money. It is not unusual for winning owners to also make an ex-gratia payment to be shared amongst the yard's staff. Both payments are earnings for tax purposes and should be taxed under PAYE through the payroll when the payment to the staff is made. Please see recently issued guidance at 5.8

For National Insurance purposes HM Revenue & Customs are prepared to accept the payments as a gratuity and therefore excluded from earnings if they simply pass through the employer's, i.e. the trainer's, hands. The payments of Pool Money or bonus payments can pass through the employer's bank account without compromising the National Insurance treatment. The exclusion will not apply where the employer decides how the money should be shared out; to obtain the concessional treatment the employer (trainer) should play no part in the decision making process.

5.5 Stable Lad subsistence allowance

HMRC publish specific allowances that employees of racehorse training or stud farm establishments, can, by concession, receive tax free when away from their normal place of work. Allowances are updated occasionally and can be found at the following page of the HMRC website:

http://www.hmrc.gov.uk/manuals/eimanual/eim68515.htm

Current allowances are as follows:

Overnight allowance	£13
Daily Allowances	
Up top 6 hours	£7
6-8 hours	£9
8 hours or more	£12

Sunday racing payment	£12
Racing abroad allowance	£21

It is standard for an amount of £30 per day to be paid on a Sunday and £27 per day to be paid for travelling abroad however amounts over those detailed above should be subject to PAYE.

Where a Sunday Racing payment or Racing Abroad allowance is paid any daily allowance should be taxed.

5.6 Annual Settlement

In circumstances where an employee is taxable on a benefit received, a company can pay the tax on the benefit by entering into a 'PAYE settlement agreement' (PSA) with their local PAYE office. PSAs were introduced in the 1996 Finance Act to replace the 'annual voluntary settlement' system. They allow employers to settle in one payment the income tax liability on minor benefits which are not paid to employees on a regular basis. The benefits included in the agreement do not then have to be included in Forms P9D and P11 D or on an employee's tax return, if applicable. They therefore provide flexibility to a company and mean that an employee does not have to suffer the tax on the benefits they receive which are covered by the agreement, and the company effectively meets their tax liability. This will, of course, increase the cost of the benefit for the company. The employer has to make the payment agreed on the PSA by 19 October following the end of the tax year to which the PSA relates.   PSA agreements have to be revisited and agreed each year with HMRC.

5.7 Dispensations

If a business provides any employee or director with goods or services, pays for any bills on their behalf, or reimburses expenses incurred by the director or employee (including business expenses) which the employee can claim as an expense, then the employer needs to consider whether these items need to be included on a form P11D. In order to simplify the P11D process by excluding most items where there would be no net taxable benefit, it is possible to apply for a dispensation from HMRC that specifically permits such omissions from the PlID.

By concession HMRC will apply the dispensation from the start of the tax year in which the application is made.

It is recommended that all businesses review their circumstances as there is often a cost benefit in reducing their compliance obligations.

Please note that accurate records of benefits need to be mentioned even if a dispensation is in place.

5.8 Revenue Guidance Issued July 2011

HMRC Manuals/Manuals A To Z/PAYE Online Manual/PAYE70200 PAYE Operation: Specific Employments: Contents/PAYE70275 PAYE Operation: Specific Employments: Racehorse Trainers / Stud Farm Employees

PAYE70275 PAYE Operation: Specific Employments: Racehorse Trainers / Stud Farm Employees

Additional payments by employers and horse owners

Where an employee of a racehorse trainer or stud farm receives payments in addition to wages (see the Employment Income Manual (EIM) at EIM68500), these are assessable as employment income.

Payments made by the employer

Payments may be made

- By the employer on his or her own behalf

Or

- By the employer on behalf of a third party such as a racehorse owner

Examples of payments are

- A percentage of prize money for a winning horse
- A percentage of racehorse stake money
- Fees for leading a horse between stable, stud farm or station
- Presents for mares in foal
- Groom fees

Such payments should be taxed under PAYE by the employer in the normal way along with the wages or salary of the employee. The payments are also liable to National Insurance contributions.

Horse owner makes payments direct to employee of a trainer or stud farm

Where payments are made direct to an employee by the horse owner, the owner is required to operate PAYE. The employer is liable for Class 1 NIC on such payments and the owner should advise the employer of the payments.

In any case of difficulty, consult PAYE Technical Advice - Shipley.

6 General Direct Tax Issues

As has been seen from the discussions above, the tax treatment of some elements of the racing industry has evolved over time and has become specific to these industries. However, there are still some basic rules that should be considered. These are set out below.

6.1 Planning the Investment Vehicle

Where HM Revenue & Customs determine that a person is operating a trade, the profits from that trade will be taxed as trading income. This is the case where the trade is operated through a company or otherwise. The tax paid will, however, vary depending on the type of operating vehicle for the trade, the main difference being that broadly, a company is subject to corporation tax on any taxable profits at the effective rate shown below

Taxable profits	April 2011 – March 2012	April 2012 – March 2013	April 2013 – March 2014	April 2014 – March 2015
First £300,000	20%	20%	20%	20%
Next £1,200,000	27.5%	26.5%	25%	23.75%
Balance over £1,500,000	26%	25%	24%	23%

Some of the above rates have been proposed by the Coalition Government but are subject to Parliament passing the relevant legislation.

A sole trader is subject to income tax at a marginal top rate of 50% . It is therefore important that professional advice is taken when commencing a trade to determine which vehicle is best for the individual concerned. The main differences between the three most common options – operating through a limited company, as a sole trader or via a husband and wife partnership – are discussed below.

The decision will depend on the activity being carried on, whether it be racing or breeding or a mixture of the two. For example, where an individual is carrying out a racing activity this is not taxable and therefore different criteria have to be considered. Racing is rarely a profitable activity and therefore there will be an obvious benefit in operating through a limited company since that company will have limited liability and the individual will only be liable for any losses to the extent of his shareholding in the company. In practice an individual is likely to guarantee any borrowing to support a loss making venture. On the other hand, where there are profits or capital gains from racing these will not be taxable in either a company or on a sole trader. Where they arise in a company and the individual wishes to withdraw the related profits from the company, if these are withdrawn via the payment of a dividend then the individual will be taxed on that dividend. This would have been avoided if the activity were operated directly by the individual.

6.1.1 Investment as a sole trader

Where a person operates a trade as a sole trader, he will be subject to income tax on the tax adjusted trading profits, at the individual's top marginal rate of income tax, which, at the current rates, could be 50% Any trading losses, provided they are not restricted due to the trade not being run on a commercial basis (see section 1.6), can be relieved against any other current year or prior year income, or future profits from the same trade.

The trader will also have to pay Class 2 and Class 4 National Insurance contributions at the rates given in Appendix III.

6.1.2 Investment through a husband and wife partnership

Where a husband and wife are both actively involved in the trade and particularly where the stable premises are jointly owned, operating the training business as a husband and wife partnership can have certain tax advantages.

The income tax liability of each spouse would be based on their share of the tax adjusted business profits thus maximising the lower rates of tax. The national insurance liability, classes 2 and 4, needs to be considered as this may reduce the overall benefit of trading through a partnership.

The introduction into the business of a spouse as a (working) partner will ensure that the spouse's interest in the business premises qualifies for Entrepreneurs Relief for Capital Gains and also for Business Property Relief for Inheritance Tax, subject to the other conditions being met.

As with any form of planning, the particular circumstances of each case should be considered.

6.1.3 Investment through a Company

The business profits will be computed as trading income in accordance with the Taxes Act and subject to corporation tax. The rates of corporation tax for financial year starting on 1 April 2011 are as follows:

	Rate of corporation tax
Taxable profits up to £300,000	20%
Taxable profits between £300,000 and £1.5 million	27% but the tax charge is reduced by: 7/400 x (£1,500,000-P) x (I/P) Where I is the taxable profits of the company and P is these profits adjusted to include the non-group Franked Investment Income of the company.

Taxable profits over £1 .5m 27%

These bands are reduced where the company has associated companies, that is, other companies with commercial interdependence.. From April 2011 the rules relating to associated companies changed. Prior to that date companies were associated if they were under common control. Now the determining features are:-

- Financial interdependence
- Economic interdependence
- Organisational interdependence

Given that the corporation tax rate on profits is lower than the income tax rates there is at first sight an obvious advantage to trading through a company. However, if the shareholder wishes to withdraw the profits from the company then these profits will be taxed again on that individual, as employment income if the funds are withdrawn by the shareholder taking a salary, or as investment income if the shareholder is paid a dividend.

Where the shareholder is paid a salary the company will, provided the salary is not excessive, receive a tax deduction for that salary. The individual will then pay income tax on that salary. National Insurance contributions will also need to be paid. The rates of National Insurance are given in Appendix IV.

Shareholders receiving a dividend will be treated as receiving a non repayable tax credit which is reduced to one-tenth of the gross dividend (the dividend including that amount).

If the company makes losses these can be set off against total taxable profits of the same period, total taxable profits of the previous twelve months or against future profits of the same trade. This gives much the same loss relief as for a sole trader.

Where the trade is operated from a company that is part of a group of companies any losses can also be passed on to other companies in the same 75% group. A 75% group exists where one company is a 75% owned subsidiary of another, or both are 75% owned subsidiaries of the same company. Therefore, it may be advisable that, where an individual who already owns a group of companies decides to set up a trade in a new company and anticipates that the trade will make losses, for the company to be held as a member of the group of companies. The long term implications should also be taken into account. For example, what will the shareholder do when and if he wants to sell if he decides to sell the shares in the company then the proceeds will flow up to a holding company in the group and this holding company may have to pay corporation tax on the capital gain, subject to the availability of substantial shareholder exemption.

Substantial shareholder exemption is available on the disposal of a shareholding in a trading company by a company which holds in excess of 10% of the share capital of the company and has held these shares for more than 12 months at any time in the past two years. If these proceeds are then distributed back to the shareholder he will be taxed again on the investment income. This obviously may not be tax efficient. There are other ways in which the value can be taken out of a company.

6.2 Capital Gains Tax ("CGT")

Both horses which form part of the bloodstock of the stud farm and racehorses in training are not subject to CGT, for the following reasons.

The bloodstock forms part of the commercial activity of the stud farm and will normally be treated as stock-in-trade. They are therefore not capital assets for the purposes of this tax.

Racehorses in training are both tangible moveable property and "wasting assets" as defined by Section 44 Taxation of Chargeable Gains Act ("TCGA") 1992, as they have a predictable life of less than fifty years. Section 45 TCGA 1992 states that "no chargeable gain shall accrue on the disposal of, or of an interest in, an asset which is tangible moveable property and which is a wasting asset".

The exception to this wasting asset rule is where an asset is used solely for the purposes of the trade and the expenditure is eligible for capital allowances. This exception does not apply to racehorses in training as this activity is not treated as a trade and a horse is not eligible for capital allowances.

6.3 Inheritance Tax ("IHT")

6.3.1 **General**

The liability to inheritance tax primarily arises on death. The deceased's estate is valued at that time and if the chargeable transfer exceeds the nil rate band of £325,000 for 2011/12 , IHT will be payable. If the assets are left to the UK domiciled spouse then IHT will normally be deferred until the death of the surviving spouse.

Lifetime gifts to an individual are exempt so long as the donor survives seven years, and the donor does not continue to benefit from the asset or money that was gifted. However, lifetime gifts to any form of trust (i.e interest in possession trusts or discretionary trusts) are normally chargeable at the time of the transfer at a lifetime rate of 20%, following changes adopted in the Finance Act 2006.

A general description of inheritance tax is set out in Appendix IV.

6.3.2 Reliefs available

In the present context, the IHT reliefs which are of particular significance are agricultural property relief and business property relief. These forms of relief are considered below. Agricultural property relief takes precedence over a claim for business property relief if both forms of relief are available on the same item.

Agricultural Property Relief ("APR")

APR is available where an individual or partnership transfers land and buildings that they own/owned and use for agricultural purposes. It is also available in respect of transferred shares or securities in agricultural companies to the extent that their value is attributable to agricultural property provided that the transferor has control of the company immediately before the transfer. Land and buildings at a stud farm in the UK used for the breeding, rearing and grazing of horses qualify for APR. The farmhouse or stud house can be included within the definition of APR. However, HMRC are reluctant to give APR on farmhouses and there have been several cases where relief has been denied. The house must be both of a character appropriate to the stud and must be occupied for the purposes of running the stud.

Provided that certain other conditions apply, a deduction of 100% is available if:

- the interest of the transferor carries the right to vacant possession (or the right to obtain it within 24 months); or if

- the transferor was granted a lease of the land after 1 September 1995.

In other cases the relief is restricted to 50%.

Relief is available if either of the following ownership and occupation conditions is satisfied:

- the property has been occupied by the transferor and used for agricultural purposes for a period of two years prior to the date of the transfer; or

- the property has been owned by the transferor for a period of seven years prior to the date of the transfer and has been used for agricultural purposes throughout that period either by himself or another.

If the gift of agricultural property becomes chargeable because it was made within seven years of the death of the donor, it must be held by the donee throughout the period up to the donor's death and still remain agricultural during that period for relief to be given.

Business Property Relief "BPR"

Relief is also available on the transfer of 'relevant business property' provided that it has been owned for a minimum period of two years.

Relevant business property comprises:-	*Applicable rates*
Property consisting of a business or an interest in a business (e.g. sole trader, share in partnership – including breeding stock)	100%
Unquoted securities of a company which, together with other securities and unquoted shares, gave the transferor control of the company immediately before the transfer.	100%
Controlling holding in quoted trading companies	50%
Any unquoted shares in a trading company	100%
Land, buildings, machinery and plant which immediately before the transfer was used wholly or mainly for the purposes of a business carried on by a company controlled by the transferor or by a partnership of which he was then a partner.	50%

Land, buildings, machinery and plant which immediately before the 50%/100% before the transfer was used wholly or mainly for the purposes of a business carried on by the transferor and was settled property in which he was then beneficially entitled to an interest in possession.

Therefore, shares in an unquoted company which carries on bloodstock breeding activities, taxable by HM Revenue & Customs as a trade, could attract business property relief of up to 100%.

The transfer of shares in a company which does not carry on a trading activity, such as racing, will not attract business property relief.

Again, the business property will still need to be held by the donee at the donor's death and remain as business property if the donor dies within seven years of making the gift, for relief to be given.

6.4 Enterprise Investment Scheme

The Enterprise Investment Scheme ("EIS"), which replaced the Business Expansion Scheme in 1994, is designed to offer to members of the public an incentive to invest in unquoted trading companies by offering them a tax effective means of doing so.

EIS relief is only available for companies engaged in a qualifying trade. A company is engaged in a qualifying trade, if during a period of three years following the issue of the EIS shares, its activities do not include to any substantial extent 'excluded activities'. Since 17 March 1998 "farming" has been an excluded activity and HM Revenue & Customs regard the commercial breeding of livestock as farming. Bloodstock breeding is, however, not an excluded activity and if this is carried out without the occupation of land, this is generally an accepted trade.

A number of syndicates have taken advantage of the EIS. An advance clearance procedure is available to ensure that the activity to be carried out by the company comes within the legislation and this clearance procedure should be used.

The tax reliefs afforded by investment in EIS companies are:

Income tax

- 30% (20% for shares issued prior to 5 April 2011) relief for shares up to an annual investment of £500,000 (£1,000,000 from 6 April 2012)

  (Increases in limits are subject to EU state aid approval)

- Income tax relief is dependent on several conditions including the requirement that an individual investor and his connected parties may not own more than 30% of the share capital of the company. Care should be taken when different classes with different voting rights might inadvertently breach the limit.

- The company has to fulfill the conditions required by the legislation for 3 years to prevent the relief being withdrawn.

Capital Gains Tax

- A reinvestment of any capital gain into EIS shares will defer the tax liability until the disposal of the EIS shares occurs.

- Gains on EIS shares are tax free where income tax relief has been received.

Professional advice must be sought where an EIS investment is contemplated.

6.5 UK Taxation Implications for Foreign Nationals

General

This section concentrates on the UK taxation implications for foreign nationals. The legislation is relation to UK tax for foreign nationals has been the subject of material changes in recent years. Recent consultation documents on residence will change how residence is established so specialist professional advice should be sought in relation to foreign nationals coming to the UK.

Income tax and capital gains tax (and non UK domiciled).

Resident for less than 7 years

Tax is charged on UK income (or gains) on an arising basis and on non-UK income (or gains) as it is remitted to the UK.

Resident for more than 7 years out of the previous 9 but less than 12 years (and non UK domiciled)

As above plus Remittance Basis Charge of £30,000 or the option to be taxed on worldwide income and gains.

Resident for more than 12 years out of the previous 15 years (and non UK domiciled)

The Government issued a consultation paper in June 2011 which proposed that from 6 April 2012 the Remittance Basis Charge will be increased to £50,000 for those individuals who have been resident in the UK in 12 out of the previous 15 years.

The consultation paper mentioned above also proposed that an investment into a company with trading activity in the UK, or investing in commercial property in the UK, should not be regarded as a taxable remittance.   Legislation is expected to become effective from 6 April 2012.

Inheritance tax Tax is chargeable on assets situated in the UK only. However, a non-domiciled UK resident will be treated as UK domiciled for IHT purposes if they have been resident in the UK for income tax purposes for 17 out of the last 20 years.

Non domiciled individuals coming to the UK should seek specialist advice before their arrival in the UK.

Bloodstock breeding

The UK tax treatment of bloodstock breeding activities is explained in detail in Chapter 1. The main points of relevance to a non-domiciled UK resident are:

a) Tax losses may be used to shelter remittances of foreign source income and capital gains from UK tax. Alternatively they may be offset against UK source income and capital gains.

b) A capital gain on the disposal of UK land used and owned by a non-resident in their trade will be liable to UK capital gains tax. Non residents need to be careful in structuring their activities to avoid direct ownership in the UK.

c) As mentioned above, UK IHT applies to UK assets only. Bloodstock and land in the UK which are owned through a non-UK incorporated company may avoid the charge to IHT.

Stallions

The UK tax treatment of income from stallions and stallion syndicate shares is explained in Chapter 2. The main points of relevance to a UK resident foreign national are:

a) A gain on the sale of a colt which is being raced and is not used for breeding purposes should not be liable to UK tax.

b) A gain on the sale of a stallion which is at stud is normally included in the calculation of the profit/loss of the breeding activity, hence liable to UK income tax.

c) Nomination fees from a stallion standing at stud in the UK or from a share in a UK stallion syndicate, are generally regarded as UK source income and liable to UK tax. Care must be taken where a foreign national has substantial breeding activities outside the UK.

d) A gain on the sale of a share in a UK stallion syndicate which is held as an investment rather than as part of the stock in trade of a breeding activity is tax-free in the UK.

Leasing racehorses

Where a breeder does not want to sell a horse that is about to commence its racing career, but at the same time does not want to incur the costs of racing the horse, he may decide to lease the horse to another individual/company. This is a fairly common arrangement. The terms of the lease would usually be such that there would be no rents paid under the lease, and all the expenses and prize money of the racing accrue to the lessee. Any racing profits would be tax free since racing is not a taxable activity.

There are various forms of leases which can be arranged between the owner of the horse and the lessor. All leases need to be registered with the British Horseracing Authority under the Rules of Racing. A form of lease can either be obtained from the British Horseracing Authority or a legal document can be drawn up which will clearly define the relationship between the parties so that there can be no confusion at a later time. The leasing arrangement which may be required will depend upon the tax position of the parties and the likely future profitability of the activity.

In 2007 the Horseracing Regulatory Authority is expected to be replaced by the British Horseracing Authority

6.6 Single Farm and other Rural payments

Rural Payments, such as the Single Farm Payment, are available to those stud owners and trainers in England and Wales providing they meet the qualifying criteria for the scheme. In addition, further grants are available to landowners through the DEFRA Environmental Stewardship Scheme. The Rural Payments Agency has also indicated that they could consider horses as eligible for grazing on set-aside land.

Due to the intricacies of these payments they will not be discussed in detail in this Guide, however, payments received are usually treated as trading income which is subject to income tax. Further information can be obtained from the Department for Environment, Food and Rural Affairs or the Rural Payments Agency.

PART 2 – VALUE ADDED TAX

1 Introduction to VAT

Value Added Tax is a tax charged on supplies of goods and services made by VAT registered businesses. Although there are categories of supplies of goods and services which do not attract VAT, these only apply in limited circumstances in the bloodstock industry and it is, therefore, a tax which has widespread impact.

1.1 VAT registration

Value Added Tax is collected by H M Revenue and Customs('HMRC') using a system requiring businesses making VATable (taxable) supplies to charge VAT to their customers. They are then required to pay this VAT to HMRC but are allowed to offset VAT charged to them against the VAT they have charged to their customers. If a business has been charged more VAT than it has charged its customers then the balance will be repaid by HMRC.

The VAT system requires businesses whose sales exceed the VAT registration threshold (£73,000 per annum with effect from 1.4.2011) to register for VAT. It should be noted that from 1.8 2012 there will be no threshold for businesses not established in the UK. Any such business making supplies in the UK will be required to register. Once registered for VAT a business is required to make returns, normally on a quarterly basis, to HMRC detailing the amount of VAT charged to its customers (output tax) and the amount of VAT charged to it by its suppliers (input tax). The value of sales (outputs) and purchases (inputs) made by the business is also recorded on the return.

A business is required to apply for VAT registration when its taxable turnover in the twelve months then ending has exceeded the threshold, or if it is anticipated that the taxable turnover will exceed the threshold in the 30 days then beginning. It should be noted that taxable turnover includes the value of any zero-rated supplies i.e. supplies that are charged at a zero-rate such as animal fee and any reduced-rated supplies. However, where wholly or mainly zero-rated supplies are made, HMRC do have the discretion to grant exemption from registration.

Once a liability to register has been notified to HMRC they will then take the necessary action to allocate a VAT registration number. This registration number forms the basis of the control mechanisms exercised by HMRC.

Although it is a requirement to notify HMRC that the threshold has been, or will be exceeded, it is also possible to apply for voluntary registration when there is no requirement for a compulsory registration e.g. where a business is incurring costs in advance of making taxable supplies or is trading below the threshold but would like to register in order to recover VAT on costs. This is particularly relevant where the customers would themselves be VAT registered and would therefore be able to recover any VAT charged. Both of these situations often occur in the bloodstock industry.

If the turnover falls below, and is likely to remain below, the de-registration threshold (£71,000 per annum with effect from 1.4.2011) a business can de-register. De-registration is not mandatory unless the business has actually ceased trading, but is available if a business so wishes – normally when customers cannot recover VAT charged to them.

2 VAT General

There are a number of basic rules that apply to all business sectors. In order to avoid mistakes being made these basic rules should be understood. Some of the more important rules are set out below.

2.1 Goods or services

The distinction between whether a supply is one of goods or services is important in a number of areas, particularly when determining the liability and place of the supply.

Any transfer of the whole property in goods is a supply of goods. The transfer of possession of goods under an agreement for the sale of those goods which expressly contemplates that the property will pass at some time in the future but in any event not later than the date when the goods are fully paid for is also treated as a supply of goods. A typical example of this type of transaction is an HP sale.

It should be noted that the grant of a major interest in land (i.e. over 21 years) is also treated as a supply of goods as is the supply of any form of power, heat, refrigeration or ventilation.

All other supplies are supplies of services.

The distinction between a supply of goods and a supply of services is particularly important in the bloodstock industry as, for example, the supply of a part share in a horse is regarded as a supply of a service, whereas a supply of a whole horse is regarded as a supply of goods.

2.2 Place of supply of goods

It is always important to determine where a supply is deemed to take place under the VAT legislation, as that will determine who has to account for any VAT due on that sale. Generally speaking, if a supply of goods does not involve their removal from or to the United Kingdom it will be treated as supplied in the UK if the goods are in the UK and otherwise will be treated as supplied outside the UK. There are a number of more complicated rules relating to the place of supply of goods moved between EU Member States and these will be dealt with later in the section relating to supply and acquisition.

2.3 Place of supply of services

The rule for determining the place of supply of services varies according to whether the supply is business to business (B2B) or business to consumer (B2C).

It should be noted that it is the supplier’s responsibility to determine whether or not his customer is in business. A VAT number is a clear indication but a customer could be in business even if he is not VAT registered e.g. he is trading below the VAT threshold or he is a flat-rate farmer.

The basic rule for determining the place of supply of B2B services is that it takes place where the customer belongs. A supplier shall be treated as belonging in a country if he has a business establishment or some other fixed establishment in that country. Therefore, if the recipient of the service belongs in the UK then that service is deemed to be supplied in the UK. There are some exceptions to this rule e.g. services relating to land but they are unlikely to be regularly encountered in the bloodstock industry.

For B2C supplies the basic rule is that the service is regarded as being supplied in the country where the supplier belongs. Here again there are a number of situations where that rule does not apply. The following are examples of services that when supplied to non-business customers belonging outside the EU will be treated as being supplied outside the EU and therefore outside the scope of UK VAT;

- services supplied by consultants, lawyers, accountants etc
- services of data processing, supplies of information
- financial services

Full details of the exceptions to the basic rules can be found in HMRC Notice 741A.

2.4 Time of supply (tax point)

The time at which a supply is treated as taking place is called the tax point. It is the tax point that determines the date on which VAT must be accounted for and the rate at which it is to be charged.

The basic tax point for a supply of goods is the date when the goods are removed, i.e. sent to or taken by the customer. If they are not removed it is the date they are made available for his use. The basic tax point for a supply of services is the date the services are performed. It is possible, however, in the case of both goods and services, that the tax point will be varied to take account of the issue of a VAT invoice and/or receipt of payment.

Where the invoice is raised or payment is received before the basic tax point then the earlier date becomes the tax point. However, where a VAT invoice is issued within fourteen days after the basic tax point it is permissible to use the later date as the tax point except to the extent that payment has already been received.

Where there is a continuous supply of services e.g. training or keep, the tax point is the earlier of the date the tax invoice is issued, or the date payment is received.

It should be noted that small businesses could in certain circumstances choose to account for VAT on the basis of cash paid and received. This scheme has the advantage of providing automatic VAT bad debt relief. The current (prospective) turnover limit for joining the cash accounting scheme is £1,350,000 as at 1.1.2011.

2.5 Value of supply

This is the value on which VAT is chargeable. In most cases the value will be the invoiced price, although it should be noted that when a discount is offered for prompt payment the VAT should be calculated on the discounted value even if this discount is subsequently not taken up by the customer.

In order to prevent abuse HMRC do have the power, when a supply is between connected parties and the recipient cannot recover all the VAT charged, to direct an open market value if they feel the invoiced value has been artificially depressed.

3 VAT Accounting

3.1 Invoices

A VAT registered person is required to issue a VAT (tax) invoice for each taxable supply made to another VAT registered person or to a person in another Member State. To qualify as a tax invoice the following information is required to be shown on the face of the invoice.

- An identifying number;
- The date point (time of supply);
- The date of issue of the document;
- The name and address and VAT registration number of the supplier;
- The customer's name and address;
- A description of the goods or services supplied and for each description, the quantity of the goods or the extent of the service, the rate of VAT and the amount payable, excluding VAT, expressed in any currency;
- The unit price;
- The gross amount payable, excluding VAT, expressed in any currency;
- The rate of any cash discount offered;
- The total amount of VAT charged in sterling. If the goods / services have been invoiced in a foreign currency it is sensible to show the rate of exchange used to convert the VAT figure to sterling.

For EU cross-border supplies of goods or services the supplier's VAT number should be given a country prefix i.e.GB and the registration number, if any, of the recipient of the supply of goods or services should also be shown and this registration number, if any, shall contain the alphabetical code of the Member state in which the recipient is registered.

Where the supply is exempt or zero-rated the invoice should contain a relevant reference or indication why the supply is exempt or zero-rated as appropriate.

A copy of the tax invoice must be retained by the supplier for production to HMRC if required.

3.2 Records

As a minimum a simple record should be kept which will enable HMRC to verify the information submitted on the VAT return. A record of invoices issued and received, together with a summary of the details on those invoices will normally suffice. There should also be a form of VAT account showing the VAT calculations and the totals of input tax and output tax recorded on the VAT return.

These records are required to be kept for 6 years and must be made available to HMRC on request, together with any other information kept by the business which relates to the making of taxable supplies.

3.3 Bad debts

If a situation arises whereby a customer has not paid for a supply within six months from the date when a debt became due and payable, the debt may be written off in the normal VAT account and transferred to a separate bad debt relief account. This enables a taxpayer to take a VAT credit in respect of the VAT element of the unpaid amount. The claim must be made within four years and six months of the later of the date of the supply and the date when the amount became due and payable. If the customer subsequently pays his account then the VAT must be adjusted by an amount equal to the VAT element of the payment. In order to balance the VAT position it is a requirement that any VAT registered customer who does not pay a debt within six months of the supply or, if later, the payment due date, should adjust any VAT deducted on that supply to reflect the fact that payment has not been made i.e. to reverse the input VAT entry until such time as the account is paid.

3.4 VAT returns

VAT returns are now required to be submitted online (www.hmrc.gsi.gov.uk).An email reminder will be sent by HMRC (providing the online account has been set up with an e-mail address). The return should be completed so as to record the VAT due on all supplies made and received in the period. The totals of output tax and input tax will be recorded together with the net payment or repayment due. The return, and any necessary payment, must be submitted within one month of the end of the VAT return period, subject to any concessionary extensions applied by HMRC from time to time in relation to specific payment methods. Failure to submit the return and/or the payment could lead to a default surcharge being imposed and this can rise to 15% of the VAT due on the late return/payment.

It should be noted that businesses, typically those that normally receive a VAT repayment because the VAT on their inputs is greater than the VAT on their outputs, can elect to submit returns on a monthly basis. Any request for monthly returns should be should be submitted through the online portal. The portal can also be used to change other registration details such as change of address etc.

3.5 Input tax recovery

VAT can be recovered on any expense incurred in connection with the making of taxable supplies in the course of or furtherance of the business. It is therefore important, particularly in the bloodstock industry, to establish exactly which activities are covered by the VAT registration.

Where an expense has been incurred partly for business and partly for non-business purposes the VAT must be apportioned.

There are certain items of expenditure on which, although they are incurred in connection with the business, the VAT cannot be deducted in any circumstances. These are expenses relating to the purchase of cars (where there is an element, however small, of availability for private use) and business entertainment. Similarly only 50% of the VAT incurred in connection with leasing a car can be recovered if there is any availability for private use of the car.

Where a business makes exempt supplies, (in the bloodstock industry this is likely to be supplies of property rental or insurance commission) there will need to be an apportionment of input tax as VAT in principle cannot be recovered if it relates to the making of exempt supplies. These apportionment rules are complex and specific advice should be taken to ensure maximum recovery is obtained.

A newly registered person can recover VAT on all goods on hand, providing they were purchased no more than 4 years previously, and VAT on all business related services received in the previous six months, provided that tax invoices are available and the VAT does not relate to exempt supplies.

3.6 VAT visits

HMRC carry out visits to verify that VAT returns submitted are correct. The frequency of these visits varies according to the size of the business, the business sector and the business's previous revenue history. A small business e.g. a racehorse owner, could expect visits every 4 years or more whereas a larger business such as an auctioneer or large breeding operation would receive visits at least annually. The visits vary in length but in general range from half a day for the smaller business to two to three days for the larger business. As indicated above, the purpose of the visit is to verify a selection of VAT returns and as such they do not follow a particular pattern. The visiting officer can request all records relating to the making of supplies. This can include copies of annual accounts, bank statements etc.

Typically an officer would examine the VAT account, the purchase and sales daybooks, and a selection of sales and purchase invoices. Where zero rating is claimed for exports or dispatches evidence of shipment will be examined and the inspector may also compare the bank statement with invoices and daybook entries. Another standard check is to compare the sales figures shown on the VAT returns with those declared in the annual accounts. Where this indicates a discrepancy, and this can be for quite legitimate reasons, an explanation will be requested.

It is worth making a note of the areas covered during the visit and retaining this for future reference.

3.7 Assessments

HMRC issue assessments for two reasons. If a business has not submitted a VAT return an estimated assessment is issued. This assessment should be treated as a reminder to complete the return; payment of the assessment when the true liability is higher would potentially lead to penalties.

The other occasion when an assessment would be issued is when errors are found as the result of a visit. This type of assessment will detail the amount of tax under-declared / over-declared and VAT period into which the errors fall. If a taxpayer wishes to challenge the amount he should write to the VAT Office that issued the assessment asking for an independent reconsideration stating the reason for the request. The taxpayer can also appeal to an independent tribunal – the First-tier Tribunal (Tax). The time limit for either remedy is 30 days from the date of the assessment.

Assessments of under-declared VAT by HMRC and claims for refunds of overpaid VAT by the taxpayer can normally only be made for the past four years. The main exceptions are where an assessment is made because a person has:

- deliberately done something leading to a loss of VAT; or
- participated in a transaction knowing that it was part of arrangements intended to bring about a loss of VAT; or
- failed to notify a liability to register for VAT.

In such cases the four-year time limit is extended to 20 years.

4 European Aspects

Value Added Tax is the common sales tax for the EU and the EU VAT Directive (2006/112/EC) (‘the VAT Directive’) lays down the framework for VAT legislation in all EU Member States. The VAT Directive does give Member States some discretion in a number of areas but generally speaking national legislation must follow the basic principles laid down in the VAT Directive. Where there is a conflict between national legislation and the VAT Directive a taxpayer can rely on the VAT Directive.

Although the VAT Directive is meant to provide a common framework for the application of VAT in the EU there are still many differences in treatment, particularly in the bloodstock industry. A good example of this is the VAT treatment of shares and nominations. They are treated differently in Ireland, France and the UK respectively.

This means that great care should be exercised when becoming involved in transactions involving other Member States. It would certainly be dangerous to assume that the UK VAT treatment is replicated in the other Member States.

4.1 VAT refund schemes

There are provisions within the EU VAT regime that allow businesses incurring VAT in one Member State but registered in another to recover the VAT incurred in the other country. The refund should be made providing it can be demonstrated that:

- the claimant is a taxable person in one Member State, and has not made any taxable supplies during the period of the claim in the Member State in which the VAT has been incurred (subject to limited exceptions), and

- the VAT which is the subject of the claim would be repayable to a person VAT registered in the Member State in which it was incurred.

The claim procedures are relatively simple. Claims are now submitted to the tax authority of the Member State where the claimant is VAT registered, via an online portal. The tax authority in question verifies certain information and then passes the claim to the Member state where the VAT was charged. It should be noted that the changes in the place of supply rules introduced in 2010 should reduce the incidence of VAT incurred in other Member states but where VAT has been incurred the taxpayer should confirm that it was correctly charged as Member States should not refund VAT incorrectly charged.

There is a similar procedure whereby non-EU businesses incurring VAT in the EU can recover VAT charged to them. This scheme is known as the Thirteenth Directive Scheme and requires claimants to provide evidence that they are in business in their own country and to declare that they have not made any taxable supplies in the particular Member State of the EU during the period of the claim (subject to limited exceptions).

Thirteenth Directive claims should be submitted on the approved form to the Member state where the VAT was incurred.

Another important point to remember is that the time limits for making the claims are very strict. For an EU cross-border VAT refund claim, the claim period is a calendar year i.e. January to December, and the claim must be submitted to HMRC within nine months of the end of the claim year, i.e. 30 September. For a Thirteenth Directive claim the claim year runs from 1 July to 30 June and the claim must be submitted by 31 December. It is very unlikely that a claim would be accepted when it is lodged outside these time limits.

4.2 Supply and Acquisition

The concepts of supply and acquisition were introduced in 1993 as part of the transition to a Single Market. The provisions cover the movement of goods between Member States and, in certain circumstances, the associated transport services relating to the movement.

Where a VAT registered person sends goods to another EU country, and the recipient of those goods is registered for VAT in that other country there will be a zero rated supply in the Member State of dispatch, providing a valid EU VAT number is obtained from the recipient and that evidence of dispatch to the other Member State is obtained (this should normally be within 3 months of the time of supply). This applies even if there is no change in title to the goods, i.e. if own goods are moved to another Member State. If goods are moved to another Member State and the recipient cannot provide an EU VAT number then the person dispatching the goods must account for VAT on the movement as if it were a sale in the Member State of dispatch i.e. VAT must be charged on the movement. This applies equally to transfers of own goods where no sale has taken place. VAT records must also be amended to account for VAT where the necessary evidence of removal has not been received within the time limit.

Where a taxable person initiates an intra-Community movement of goods there will be a matching intra-Community acquisition of the goods in the country where the dispatch or transport of the goods ends.

If the recipient is VAT registered he must record the acquisition in his VAT account. VAT must be accounted for on the acquisition as if it were a sale i.e. output tax must be declared on the VAT return for the period in which the acquisition took place. However if the acquisition is for the purpose of the business and is incurred for the purpose of making taxable supplies, the VAT may be deducted as input tax on the same VAT return – resulting in a VAT neutral position. If the recipient of the goods is not VAT registered the value of acquisitions received will generally count towards the registration threshold in exactly the same way as if they were making sales, i.e. receipt of acquisitions in excess of the VAT registration threshold brings with it a requirement to notify HMRC that a liability to register for VAT exists. This will mean that a company or partnership importing racehorses for a non-business purpose may be required to register for VAT and account for VAT on the acquisition but without the possibility of deducting the VAT as input tax, unless they can operate under the arrangements for VAT registration of racehorse owners outlined later in the Guide (see Section 10). However, a private individual acting in a purely personal capacity would not have to register solely because he was making acquisitions in the UK to a value exceeding the registration limit.

An understanding of the above rules is essential given the frequency of movements of horses between Member States of the EU. A basic principle to remember is that VAT must be accounted for somewhere in the EU for any movement between Member States. This applies to all movements other than temporary movements.

4.3 Temporary movements

This is a procedure that allows horses to be moved to another Member State on a temporary basis without a supply and acquisition being triggered. It is particularly useful when moving horses to another Member State for racing / training or for mares that are being sent abroad for covering.

If a horse is sent to another Member State under a temporary movement the owner must have an intention to either subsequently export the horse from the EU or remove it to another EU country, in either case not later than two years after the day upon which the horse was originally despatched on the temporary movement.

It is important to note that if the original intention is not fulfilled in either of the above examples, (e.g. if a horse is sold rather than returned) the original movement must belatedly be treated as a supply and acquisition and VAT brought to account in the period in which it becomes clear that the intention will not be fulfilled.

There is also a requirement that a record is kept of temporary movements setting out all the relevant information, e.g. name of the horse, date of export, place to which removed, and date of return. This will form the basis of any HMRC check to ensure that conditions have been fulfilled. A similar record should be kept of goods received temporarily from other EU countries.

4.4 Proof of Dispatch

In all cases involving intra-Community movements proof of dispatch should be obtained within **three months of the time of supply.**

4.5 Supplementary Returns

Where a VAT registered business is involved in cross-border movements it may be required to complete two further forms. The first, the Intrastat, is required where the person makes movements of goods to a value exceeding the relevant Intrastat threshold. As at 1.1.2011 these thresholds were £600,000 per annum for arrivals and £250,000 for despatches. It should be noted that a separate Intrastat return has to be submitted for dispatches and for arrivals if the threshold for either is exceeded. The Intrastat form is the means by which the EU captures information concerning the nature and value of intra-Community trade. The returns have to be completed monthly.

The other form that may have to be completed is an EC Sales List (‘ESL’). An ESL has to be completed when either goods or services are supplied to a person registered for VAT in another EU country.

The ESL is a record of the value of sales to each EU VAT registered customer and has to be completed monthly for despatches of goods (unless the value of the despatches of goods is less than £70,000 per annum in which case a quarterly return can be submitted). Where a monthly return has to be submitted for despatches of goods and the business also makes cross-border supplies of services, the business has a choice of either including details of any supplies of services on the related monthly return or of reporting all supplies of services on the third monthly return i.e. submit details of services once per quarter. Where only intra-EU services are supplied, rather than goods, only quarterly ESLs need to be completed.

5 International trade

5.1 Imports

The term ‘import’, in a VAT context, only applies to goods coming into the EU from a non-EU country. VAT is due on all imported goods and has to be paid at the time of importation, unless the importation is covered by one of the reliefs set out below. The value of the VAT should reflect the purchase price together with any commissions, transport and insurance costs etc.

If the goods are not purchased, i.e. a home bred horse is being imported, the value should generally reflect the market value of the horse (together with the related transport and insurance costs). However, valuation where there has not been a sale is a complex area and specific advice should be sought.

As indicated above, VAT generally has to be paid at importation. A VAT registered business can recover this import VAT as input tax on their next VAT return providing the goods are being imported for the purpose of their business. A certificate, C79, will be issued to the VAT registered importer by the HMRC authorities at the point of importation and this provides the necessary evidence for recovery of the VAT. Alternative evidence will on occasions be accepted but you will almost certainly have to prove to HMRC that there is no possibility of a duplicate claim being made. The fact that you have paid the VAT will not in itself be sufficient evidence.

5.2 Temporary importation

Temporary importation relief allows, in certain circumstances, horses to be temporarily imported into the EU without being subject to import duty or VAT. The relief is available for horses being imported for training, breeding, veterinary treatment, participation in a race, or grazing. `The main condition for temporary importation is that a person established outside the Customs territory of the EU must own the horses and the horses must subsequently be re-exported. A maximum period of two years is normally allowed for temporary importations. There is normally a requirement to lodge security in the form of cash deposit or guarantee for the potential import VAT that would become payable if the horse is not re-exported.

5.3 Returned Goods

VAT relief is allowable, in certain circumstances, for goods that have previously been exported from the Community.

- Goods which have been exported from the EU are eligible for VAT –free re-importation if they are returned within three years of the original export (although this period may be extended in special circumstances). The principal conditions for this relief are that
- the goods are re-imported by or on behalf of the person who exported them.
- the goods are in the same state as that in which they were exported.
- Relief will not be granted where HMRC feel the export and re-import was undertaken with a view to avoiding VAT.

5.4 Re-importation of goods exported for treatment or process

Where goods have been temporarily exported for a process (e.g. a mare being covered) VAT will only be due on the value of the process providing:

- at the time of exportation the goods were intended to be re-imported after the completion of the treatment or process, and
- the ownership of the goods was not transferred to any other person at exportation or during the time that they were abroad.

Therefore, where mares have been exported for covering import VAT need only be paid on the cost of the nomination and the related costs such as transport, insurance etc.

5.5 Exports

Where goods are exported outside the geographical territory of the Community the supply can be zero-rated. This zero rating will always be contingent upon the necessary proof of export being produced to HMRC. This will normally take the form of official evidence or commercial evidence, e.g. a certificate of shipment, bill of lading, air way bill etc.

There are two different export procedures that provide for such supplies to be zero-rated; these are direct exports and indirect exports.

5.5.1 Direct Export

A direct export is where the supply is under the control of the UK owner or supplier. This means that the goods are sent directly to the port or airport for dispatch. They may of course be exported by a person acting on behalf of the UK owner or supplier, e.g. a shipping agent, but that person must be acting for the UK owner and not the purchaser. The goods must be exported within three months of the time of supply. (However, see Appendix VIII for a link to HMRC's Agreement with the British Horseracing Board and Thoroughbred Breeders' Association about Racehorses and time limits for exportation).

It is important to note that the goods must not be used in the UK in the period between the time of supply and the export. This means that in the case of a racehorse, once it has been sold for export it cannot be raced in the UK. There are occasionally circumstances in which HMRC will allow a horse to race, e.g. where the supply takes place shortly before a race in which the horse has already been entered, but these are unusual and any concession should be specifically requested and not assumed. Once the goods have been exported, proof of export must be obtained within three months of the time of the original supply.

If the goods are not exported within the time limit or valid evidence of export has not been received, the supply cannot be zero rated and the VAT account must be adjusted accordingly. If the goods are subsequently exported and satisfactory evidence of export is obtained then the VAT account can be adjusted again and the supply zero rated.

5.5.2 Indirect exports

This applies where goods are supplied to and exported by an overseas person. However, someone acting on behalf of the overseas person can arrange the export. Zero rating is available only when the goods are exported within three months of the time of the supply and valid evidence of export is obtained within three months of the date of supply. (However, see Appendix VIII for a link to HMRC's Agreement with the British Horseracing Board and Thoroughbred Breeders Association about Racehorses and time limits for exportation).

This relief allows possession of the goods to be taken by the overseas person, or the agent acting on his behalf, prior to export but use of those goods is not allowed. It should be noted that any failure to comply with the conditions e.g. the restriction on use, export time limits etc., could put the zero rating of the supply at risk. It is, therefore, essential that where goods are supplied to an overseas person, sufficient care be taken to ensure that that person will comply with the export conditions.

It is perfectly acceptable as far as HMRC are concerned for the exporter to secure the VAT by way of deposit etc. and to release the deposit to the customer when acceptable proof of export is obtained. Equally there will be no objection to the seller initially invoicing the sale with VAT and then issuing a VAT credit note to zero-rate the sale when adequate proof of export is obtained.

6 Bloodstock Applications – Breeders

6.1 VAT registration

Although bloodstock breeding for sale is a recognised business activity HMRC tend to look closely at any registration applications from bloodstock breeders, particularly for voluntary registrations, i.e. where the turnover has not exceeded the VAT threshold. They will be looking to see that the operation is being run on commercial lines and will be making taxable supplies with a significant degree of regularity. Their underlying concern has always been that they may unwittingly allow a VAT registration when the majority of the progeny are raced rather than sold. Although this is less important since the introduction of the VAT Registration Scheme for Racehorse Owners, it still seems to be a concern for HMRC.

It should be possible for anyone breeding for sale to register for VAT irrespective of the number of mares. Historically it was HMRC' view that a minimum of three broodmares should be owned before they will allow a registration. However, the real test is that the breeding is intended to be commercial i.e. there is an intention to sell the progeny. They should also recognize that over time the income generated from one high quality broodmare will often exceed that generated by three of lesser quality.

National Hunt breeders in particular face a close examination of their circumstances before HMRC will grant a registration. The long term nature of National Hunt breeding and the likelihood that it may be several years before any taxable supplies are made are factors that make HMRC reluctant to allow the registration. Notwithstanding this, providing it can be demonstrated that the breeding is being entered into on a proper commercial basis, irrespective of scale, then registration should ultimately be granted.

The existence of the Racehorse Owner's Scheme does remove many of the risks perceived by HMRC. However they may wish to register a breeder under the Owner's Scheme rather than under normal rules. The Scheme is regarded by HMRC as being a concession and as such is under constant review. Care should be taken not to accept a registration under the Scheme if it is not appropriate. If the Scheme were ever withdrawn such a registration could well also be withdrawn, whereas a registration as a breeder for sale provides longer term security that registration will continue.

6.2 Supply of keep

A VAT registered breeder will be required to charge VAT on any supply of keep. The only exception to this will be when the keep is being supplied to either:-

- a person who has either imported a mare into, or purchased a mare in, the EU with the express purpose of having it covered and subsequently re-exported; or
- a person belonging in another Member State who provides a valid VAT number or other proof of business status to the breeder

In both cases, the supply of keep and ancillary services can be zero-rated.

Ancillary services include any services constituting direct work on the mare, or foal where appropriate including veterinary services, blacksmith services, dentistry and worming.

6.3 Keep of stallion

The keep of stallions will be subject to the same rules as the keep of any other stock. However it is not unusual for stallion studs to provide their services in exchange for cash plus nominations (so called ‘free’ nominations) or for nominations only. However VAT must still be accounted for on the full value of the supply of the keep of the stallion (and any other services e.g. advertising) supplied to the stallion owner.

The value for VAT is the figure which, with the addition of VAT, is equal to the value of the consideration received. To simplify matters a formula has been agreed with HMRC to value the supply of the nominations received in full or part consideration. A link to the Memorandum can be found at Appendix VIII.

It should be noted that where the stallion owner is VAT registered VAT invoices should be exchanged for the supplies made by the parties to the transaction, thereby ensuring that there will be no loss of VAT as each party should be able to recover the VAT charged by the other. The stallion owner has to provide a VAT invoice because he is also involved in a barter transaction by virtue of the supply of the nominations.

6.4 Supply of stallion nominations

The supply of a stallion nomination is regarded in the UK as a supply of a service -of work on goods. Whether or not the supply of the nomination is subject to VAT will depend on the place where the mare owner is established and whether or not they are in business. If the mare owner is established in the UK then VAT will be chargeable. If the mare owner is in business in another Member State then no VAT will be charged.

UK VAT will be charged on any other sale of a nomination to a stallion based in the UK unless; the mare to be covered has been imported into or purchased in the EU with a view to covering and export, in which case the supply of a nomination can be zero rated in the same way as the supply of the keep, The supplier of the nomination should ensure that appropriate evidence of export is obtained as they will be liable to account for VAT on the sale of the nomination unless that evidence is produced.

6.5 Sale of stallion shares

As indicated above, the sale of a stallion share is regarded as a supply of a service and will be subject to the normal B2B or B2C rules depending on the business status of the customer. Although it is likely that in most cases the supply will be a B2B supply, proof of business status will still be required. The place of supply rules follow those for a sale of a nomination although it should be noted that where a stallion share is sold to a non-business person outside the EU the sale will be subject to UK VAT, even though the stallion may never have come to the UK and no VAT has ever been recovered in relation to that share.

There is an exception to this rule. When all the shares in a particular horse are sold at the same time, this is a supply of goods. In these circumstances if any of the shareholders are registered and selling by way of business, this is a standard-rated supply, except where;-

- the horse is located outside the UK at the time of sale, or
- is exported to a non-EU country or is dispatched to a VAT registered buyer within the EU, in which case the supply may be zero rated.

However it should be noted that where the horse is located in another EU Member State at the time of sale or is subject to an intra-EU supply there may be a liability to account for VAT elsewhere in the Member States.

6.6 Sale of foals, yearlings, mares, etc.

The sale of stock by a UK VAT registered breeder will be liable to UK VAT if sold in the UK. The sale of stock in other Member States is outside the scope of UK VAT but may trigger a liability to register for VAT in the country in which the stock is sold. It should be noted that VAT registration thresholds in other EU Member States tend to be much lower than in the UK. Where stock is sold for export from the EU, or to a person VAT registered in another Member State, the supply can be zero rated providing proof of evidence/dispatch is obtained, and in the case of an EU sale the purchaser's VAT registration number is quoted on the invoice.

The VAT treatment of sales of goods via agents means that when a horse is sold via an auctioneer or agent it will be treated for VAT purposes as being sold to the auctioneer/agent and by the auctioneer/agent.

The bloodstock auctioneer will issue a self-billed VAT invoice to the vendor. These are invoices prepared on behalf of the vendor and form the basis of the auctioneer's claim for input tax on the deemed purchase. The self-billed invoice can only be issued with the agreement of the vendor and must contain the vendor's VAT number and the statement 'THE VAT SHOWN IS YOUR OUTPUT TAX DUE TO REVENUE & CUSTOMS', as the self-billed invoice takes the place of the sales invoice that would normally be issued by the vendor.

The onward sale by the auctioneer has no consequence for the vendor, even if the horse is sold for export, as it will be the auctioneer who will be responsible for accounting for any VAT on the sale or to claim zero rating, if appropriate.

Please refer to earlier sections 4.2 and 5.5 for more details concerning the zero rating of supplies to non-EU countries and for dispatches to other EU Member States.

6.7 Foal sharing

This typically involves one party providing the nomination and the other providing the mare. Any resulting property is owned jointly by the two parties– normally 50:50. For VAT purposes, in the absence of any specific agreement to the contrary, the foal share is regarded as a joint venture with the only supply being made being the disposal of the resulting progeny. If the progeny is sold each party is required to account for VAT on its share of the progeny.

6.8 Breeders owning racehorses

It is now possible for bloodstock breeders to treat their racing activities as an integral part of their VAT registered breeding business. The Memorandum of Understanding which is reproduced at

Appendix IX sets out the conditions for this treatment but broadly speaking any breeder who races his stock with a view to enhancing the value of that stock and/or the overall standing of the business may treat the racing as part of the business activity. This will mean that virtually all home bred stock and most bought-in colts and fillies will be treated as part of the VAT 'business' and the breeder will be able to recover VAT on racing costs.

Generally speaking, however, this will not apply to purchased geldings.

Where, for whatever reason e.g. a purchased gelding is put in training, stock is being raced that is not covered by the breeders section of the Memorandum of Understanding, the breeder may still be eligible for VAT recovery under the provisions of the Racehorse Owner's Scheme - the detail of which is discussed in section 10. Breeders should ensure that they understand which, if any, horses are covered by the Scheme and make sure that HMRC are also aware. Although unlikely it is possible that a breeder may not wish to have his racing stock treated as part of his VAT business. In these circumstances the breeder must apply an output tax charge on the transfer from a business to a non-business use, i.e. when a horse is transferred to training as racing would be deemed to be a non-business activity. This will also mean that there will be a restriction on the amount of VAT that can be recovered on the racing expenses. Further details of the output tax calculation and the input tax recovery position are set out in a Memorandum of Understanding see link at Appendix VIII. It should be noted that this Memorandum has hardly been used since the introduction of the Owner's Scheme and therefore some of the figures for keep, value of nomination etc. are out of date. If these arrangements are being contemplated updated information should be requested from the National Advice Centre.

6.9 Stallion Syndicates

When shares in a horse are sold as stallion shares for the first time VAT will be due only if the racing activity of the owner had been treated as a business for VAT purposes, or in a case where all or part of a horse has been purchased towards the end of the horses' racing career with the specific intention of standing it as a stallion and all or part of the interest is then resold, e.g. as part of a syndication.

Section 6.5 above deals with the VAT liability of sales of stallion shares.

As indicated above it is not unusual for the stud standing the stallion to be given a number of nominations by the syndicate in full or part payment for the supply of keep (and any other services). As most stallion keep and management agreements specify that the supply of nominations covers all expenses to be incurred by the stallion stud it is deemed to be VAT inclusive and, therefore, the stallion stud must absorb the VAT cost. Although in the past very few stallion syndicates were allowed to register the change in the way in which stallions are managed has resulted in a shift in the VAT position. A syndicate can now register in respect of the sale of syndicate nominations and those it sells on behalf of shareholders. This registration can either be in the syndicate's name or the syndicate transactions can be reflected in the syndicate secretary's VAT return. (In the latter case the secretary is required to raise an invoice in his own name for the full value of the nomination plus VAT. Those members who are VAT registered are required to provide the secretary with VAT invoices for their share, which the secretary can use to recover the VAT element as input tax. The tax point for the supply by the member to the secretary is the same as that for the supply by the secretary to the purchaser of the nomination. The secretary may recover input tax on costs incurred on behalf of the syndicate subject to the normal rules. Stud costs must be charged on by the secretary to the members who, in turn, will be able to recover the VAT if they are registered.)

In either case the syndicate will no longer suffer irrecoverable VAT on its costs, although it will no longer have a pool of ‘’non-VAT’’ nominations available for sale.

7 Bloodstock agents

Bloodstock agents often operate in a number of different countries and therefore have to be particularly careful to ensure that they do not fall foul of VAT regulations in any country in which they arrange transactions.

Where agents act in their own name in a supply of goods, e.g. where they issue an invoice for the purchase or sale of a horse, even though they have only acted as agent, then for VAT purposes the supply is treated as having been made to them as principal and by them as principal. The agent will therefore have to account for VAT on the sale of the horse in accordance with the rules set out above. This in theory can mean that a horse sold on behalf of a non-VAT registered owner can become subject to VAT when the agent invoices the sale in his own name.

Where an agent acts as an intermediary, the place of supply of his intermediary services will depend upon whether his principal receives the supply in a business or private capacity, as follows:

Business customer

The normal B2B rules apply, sometimes in a somewhat counter-intuitive way. Thus, if a UK agent acts for a UK business regarding the sale of a horse standing in France, the supply will be subject to UK VAT. On the other hand, if a UK agent acts for a French business customer in respect of a sale of a horse standing in the UK, there will be no UK VAT on the supply.

Private customer

Where an agent acts as an intermediary for a private customer the place of supply will be the same as the place of supply of the underlying transaction. Thus, for example, where an agent acts in relation to a sale of a horse located in the US, the agent's services will be outside the scope of UK VAT.

8 Racehorse trainers

Generally speaking all supplies made by racehorse trainers will be subject to VAT although supplies of training services to owners who are in business outside the UK will not be subject to UK VAT as it is a B2B supply (see Section 2.3 refers)

There are, however, a few areas where confusion can arise and these are dealt with below.

8.1 Trainers as owners

A trainer will often own or have shares in horses in his yard. This may be because a horse has been bought as a speculative purchase, or a trainer has retained a small interest in a horse in his yard at the request of the other owner(s).

If these interests are retained for genuine business purposes then they can be treated as being part of the VAT registered business and the normal rules will apply (for example, a trainer who owns and retains horses might do so to attract owners or buyers and to provide rides for apprentices, provided the number of horses is not disproportionate to the main activity of training).

If, on the other hand, a racing partnership under which the trainer owns a share in the horse, registers for VAT the trainer can recover any related input tax on his share, although he is not required to do so. In most circumstances it will be best for all concerned if the trainer’s share is included in the partnership VAT registration.

In the unlikely event that a horse has been retained for purely private purposes VAT cannot be recovered in connection with the purchase or training of that horse. In practice this will mean that a small adjustment has to be made to the overall input tax recovery to recognise the element of non-business use. If input tax recovery has been denied on the purchase of a horse retained for private purposes no VAT need be accounted for on the disposal of the horse.

8.2 Trainers as dealers

The section above relating to bloodstock agents applies equally to trainers when they are acting as dealers. Trainers should familiarise themselves with these provisions to ensure that their VAT accounting is correct.

8.3 Trainers expenses

It is quite common for trainers to incur expenses going to the racecourse etc. in the UK or elsewhere. These expenses will then be re-charged to the owner on the normal monthly training bill. These expenses are part of the cost of training the horse and as such the VAT treatment follows that of the training supply itself. The only time this does not apply is when the trainer has incurred the cost on behalf of someone else e.g. he has paid the owner’s air fare. In this case the expenses can be treated as disbursements. Generally this will not be the case so if disbursement treatment is claimed the trainer should be prepared to demonstrate that the supply of the underlying goods/services was made to the owner and not to him.

8.4 Trainers as employers

The normal position for trainers employing apprentice and conditional jockeys is that the trainer is regarded as their employer. Riding fees earned by the apprentice or conditional jockey will then be treated for VAT purposes as the

Trainer's income and subject to VAT, if the trainer is VAT registered. It should be noted in these cases that VAT is due on the total fee earned by the apprentice or conditional jockey and not just the element actually received and retained by the trainer.

8.5 Trainers gifts

Where an owner makes a gift to a trainer, then there is no VAT liability on the receipt of the gift providing there was no prior agreement or understanding between the parties relating to the making of the gift. However, it is likely that in situations where stallion shares, breeding rights or nominations are received, HMRC will view this as additional non-monetary consideration for a supply of training services and subject to VAT. For example, for stallion shares output tax will be due on the open market value and for annual breeding rights output tax will be due on an agreed market value. Where a Vatable supply is triggered by virtue of the receipt of a ''gift'' it is of course permissible for the trainer to issue a VAT invoice to the "donor".

8.6 Trainers prize money

When prize money is received under the Rules and Orders of racing then it is outside the scope of VAT. Where, however, there is a separate agreement with a particular owner or owners that an additional percentage will be paid then that additional percentage will be regarded as additional consideration and subject to VAT.

8.7 Training invoices

As a trainer is providing continuous supplies of services, he is able to take advantage of the rules which allow for the tax point to be created on the earlier of receipt of cash or the date of invoice and most trainers will raise monthly invoices to owners.

9 Jockeys

A jockey's income normally falls into one of three categories - riding fees, a retainer, or prize money.

9.1 Riding fees

From 1 January 2011 VAT liability of a jockey's riding fee follows the normal B2B or B2C rules as set out at 2.3 above i.e. if the owner is in business as a racehorse owner or breeder VAT will be due in the country in which the owner is in business e.g. if the owner is VAT registered in the UK then UK VAT will be payable but if the owner is in business in France then a UK jockey will not charge VAT on his riding fees – wherever that ride took place. If the owner is not in business then the riding fee will be taxed according to where the jockey is established .e.g. a UK jockey should charge UK VAT on his riding fee wherever the ride takes place.

9.2 Retainer

Generally speaking, a UK VAT registered jockey's retainer will be subject to UK VAT unless the other party to the retainer agreement is in business outside the UK.

9.3 Prize money

Prize money percentages received under the Rules and Orders of racing are accepted as being outside the scope of UK VAT. However, where a jockey has an agreement with an owner or owners that he receives additional percentages these will be regarded as additional consideration for the service of riding the horse. This applies equally to situations where a jockey has negotiated the receipt of stallion shares, breeding rights, nominations, etc. The value of these "extras" will be deemed to be additional consideration and subject to VAT in accordance with the VAT treatment of the riding fee.

If there is no prior agreement or understanding then any additional payments, in whatever form, will not be subject to VAT. However, where valuable nominations or breeding requests are received HMRC will look critically at the relationship between jockey and owner in order to satisfy themselves that there should not be a liability for VAT.

10 Racehorse owners

It is now possible for racehorse owners to register for VAT. This is further explained in the Memorandum of Understanding (see link at Appendix VIII].

The Memorandum sets out the conditions and the VAT treatment as it applies to owner breeders, trainers and dealers racing their own horses, and "pure" racehorse owners.

10.1 VAT Registration

The VAT Scheme for Racehorse Owners (the Scheme) allows racehorse owners to register for VAT if they:

(a) own a horse or horses covered by a sponsorship agreement registered at Weatherbys; or

(b) own a horse or horses covered by a trainer's sponsorship agreement registered at Weatherbys; or

(c) can show they have received, and will continue to receive, business income (see below).

Where the ownership of a horse is split into a number of shares and some or all of them are less than 50% it is normally more sensible for the owners to jointly register as if they were a partnership. The fact that a partnership VAT registration is obtained does not automatically mean that a legal partnership has been created. The existence or otherwise of a legal partnership will be determined by the arrangements between the parties. However for VAT purposes all partners in a VAT partnership are jointly and severally liable for the VAT debts of the partnership.

The BHA has published a Guide to the VAT Scheme for racehorse owners. A link to the Guide can be found at Appendix IX.

In addition to explaining the process for obtaining a registration the Guide also deals with a number of practical issues following on from the registration.

Once a registration has been accepted by HMRC they will monitor the position to ensure that the owner continues to generate, or seeks to generate, income from all his horses. If this is not the case they reserve the right to either de-register the owner or to exclude some of his horses from the Scheme. They will do this if they feel that insufficient effort has been made to generate some form of business income. It is therefore important that records are kept of all attempts to obtain sponsorship, including efforts to replace sponsorship for particular horses where existing agreements expire.

10.2 Business Income

The term 'business income' covers income from appearance money, sponsored number cloths (SNC) payments, leasing payments and sponsorship income.

Although the receipt of any one of these will qualify the owner for registration, the key element of the Scheme is owner sponsorship. The BHA has set up a framework (Sponsorship Framework for

Racehorse Owners - SFRO) that lays down the conditions under which owners can seek sponsorship.

HMRC will be looking to see that the terms of any sponsorship agreement have been met and that the sponsor receives value from the transaction. It is therefore essential that maximum use be made of the available sites. The mere receipt of a payment from a sponsor with no discernible benefit accruing to the sponsor will almost certainly be challenged by HMRC and they may seek to set aside the registration. This could lead to an assessment of all the VAT repaid to the owner.

It will be noted that prize money is excluded from the income qualifying as business income. Prize money will, however, attract VAT in the hands of a VAT registered owner and this VAT will have to be paid over to HMRC as output tax. This will not lead to any diminution of prize money as the racecourse will add VAT to the appropriate prize money payment. The payment to successful owners will in fact be in two parts. The first part which will be subject to VAT is deemed to be the prize money element. The other part consists of the return of stakes and is not subject to VAT as it is merely the payment of the sweepstake to the winning and placed connections.

HMRC will focus particularly on the nature of sponsorship deals and the extent to which efforts have been made to cover all horses in a particular owner’s ownership with one or more sponsorship arrangements. If, for whatever reason, one or more horses are not covered by a sponsorship deal then HMRC will be looking for that position to be rectified as soon as possible. Although as yet there is no actual time limit laid down a period of six months without a valid deal, particularly when that covers the racing season for the horse(s), is likely to result in a challenge from HMRC. It should be noted that in no circumstances will VAT recovery be allowed for an interest in a horse which is less than 50% owned by the registered entity, even if sponsorship income is being generated in respect of that animal.

10.3 Other matters

Registration for VAT carries responsibilities as well as benefits. VAT must be accounted for on all sales of horses which are covered by the VAT registration unless VAT recovery on the purchase of the horse was denied. Where no VAT was charged on the purchase of the horse you are allowed to account for VAT on the increase in value as opposed to the full selling price. In these circumstances if the horse is sold for less than the purchase price you do not have to account for VAT on the sale.

Another aspect that is often overlooked is that for sole trader registrations any other self-employed income generated by the VAT registered racehorse owner will also be caught under the VAT registration.

De-registration from the Scheme, either voluntarily or on demand by HMRC, will result in the owner having to account for VAT on the current market value of any stock on hand at time of de-registration. It may be necessary in these circumstances to obtain an independent valuation of any horses on hand at the time of de-registration.

10.4 Company owners

Company owners have two possible avenues open to them if they wish to recover VAT on their racing expenses.

The most obvious method is to persuade HMRC that the expenses relating to the racehorse ownership are being incurred for the purpose of the business, i.e. that the horse ownership is being used as a method of advertising and promoting the company and/or its products.

HMRC will look critically at the circumstances and it will be necessary for a clear and a reasoned business case to be made. HMRC cannot disallow the input tax on the basis that the business case is not successful as it is the intention that is important. However, they have concerns that racehorse ownership by a company may mask a personal interest by the directors and that in reality it is a non-business activity. This is particularly relevant for owner managed businesses. It will be important that consideration of the business case is given, and recorded, before the purchase of the horse. A board minute, or similar note, detailing the reason why a horse is obtained would be helpful. The sorts of issues that HMRC will consider will be whether or not there is any relationship between the company and/or its products and the bloodstock industry, whether the racing career of the horse is shaped in any way to provide added value for the company, whether advantage is taken of the sponsorship advertising site opportunities on the jockey's colours etc., and whether the target market for the company and its products is linked in any way to people who may see the horse either at the racecourse or on television. When considering the business case, it should be remembered that any VAT incurred on business entertainment is not deductible and a business case that places reliance on the fact that owning a racehorse adds value to corporate hospitality at the racecourse is unlikely to find favour with HMRC.

The other option is to use the provisions of the Owner's Scheme. Given the requirement of the Scheme to generate business income, it will be necessary for the owning company to advertise another company's products. It could of course work with an associated company but in these circumstances great care must be taken to ensure that there is a genuine transaction between the two parties, i.e. invoices are raised and monies are paid and that thought is given to the VAT recovery position in the sponsoring company, i.e. the VAT being incurred on the sponsorship fee.

Appendix 1

GUIDELINES TO TRAINERS

National
Trainers
Federation

The Tax Treatment of Living Accommodation for Stable Staff

National Trainers Federation
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National Trainers Federation

APPENDICES

1 Frequently Asked Questions

2 Extracts from H M Revenue and Customs' Schedule E Manual

I INTRODUCTION

These guidelines set out the national agreement with H M Revenue and Customs on the tax and NIC treatment of living accommodation for stable staff. The NTF commends this agreement to its members as giving a fair and equitable result in most circumstances.

Full details are also provided on the tax and NIC treatment of board and lodging, living accommodation and costs of occupation. For more information see leaflet CWG2 - Employees Guide to PAYE and NICs and leaflet CWG5 – Class 1A National Insurance Contributions on Benefits in Kind.

Class 1A National Insurance Contributions (NICs) are payable on most benefits provided to employees by employers or arranged by employers. Employers may also have to pay Class 1 NIC on reimbursements to employees and bills settled on their behalf. If Class 1 NIC is payable Class IA NIC sae not payable on the same expense or benefit. Where a benefit is exempt from tax, Class 1A NICs will not be due. This guide contains information on the relevant Class 1 and Class 1A NIC liability in respect of the board and lodging, living accommodation and costs of occupation provided to employees.

Expenses which are the subject of an Inland Revenue dispensation are not reported on forms PllD and are not liable to tax or NICs.

II BOARD AND LODGING

Definition of board and lodging

Board and lodging means accommodation where the employee cannot live independently (storing, preparing and cooking their own meals). Such board and lodging will include bed and breakfast, half or full board accommodation. It is important to distinguish "Board and Lodging" from "Living Accommodation" as the tax treatment is quite different (see page 6).

Tax treatment of board and lodging (N.B. other than Living Accommodation)

The tax treatment is unchanged and depends on whether the employee earns at a rate of £8,500 per annum or more.

What does "earns at a rate of £8,500 per annum" mean?

It is not only wages which are counted for the £8,500 limit. The following items should be added together for this purpose:

(a) wages, overtime, bonuses, pool money etc

(b) the cost of the provision of the board and lodging;

(c) expenses reimbursed (including payments fo rtime worked away from the yard – see NASS/NTF Memorandum of Agreement.

(d) any of the employee's bills settled by the employer;

(e) the cost to the employer of any benefits provided to the employee: and

(f) the cost of any travel tickets or vouchers provided to the employee

For the purposes of calculating whether the employee earns at a rate of £8,500 per annum or more, items should not be included where they are covered by a dispensation from H M Revenue and Customs not to report them on form P11D.

If the employer has any part time employees, it is not necessary to "gross up" their part time rate to the full time equivalent to see if they would earn more than £8,500. For example, an employee works 3 days a week and earns £5,500. Do not gross this up to the full time rate, which would be £9,166 per annum.

However if an employee joins on say, 5 October and works full time for six months of the tax year, the limit is £4,250 (6/12 x 8500).

Employee earning over the £8,500 limit

Those earning at a rate of more than £8,500 per annum are subject to tax on the cost of board and lodging borne by the employer whether provided within the curtilage1 of the training establishment, reimbursed, paid as an allowance or met directly under an arrangement between the employer and the provider.

Employee earning less than the £8,500 limit

Those earning at a rate of less than £8,500 per annum are tax exempt on the board and lodging where:

(a) the employer provides the board and lodging in kind; or

(b) the board and lodging is arranged by the employer who settles the bills direct with the provider (not by reimbursing the employee or settling the bill for board and lodging arranged by him/her).

If the employee is entitled to a gross cash wage out of which he pays for board and lodging, or the employer, with the employee's agreement, deducts an amount to pay for board and lodging, then the gross wage is subject to tax and NICs in the usual way.

Generally stable staff whose contracts provide for a cash wage and free board and lodging may be entitled to take a higher cash wage and make their own arrangements for accommodation. By concession the employee will be taxed only on the cash wage received providing:

(a) his/her contract is for a cash wage plus free board and lodging;

(b) he/she earns at a rate of less than £8,500 per annum (see above) and;

(c) where the board and lodging is not provided by the employer in kind, the employer has a contract with a third party for its provision and payments under the contract are made direct to the third party (landlord/lady).

Trainers should be aware that very few stable staff will meet the strict conditions for exemption from board and lodging.

[1] Living within the curtilage of the training establishment means living on land owned or rented by the employer (the trainer, training partnership or company, as the case may be) which adjoins or is within the boundary of the training establishment.

National Insurance Contributions (NICs)

Employees earning less than the £8,500 limit

Most benefits provided to those employees earning at a rate of less than £8,500 reportable on forms P9D will not attract a Class 1 NIC liability. However expenses will attract Class 1 NIC if an employer pays or reimburses an individual's personal bill.

Employees earning at a rate of over £8,500

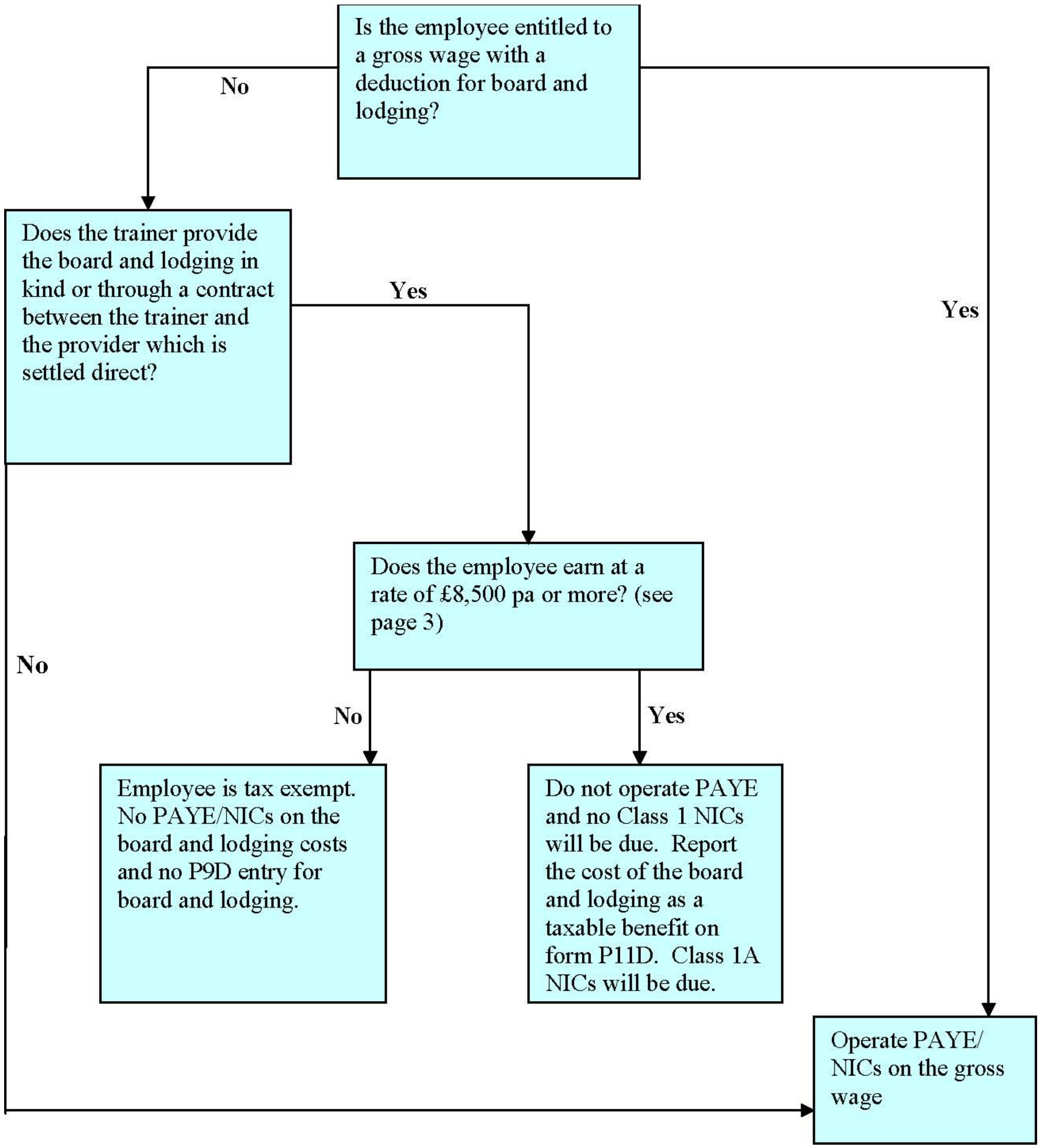
Class 1 NIC is due in respect of payments reimbursed to the employee for board and lodging or where the employer settles the individual's bill.

Board and lodging that is arranged by the employer and paid directly to the landlord/landlady by the employer will be liable to Class 1A NIC (see form PllD Section N 1.22).

Tax Treatment of Board and Lodging

(Employee cannot sub-let, and is not reimbursed the cost)

Note: Trainers should be aware that very few stable staff will meet the strict conditions for exemption from tax on board and lodging.



III LIVING ACCOMMODATION

Definition of living accommodation

Living accommodation means accommodation where the employee has the use of a refrigerator and cooking facilities. Such accommodation could include a cottage, a hostel shared by a number of staff, a bed-sit or a room in a property rented or owned by another.

Living accommodation does not include board and lodging.

Tax Treatment of Living Accommodation (N.B. other than board and lodging)

Living accommodation provided by the employer by whatsoever means (owned or rented by the employer, or the cost of which is reimbursed) will be taxable on the employee regardless of whether or not he/she exceeds the £8,500 earnings limit unless he/she meets one of the conditions for exemption set out in (a) – (d) below. An employee will be exempt from tax on the accommodation itself providing:

(a) the employee lives within the curtilage2 of the training establishment (regardless of the employee's grade); or

(b) the employee carries out the duties of the kind encompassed within Grade "A", as follows:

- Head Lad: Full responsibility for yard and horses including feeding, veterinary care, staff management.
- Travelling Head Lad: Full responsibility for horses and staff when travelling and at the races including declarations, saddling runners, post race care and veterinary treatment.
- Assistant Trainer: Full responsibility in the yard and at the races in trainer's absence including office administration and entertaining owners.
- Senior Staff: Stable Employees with plenty of experience. Capable of carrying out instructions without supervision. Able to take responsibility as required.

and in addition:

(i) has access to motorised transport and lives within a 5 mile radius of the yard; or

[2] Living within the curtilage of the training establishment means living on land owned or rented by the employer (the trainer, training partnership or company, as the case may be) which adjoins or is within the boundary of the training establishment.

(ii) can otherwise reach the yard within 10 minutes; or

(c) the employer/employee can demonstrate to the satisfaction of the local Inspector of Taxes that the employee qualifies for exemption on other grounds. Such employees would have to meet the conditions set out in H M Revenue and Customs Manual EIM 11349 and EIM 11350 (Appendix 2); and

in any of the cases (a) – (c) above, the employee is not permitted to sub-let the property and the employee concerned has responsibility for looking after the horses outside normal working hours.

(d) there is one other circumstance in which an employee can be exempt from tax on the provision of accommodation. Employees who were (with the agreement of H M Revenue and Customs) treated as exempt from tax on living accommodation up to 5 April 1977 will remain so providing the circumstances remain unchanged. This also applies to employees who succeed to a particular position where the predecessor was treated as exempt on living accommodation.

If the employee is exempt from tax on the accommodation, council tax and water rates on the property paid by the employer will also be exempt. There may, nevertheless, be tax to pay on the benefit of any costs of occupation borne by the employer, see page 8/9.

There are three cases where the exemption from tax will **not** apply:

- where the employee arranges the accommodation and the employer reimburses the employee;

- where the employee has the continuing right at any time to give up the accommodation and receive a higher wage. (NB this can be distinguished from those cases where the employee is free to choose which option he prefers but (say) having chosen the accommodation he does not have the right to give up the accommodation and demand the higher wage); or

- where the employee is a director of the company which provides the accommodation, the exemptions from tax will not normally apply unless the employee is a full time working director and he controls (together with relatives and certain others) less than 5% of the company. Professional advice should be sought in all cases as the provisions are complex.

If the employee is not exempt from tax on the accommodation, where the employer rents the accommodation, the employee will be subject to tax on an amount equal to the rent paid. Where the accommodation is owned by the employer (freehold or leasehold), the tax charge is based on the Gross Rateable Value (GRV) under the old property rating system which applied prior to the introduction of the Community Charge. GRV for properties can be obtained from the Local Council.

Exceptionally, if the purchase price of the property (or the lease premium if paid) plus the cost of any improvements, is over £75,000 then the taxable amount is more complex to calculate and you are advised to contact your tax advisor.

Where the employee has arranged the accommodation and the employer reimburses him/her, the employee is taxed (and subject to Class 1 NICs) on the amount reimbursed.

Where an employee has the continuing right at any time to give up the accommodation in return for a higher wage, he/she will be subject to tax on the wage forgone if greater than the amount otherwise chargeable. (NB: this does not apply in those cases where an employee was offered a higher wage and no accommodation, or a lower wage with accommodation, and having chosen does not have the right to give up the accommodation for the higher wage).

Where the employee is permitted to sub-let the property, he/she will be subject to tax on the rent which he/she can realise, if this is greater than the value otherwise chargeable.

Where more than one employee occupies the property (such as a cottage or hostel) the taxable amount should be divided amongst the occupants on a reasonable basis.

Finally, if an employee pays rent to the employer, or makes a contribution to expenses borne by the employer in relation to the property, these sums will reduce the taxable benefit pound for pound, but will not reduce the charge below zero.

National Insurance Contributions (NICs)

If the employee is exempt from tax on the living accommodation provided or the employee's earnings do not exceed the £8,500 earnings limit, there will be no Class 1A NIC liability on the accommodation provided.

Class 1A NIC will be due on the taxable value of living accommodation provided to employees who:

- do not fulfil the criteria for tax exemption under Tax Treatment of Living Accommodation (a) to (d) on pages 6 and 7; **and**

- their earnings exceed the £8,500 earnings limit (see form P11D Section D1.14)

Costs of occupation

An employee will be taxable on the costs of occupation if he/she earns at a rate of £8,500 per annum or more, whether or not he/she meets the conditions for exemption from tax on the accommodation itself. For example, any expenses borne by the employer which relate to:

(a) heating, lighting or cleaning the premises;

(b) internal decoration and repairs (but not repairs to the structure, electrical or heating installation):

(c) the use of furniture and applicances and repairs to these: and

(d) telephone bills.

Expenses under (a), (b) and (d) are taxed at cost; (c) is taxed annually at 20% of the cost of the items of their value when first provided as a benefit to any employee, together with any running costs. Where the living accommodation itself is exempt from tax, there is a limit to the value on which an employee is taxed for items included under (a), (b) and (c). The limit is 10% of the employee's earnings after deducting any employee's pension contributions that qualify for tax relief.

Costs of Occupation - NICs

NICs will be due in respect of costs of occupation relating to the living accommodation as follows:

- **Class 1 NIC** – where personal bills of the employee are paid by the employer (i.e. where the employee has contracted with the supplier for services) for example heating, lighting, and cleaning or where such expenses are either reimbursed by the employer or paid by the employer to the provider on the employee's behalf.

- **Class 1A NIC** – will be due on the following

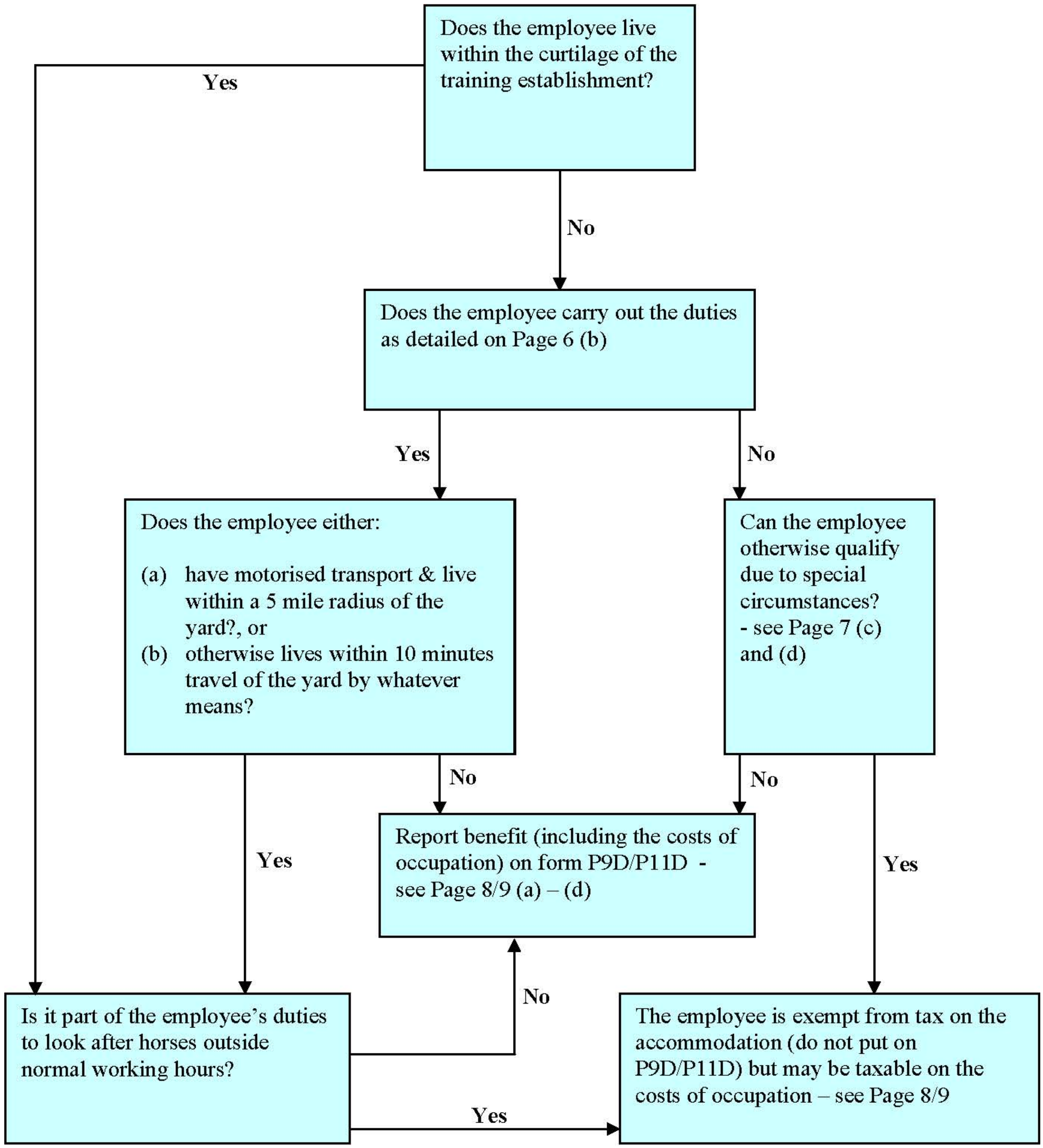
.

(a) facilities, for example heating, lighting, cleaning, where the employer has contracted with the provider and has paid the provider direct (this includes telephone bills, internal decoration and repairs, but not repairs to the structure, electrical or heating installations).

(b) the taxable value of the use of furniture and appliances owned by the employer which are placed at the employee's disposal (see page 8/9).

Living Accommodation
(Other than Board and Lodging)

Employee cannot sub-let, is not reimbursed the cost nor has the right at any time to give up the accommodation in return for a higher wage



IV EXISTING AGREEMENTS AND STATUS OF THE GUIDELINES

Trainers may have an existing agreement with their Inspector of Taxes that certain employees are exempt from tax on the provision of living accommodation. Such agreements remain undisturbed providing circumstances remain substantially the same as when the agreement was entered into. The guidance issued by H M Revenue and Customs head office to local tax districts at the time of issue of the previous guidelines in 1998 made it clear that the issue of the guidelines was not to be taken as an opportunity for Inspectors to revoke agreements and launch a wholesale review of the tax treatment of accommodation provided by trainers. It is to be expected that the guidelines will be influential in determining the tax treatment of living accommodation in the future as new cases arise and agreements are reviewed. It is also to be expected that the guidelines will be influential as a basis for settlement of past years where these are not covered by an agreement and are in dispute.

There may be cases where an existing agreement is now clearly invalid, for example where an agreement states that board and lodging is exempt when provided in kind via a landlady. The agreement may well have been issued at a time when all stable staff were paid at a rate well below the £8,500 limit and it would be wrong to expect that the agreement remains valid if their pay, including the board and lodging, is now at or above the £8,500 limit.

Trainers are recommended to adopt the guidelines. Where trainers do not wish to do so but are unsure as to whether circumstances have changed materially since their existing agreement was entered into, they should discuss the matter with the Inspector of Taxes responsible for the PAYE affairs of their training establishment and/or consult their professional adviser.

V FORMS P9D AND P11D

You are recommended to adopt these guidelines when completing forms P9D and P11D. Employees who, in accordance with these guidelines, are exempt from tax on the provision of board and lodging or living accommodation, should not have the accommodation itself reported on the form P9D / P11D, but please note that there may be items to report under the costs of occupation of the property (see page 8/9).

Although not obligatory, the NTF recommends that staff are told if the accommodation itself is exempt from tax and, therefore, has not been disclosed on their form P9D / P11D and does not need to be declared in their Tax Return (if required to complete one).

Where an employer returns benefits on a form P9D / P11D for the first time then the Inspector of Taxes may enquire about past years.

If you do not wish to adopt these guidelines because you have an existing agreement with your PAYE Inspector of Taxes, then H M Revenue and Customs has asked that you at least read the guidelines and discuss your agreement with that Inspector if circumstances have changed materially since your agreement was entered into.

VI THE EMPLOYEE'S POSITION

As noted above, if any employee fails to meet the conditions for exemption under the guidelines, it is open to an employer or employee to seek to demonstrate to their local Inspector of Taxes that they otherwise meet the conditions for exemption in their own circumstances. For example, an individual may work for a smaller yard and strictly be grade "B" or below by reference to their experience yet are fulfilling the duties of a more senior position. There may be other exceptional circumstances applicable to an individual employee. Trainers are advised to discuss exceptional cases with their Inspector of Taxes.

Each employee has a personal responsibility to report any benefits received on their own Tax Return, if they receive one. If a Tax Return is not issued, then the employee has a duty, under Self Assessment, to write and disclose any new benefit to the Inspector of Taxes within six months of the end of the tax year in which the benefit first arose. This is the case even if the employer has reported the benefit on form P9D or P11D.

APPENDIX 1

Frequently Asked Questions

Question 1 An 18 year old works for us on a 40 hour week and is provided with living accommodation in one of our houses on the yard with two other employees. His basic wage is £200.00. Sometimes he fills up water buckets at night. Can we take £60.00 from gross wages as a contribution to his accommodation?

Answer 1 Tax

To be exempt from tax on the living accommodation, part of the employee's duties should be to look after the horses outside working hours (see flowchart page 10). Filling up of water buckets would not be sufficient for the employee to be exempt from tax on the benefit of the living accommodation. However, in reality, as the employee lives within the curtilage of the yard he would be "on call" and would respond to any emergencies and take responsibility for the horses assigned to his care and he would be exempt from any tax on the living accommodation provided.

Deductions -You have to consider whether or not it would be legal to make the deductions.

NMW*1 for 40 hours @ youth rate of 4.92 = £196.80

Maximum permitted deduction from NMW for accommodation = £32.27
Minimum pay after accommodation deduction = £164.53

If he were paid £200.00 – £60.00 = £140.00, he would be under paid by £24.53. You must give him at least either

(a) £164.53 pay plus free accommodation; or,

(b) pay him at least £224.53 less £60.00 for accommodation; or

(c) £196.80 less a deduction of £32.27 for accommodation.

However, it should be noted that the NTF/NASS minimum wage for an 18 year old is £197.45 and so the employee needs to be paid at least 0.65p per week more than the above NMW rates to comply with the NTF/NASS minimum.

Figures correct to 30th September 2011.

Question 2 We have a 17 year old who is in digs in Newmarket. He is paid £150.00 per week. With bonus and pool money he can expect another £1,000 a year. Can we pay him £100.00 per week plus free accommodation and £50.00 per week to the landlady?

Answer 2 Tax

If the contract of employment states that the employee earns £90.00 per week with free board and lodging, the employee will be exempt from any taxable benefit arising on the provision of the board and lodging and will not attract Class 1A NICs as it is arranged by the employer who settles the bills direct with the landlady and his earnings are less than £8,500 per annum (see flow chart page 5).

However, if the contract of employment states that the employee is paid £150.00 and £50.00 is deducted from his gross pay of £150.00 then he will not be afforded the exemption on the value of the board and lodging. Tax will be deductible and Class 1 NIC will be due on the full £150.00 per week.

Deductions

However, you have to consider whether or not it would be legal to make the deductions.

You must consider the national minimum wage (NMW)*1.

NMW for 40 hours @ youth rate £3.64 = £145.60

Maximum deducted from NMW permitted for accommodation = £32.27

Minimum permitted wage post accommodation deduction = £113.33

If he were paid, £150.00–£50.00 = £100.00 he would be under paid by £13.33. For a 40 hour week he should either be paid:

£145.60 less a deduction of £32.27 for board and lodging; or

£113.33 plus free board and lodging; or

£163.33 less a deduction of £50.00 for board and lodging.

However, it should be noted that the NTF/NASS minimum wage for a 17 year old is £145.94 and so the employee needs to be paid at least 0.34p per week more than the above NMW rates to comply with the NTF/NAS minimum. Figures correct to 30th September 2011.

Question 3 Our Assistant Trainer lives with his girlfriend on the yard. She works part time for us. She earns £120.00 per week. Is she exempt from tax on the accommation? Rent is £40.00 per week.

Answer 3 Tax

Where it is clear that the accommodation is provided by the Assistant Trainer rather than the part-time employee (girlfriend) by virtue of her employment, no tax or NIC is due in respect of the accommodation on the girlfiend.

The tax/NIC position of the provision of the accommodation to the Assistant Trainer would need to be addressed. In this particular instance the Assistant Trainer lives within the curtilage of the yard and his accommodation should be exempt from tax and NIC (flowchart page 10).

Question 4 We have a 16 year old who has been at the racing school and has come to us. He is Grade D. We want to pay him £160 per week and to take £45.00 for the hostel. But do we take it from gross wages and pay him £115.00. This wage is in excess of the NTF/NASS minimum rate of £145.94 (correct to 30th September 2011).

Answer 4 Tax

The question does not state whether the 16 year old is provided with board and lodging at the hostel, or just living accommodation (see pages 2 and 6 for definition).

If the hostel provides board and lodging the employee will be exempt from tax in respect of this if he is paid a gross wage and is provided with free board and lodging. Class 1A NIC will not apply as the employee earns less than £8,500.00 per anum (see flow charge page 5). However, if he is provided with board and lodging and the employer deducts £45.00 for this from his gross wage, PAYE and Class 1 NIC should be deducted from the gross wage of £160.00.

If the hostel provides living accommodation (see page 6) and the hostel is within the curtilage of the yard, the living accommodation would not be exempt from tax (see flow chart page 10) unless part of the employee's duties included looking after the horses outside normal working hours. (See Question 1 above).

The living accommodation would not be exempt from tax if it was outside the curtilage of the yardf as the employee is not Grade A (see flowchart page 10).

* 1 National Minimum Wage *2 Rate current as at 1* October 2010

APPENDIX 2

EXTRACTS FROM H M REVENUE AND CUSTOMS'S

SCHEDULE "E" MANUAL EIM11349 & EIM11350

11349 Living accommodation exemption: The better performance test S145(4)(b) ICTA 1988

The "better performance" test is an objective one. The empoyee has to show that by occupying the accommodation provided he really can perform his duties better than if he lived elsewhere.

The test is not satisfied merely because accommodation is provided close to the place of employment so that the employee can get to work more easily. The duets of an employment do not normally beging until the employee arrives at his place of work. The distance he has to travel does not therefore affect the performance of those duties. Consequently it is necessary to look at the duties, if any, that are performed outside the employee's normal hours (including any normal unsocial hours) of attendance at his place of employment

11350
Living accommodation exemption:
The better performance test –
Practical considerations
S145(4)(b) ICTA 1988

You may accept that the accommodation is provided for the better performance of the duties of the employment if:

- the employee is required to be on call outside his normal hours; and
- he is, in fact, frequently called out; and
- the accommodation is provided so that he may have quick access to his place of employment or other place to which he is called.

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11341. Living accommodation exemption: Necessary for proper performance of the duties

11341 Living accommodation exemption: Necessary for proper performance of the duties

Section 99(1) ITEPA 2003

Part 3 Chapter 5 ITEPA 2003 does not apply to living accommodation provided for an employee if it is necessary for the proper performance of the duties that the employee should reside in the accommodation provided. This exemption from the benefit charge does not apply to most directors (see EIM11366).

The test is only satisfied where the employee can demonstrate that occupation of the particular property (as opposed to any other property) is essential to the proper performance of the duties of the employment.

Support for this view can be derived from Langley and Others v Appleby (53 TC 1), in which Fox J said at page 21

> "if it is asserted that it is essential for the servant to occupy the house in order to perform his duties, it seems to me that the servant must establish affirmatively that for the performance of his duties he must live in that house and no other."

The words "that house and no other" emphasise the strict nature of the test.

An employee may claim that it is necessary to occupy a particular residence because the employer requires the employee to live there. This is not enough to satisfy the test. It must be shown that the duties of the employment require occupation of the residence. An argument that the employee cannot afford to live elsewhere is not sufficient, see Vertigan v Brady (60 TC 624).

For types of employee accepted as being within the exemption see EIM11342.

For connected exemptions and tax relief see EIM11332. There can still be a charge on accommodation services such as heat and light (see EIM11521).

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11342. Living accommodation exemption: necessary for proper performance of the duties: types of employee [May 2010]

11342. Living accommodation exemption: necessary for proper performance of the duties: types of employee [May 2010]

Section 99(1) ITEPA 2003

Part 3 Chapter 5 ITEPA 2003 does not apply to living accommodation provided for an employee if it is necessary for the proper performance of the duties that the employee live in the accommodation provided (see EIM11341).
The following types of employee may be accepted as being within the exemption:

- agricultural workers who live on farms or agricultural estates. We accept that all of this type of employee qualify for exemption, although some will qualify under Section 99(2) ITEPA 2003 or as former representative occupier posts rather than under Section 99(1).

- lock-gate and level-crossing gate keepers

- caretakers living on the premises. This only covers those with a genuine full time caretaking job who are on call outside normal working hours (see note). It would not cover a shop employee who is allowed to live in the flat above the shop because the employer thinks this will discourage burglaries of the business premises.

- stewards and green keepers living on the premises

- wardens of sheltered housing schemes living on the premises where they are on call outside normal working hours (see note).

Note

Recent changes to employment law and practice have in a number of cases removed the requirement for resident caretakers and resident wardens of sheltered housing schemes to be on call outside normal working hours. HMRC therefore no longer accepts that these types of employee automatically come within the exemption in Section 99(1) ITEPA. This change applies to resident wardens for tax years 2006-07 onwards and to resident caretakers for 2010-11 onwards.

11343-11345.

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11346. Living accommodation exemption: Customary and better performance.

11346. Living accommodation exemption: Customary and better performance

Section 99(2) ITEPA 2003
Part 3 Chapter 5 ITEPA 2003 does not apply to living accommodation provided for an employee if:

- the living accommodation is provided for the better performance of the duties (this is referred to as the better performance test (see EIM11349))

- and the employment is one of the kinds in which it is customary for employers to provide living accommodation (this is referred to as the customary test (see EIM11347)).

This exemption from the benefit charge does not apply to most directors (see EIM11366).

For types of employee accepted as being within the exemption see EIM11351 onwards.

For connected exemptions and relief see EIM11332. There can still be a charge on accommodation services such as heat and light (see EIM11521).

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11347. Living accommodation exemption: the customary test [June 2006]

11347. Living accommodation exemption: the customary test [June 2006]

Section 99(2) ITEPA 2003

When considering an exemption from the living accommodation charge under Section 99(2) ITEPA 2003 (see EIM11346) the customary test should be examined first. Customary is not defined in the legislation and therefore has its ordinary everyday meaning. A practice is customary if it is recognisable as the norm and if failure to observe it is exceptional.

Consequently it is not enough to show that a custom exists in a particular employment with a particular employer. It must be shown that it is customary in that kind of employment generally for accommodation to be provided. You must consider employees holding similar positions with other employers. The test is satisfied where it is the normal practice to provide living accommodation for a class of employee. The onus is on the claimant to produce evidence to support his claim. (This text has been withheld because of exemptions in the Freedom of Information Act 2000)

For more information on what the Courts have said about the customary test see EIM11348.

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11348. Living accommodation exemption: The customary test: Judicial comments

11348. Living accommodation exemption: The customary test: Judicial comments

Section 99(2) ITEPA 2003

The customary test (see EIM11347) has been considered by the Courts. In Vertigan v Brady (60 TC 624) it was held that although two-thirds of nursery foremen in the United Kingdom lived in provided living accommodation, that fact was not conclusive that a custom did exist. There were two other factors to take into account:

- how long the practice had existed and
- whether it had achieved acceptance generally by the relevant employers.

It seems clear from this case that there is no custom where less than half of the employees in a particular kind of employment are provided with living accommodation, even if the practice is ancient. Note that it is the proportion of employees provided with living accommodation rather than other types of accommodation that is relevant. For example, in a particular kind of employment 25% of employees are provided with living accommodation, 60% are provided with board and lodging and 15% are not provided with any accommodation. Although 85% of employees are provided with accommodation of some kind the customary test would not be met as only 25% are provided with living accommodation.

Before exemption can be given the better performance test has to be satisfied (see EIM11349).

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11349. Living accommodation exemption: The better performance test.

11349. Living accommodation exemption: The better performance test

Section 99(2) ITEPA 2003

One of the two conditions of Section 99(2) ITEPA 2003 which prevents Part 3 Chapter 5 ITEPA 2003 from applying to provided living accommodation is that of better performance (see EIM11346). The test is an objective one. The employee has to show that by occupying the accommodation provided the employee really can perform the duties better than if the employee lived elsewhere.

The test is not satisfied merely because accommodation is provided close to the place of employment so that the employee can get to work more easily. The duties of an employment do not normally begin until the employee arrives at the place of work. The distance the employee has to travel does not therefore affect the performance of those duties. Consequently it is necessary to look at the duties, if any, that are performed outside the employee's normal hours (including any normal unsociable hours) of attendance at the place of employment.

For details of how to decide if the test is met in practice see EIM11350.

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11350. Living accommodation exemption: The better performance test: Practical considerations

11350. Living accommodation exemption: The better performance test: Practical considerations

Section 99(2) ITEPA 2003

You may accept that the better performance test (see EIM11349) is met in practice if:

- the employee is required to be on call outside normal hours and
- the employee is in fact frequently called out and
- the accommodation is provided so that the employee may have quick access to the place of employment or other place to which the employee is called.

Before exemption can be given the customary test has also to be satisfied (see EIM11347).

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11351. Living accommodation exemption: Customary and better performance: Classes of employee [March 2009]

11351. Living accommodation exemption: Customary and better performance: Classes of employee [March 2009]

Section 99(2) ITEPA 2003

You can accept the following classes of employee get the living accommodation exemption available under Section 99(2) ITEPA 2003 (see EIM11346):

- police officers (see EIM68150)
- Ministry of Defence police
- prison governors, officers and chaplains (see EIM68310)
- clergymen and ministers of religion unless engaged on purely administrative duties (see EIM60020)
- pre-registration house officers before 1 August 2008 (see EIM61012)
- members of HM Forces
- members of the Diplomatic Service
- managers of newsagent shops that have paper rounds, but not those that do not
- managers of public houses living on the premises
- managers of traditional off-licence shops, that is those with opening hours broadly equivalent to those of a public house, but not those only open from 9 until 5 or similar

- in boarding schools where staff are provided with accommodation on or near the school premises
- head teacher
- other teachers with pastoral or other irregular contractual responsibilities outside normal school hours (for example house masters)
- bursar
- matron, nurse and doctor
- (boarding schools include schools where some of the pupils are boarders)
- stable staff of racehorse trainers who live on the premises and certain key workers who live close to the stables.)

There are some classes of employees for whom we accept that the customary test is met but for whom the better performance test has to be considered in each individual case. For a list of these classes of employees see EIM11352.

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11352. Living accommodation exemption: The customary test: Classes of employee

11352. Living accommodation exemption: The customary test: Classes of employee

Section 99(2) ITEPA 2003

You can accept that the following classes of employee satisfy the customary test in Section 99(2) ITEPA 2003 (see EIM11346). If the employee also satisfies the better performance test then Part 3 Chapter 5 ITEPA 2003 does not apply to the living accommodation provided for them (see EIM11349):

- veterinary surgeons assisting in veterinary practices
- managers of camping and caravan sites living on or adjacent to the site.

For a list of classes of employees that we accept meet both the customary and better performance tests see EIM11351.

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11353. Living accommodation exemption: customary and better performance tests: submissions to Employment Income Technical [June 2006]

11353. Living accommodation exemption: customary and better performance tests: submissions to Employment Income Technical [June 2006]

Section 99(2) ITEPA 2003

Sometimes it can be difficult to decide if the conditions for living accommodation exemption under Section 99(2) ITEPA 2003 (see EIM11346) have been met.

Take special care where claims to exemption are made on behalf of large groups of workers rather than by individuals, for example where claims are made by trades unions or by employers.**11354-11360.**

HMRC Manuals/Employment Income Manual/11300. Accommodation provided by reason of employment/11366. Living accommodation exemption: Directors

11366. Living accommodation exemption: Directors

Section 99(3) ITEPA 2003

Directors do not usually qualify for the Section 99(1) ITEPA 2003 exemption (see EIM11341) or the Section 99(2) exemption (see EIM11346). Where a person who would otherwise qualify for this exemption is provided with living accommodation by a company (or an associated company) of which the person is a director there will be no exemption unless:

- the person has no material interest in the company (see EIM20212) and
  one of the following applies:
- the person is a full-time working director of the company (see EIM20202 onwards), or
- the company is non-profit making (see EIM20210), or
- the company is established for charitable purposes only (see EIM20211).

The conditions have to be satisfied in respect of the director's employment with the company providing the accommodation and the director's employment with any associated company. Companies are associated if one has control of the other or both are under the control of the same person. Control is defined in Section 840 ICTA 1988 (see EIM20213).

Where a company claims to be a charity and no ruling has been received, submit the case to IR Charities Bootle, or for cases in Scotland, IR Charities (Edinburgh).

APPENDIX II

Capital Allowances

The depreciation charged on a business's assets is not allowed as a deduction for tax purposes. However, the tax legislation does allow a similar deduction known as capital allowances, which are available to both breeders and trainers. Allowances are given on certain qualifying assets, with different rates of allowance applying to different classes of asset. The tax legislation covering capital allowances is set out in the Capital Allowances Act (CAA 2001), with important updates made to this legislation by the Finance Act 2008.

Agricultural Buildings Allowances

The breeder may have qualified for agricultural building allowances on expenditure on the land he owns under Sections 361 CAA 2001 but these allowances were phased out and eventually abolished from 6 April 2011 or 1 April 2011 for companies (Section 84 Finance Act 2008). The expenditure which qualified for agricultural buildings allowances before 6 April 2011 included the construction of farmhouses, farm building cottages for the workforce, fences, boxes and other work such as drainage and sewage works, water and electricity installations on land reclamation. Relief is only given on up to a maximum of one-third of the expenditure on the farmhouse and where expenditure is incurred on an asset which is only partly used for the purposes of the stud farm, a just appointment will need to be made to arrive at the qualifying expenditure element.

Plant and Machinery

Both breeders and trainers may qualify for capital allowances on items of plant and machinery used in their business.

The question of what constitutes "plant and machinery" is the subject of much debate between tax advisers and HM Revenue & Customs, in certain cases resulting in legal proceedings. Consequently, the decision as to whether to claim capital allowances on an item is made after considering relevant case law and the particular circumstances of the item in question.

The 1993 case of Jarrold v John Good and Sons Ltd established that an item must be "part of the plant with which the business is carried on" rather than "part of the premises in which the business is carried on" in order to qualify for plant and machinery allowances. Items such as equine swimming pools, horse walkers, solariums and box heaters should be regarded as plant, however items such as ménages and gallops (see below) may be questioned by HM Revenue & Customs. The case also established that a moveable item would also be regarded as plant and therefore portable schooling fences would also qualify for capital allowances.

All weather surfaces are increasingly important at training racehorses and many trainers have had such a surface laid. Since the case of Shove v Lingfield Park 1991 Limited, expenditure on such surfaces are less likely to qualify for capital allowances.

Writing Down Allowances

All qualifying plant and machinery must be pooled together each year adding the brought forward balance of unrelieved expenditure to the current year additions which do not qualify for the Annual Investment Allowance (see below) and subtracting the proceeds of any items disposed of. A writing down allowance (WDA) of 20% is then available on the balance of expenditure in the pool at the year end on a reducing balance basis. Please note that the 2010 Budget announced proposals to reduce this WDA from 20% to 18%.

Annual Investment Allowance (AIA)

The first £100,000 of qualifying plant and machinery expenditure incurred by a qualifying business in a twelve month chargeable period is eligible for an Annual Investment Allowance (AIA) of 100%. This annual limit of £100,000 is in force from 6 April 2010, having previously been £50,000 between 6 April 2008 and 5 April 2010. The 2010 Budget announced that this limit would be reduced from 6 April 2012 to £25,000.

The AIA will be apportioned for any accounting periods straddling the above dates and the limits are proportionately increased or decreased where the chargeable period is longer or shorter than a year. One point to note is that the AIA is available to any individual carrying out a qualifying activity or a partnership consisting wholly of individuals, such that if a trust or company is a partner in the partnership then the AIA can not be claimed.

First year allowances for plant and machinery

A temporary First Year Allowance of 40% was available for expenditure on plant and machinery incurred in the year ended 5 April 2010. This was available to individuals and any partnerships, regardless of whether a trust or company was a partner.

Cars

The capital allowances available on cars changed for expenditure incurred on or after 6 April 2009. From this date, expenditure on a vehicle qualifies for a 10% writing down allowance if the CO_2 emissions exceed 160g/km. If the emissions are 160g/km or less then the expenditure is included in the 20% main pool. Any private use of the vehicle will restrict the above claims.

For expenditure before 6 April 2009, a 20% allowance was available in respect of all cars, subject to a £3,000 cap. Any single asset car pools that were in existence before the rules changed continue to be subject to the old rules under the transitional rules outlines in Paragraph 31 of Schedule 11 FA 2009 until having to be transferred to the main pool in the first chargeable period to end on or after 5 April 2014.

Integral Features

Expenditure after 6 April 2008 on the provision or replacement of "integral features" qualifies for WDAs at a special rate of 10%. This is designed to cover assets such as electrical systems, cold water systems, certain heating systems, lifts, etc. which are normally integral to a modern building. It is possible to allocate the AIA to integral features expenditure rather than plant and machinery, such that if the total additions in a year are less than the AIA upper limit for the accounting period then 100% relief is available on all.

Other points

If the capital allowance augments a loss which cannot be used, the trader can decide not to claim those extra allowances and effectively carry them forward to be used when more value can be obtained from the allowances.

APPENDIX III

THE TAXATION OF JOCKEYS

GRIFFINS
CHARTERED ACCOUNTANTS
GRIFFINS COURT
24-32 LONDON ROAD
NEWBURY
BERKSHIRE
RG14 1JX

INDEX

1 Introduction

The tax treatments of Jockeys' income and deductible expenses are assessable to Income Tax under the rules of Trading Income. . A Jockey may operate through the medium of a company and be an employee of that company as described under Service Companies at Section 6. Trainee Jockeys, that is, Apprentice and Conditional Jockeys are afforded different treatment; the aspects of this are dealt with at Section 8.

The information in the sections 2, 3, 4, 5 and 7 has been approved by the Inland Revenue after a consultation process between them and the Jockeys Association's advisers.

2 Sources of Income

Any money receivable by a Jockey whether in cash or by cheque, whether requested, or described as a gift, in return for his professional services will normally be taxable income. In addition, the value of any non-monetary items which are marketable, such as cars or jewellery, may also be assessable if they are received in return for the Jockey's professional services, i.e. additional rewards. If there is any doubt as to the accessibility of any receipt, whether in monetary or non-monetary form, then the Jockey should consult with his accountant who in turn will refer the matter to the local Inspector of Taxes.

The following list, which is not exhaustive, indicates the more common types of income and their tax treatment.

2.1 Stable Retainers

All amounts received are taxable.

2.2 Riding Fees

All riding fees, whether payable direct to the Jockey or through Weatherbys, and whether payable within or outside the UK, are taxable.

Jockeys should retain for production to their Inspector of Taxes, via their accountants, any receipts issued to them by foreign racing authorities. If overseas income tax is deducted from any payment, the tax deducted will normally be eligible for set-off against the Jockey's UK tax liability.

2.3 Prize Money

Prizes specified under Jockey Club Rules, payable directly through Weatherbys, are taxable. If any extra percentages are paid by a separate arrangement with an Owner then they are also taxable.

The prize percentage pool allocated to the Jockeys Association Pension Scheme is taxable. The Jockey would then show in his accounts the actual prize monies, as referred to above plus the NET personal pension allocation made to the scheme on his behalf.

2.4 Work Riding

Fees received for work riding by a fully licensed Jockey is taxable.

2.5 Fees for Appearance, Sponsorship or Professional Advice

Appearance monies payable by sponsors, racehorse owners and others are taxable, as are monies receivable for advice about horses.

2.6 Injury Benefits

Temporary disablement benefits received from the Professional Riders Insurance Scheme (PRIS) are taxable. Capital sums received under PRIS regulations are not taxable.

2.7 Horses Retired to Stud

If a Jockey is given shares in a stallion syndicate he is assessable on their market value when receivable.

Any other breeding rights or annual nominations in stallions will be assessed on the value received and should be notified to your Inspector of Taxes via your accountant.

2.8 Other Activities

Any commissions on sales or syndication or horses will be assessable. The profit of a business or horse breeding, with a view to the sale of the progeny, will be taxable.

3. Revenue Expenses

Revenue expenses are, very broadly, the ordinary day to day expenses which a Jockey incurs in the exercise of his profession. They are usually deductible in computing his taxable profits if they are paid wholly and exclusively for the purpose of his profession, through some types of expenses, such as business entertainment, are specifically disallowable.

The following list is not comprehensive, but indicates some of the most common expenses for which a deduction may be claimed.

3.1 Motor Expenses

These may include petrol, oil, repairs, tax and insurance. Only expenditure which is attributable to business motoring is allowable and if a vehicle is used partly for private motoring only the proportion of the expenses which is attributable to the business use is allowable.

3.2 Travelling and Hotel Expenses

Other travelling expenses, such as rail or air fares, are allowable if they are solely for business purposes. Hotel expenses incurred by a Jockey on his own accommodation and subsistence whilst travelling on business are also allowable.

3.3 Racing Equipment and Clothing

Expenditure on repairs and replacements is allowable.

3.4 Weatherby's Charges

3.5 Valet Fees and Laundry Expenses

Laundry expenses specifically relating to riding clothes

3.6 JAGB's Subscription

3.7 Riding Licence

The cost of Form books and racing papers as well as stationery and postage costs provided they relate to business usage are normally allowable.

3.8 Wasting and Physiotherapy

Excepting that expenditure on maintaining the general health and fitness of a Jockey is not normally allowable.

3.9 Presents to lads

Under certain circumstances, it may be permissible to claim the expenses for making presents to lads following on from your successes. This matter should be referred by consultation with the Inspector of Taxes and your accountant.

3.10 Agents Fees and Secretarial Assistance

Costs incurred in engaging the services of an agent or secretary for booking rides, maintaining records and correspondence are an allowable expense.

3.11 Other Allowable Expenses

Other types of allowable expenditure may include the cost of business telephone calls, business use of home, business bank charges, and
normal recurring accountancy expenses incurred in preparing accounts or agreeing taxation liabilities.

4 Pension Scheme

The pension allocation referred to in paragraph 2.3 must be grossed up to then be entered as a personal pension contribution on the Self Assessment Return.

5 Capital Expenditure

Expenditure of a capital nature is not fully deductible from your profits in the year that it is incurred. Capital Allowance will be given which broadly allows 20% of the cost in Year 1, 20% of the remaining value in Year 2 and so on. A typical example of Capital Expenditure would be a motor car. The allowances due will be restricted, as appropriate, to take account of any private use. Some assets, other than motor cars, attract first year allowances or the annual investment allowance (see appendix II).

6 Service Companies

Some Jockeys provide their services through the medium of service companies. Where this happens, the Jockey usually enters into a contract of employment with his company and the company enters into a contract of employment with his company and the company enters into various contracts to supply his services. The tax position of the company and of the Jockey will then be as follows:

6.1 Company Income

Income which the company earns under the contracts which it enters into will be taken into account in calculating the company's profit for Corporation Tax purposes. This will include most, if not all, of the types of income listed under Section 2.

6.2 Company Expenses

In calculating its profits for Corporation Tax purposes, the company will be entitled to deduct Revenue expenses of the kind listed in Section 3. The Jockey's remuneration as an employee is an allowable expense of the Company.

6.2 Company Pension Scheme

Contributions to company pension schemes are allowable. But note that the special retirement ages for Jockeys do not apply. Schemes of this nature can only use the normal retirement age.

6.4 Jockeys' Income

The Jockey will be assessable on:

- Any income which he receives from the company, including salaries or wages, expenses payments and benefits in kind;
- Any other employments or benefits (including prize money) which arise from his employment with the company, but which are received from somebody other then the company, e.g. Owners, Trainers, etc.
- Any income which he receives under contracts which he enters into in an individual capacity.

6.5 Jockeys' Expenses

Although expenses payments and benefits are assessable as part of the Jockey's income, he will be entitled to a deduction for any amounts which he expends wholly, exclusively and necessarily in the performance of his duties for the company.

7 Trophies

The market value of a trophy received for winning a race is normally assessable. If there is any doubt as to whether the value of a trophy is assessable, details should be provided to the Inspector of Taxes.

8 Apprentice and Conditional Jockeys

Apprentice and Conditional Jockeys who shall collectively be referred to as Trainee Jockeys are normally regarded by the Inland Revenue as employees of the trainer for whom they ride.

The majority of Trainee Jockeys receive a wage as a stable employee. This income is directly subjected to PAYE (Pay As You Earn) and National Insurance by the Trainer in the same manner as any other employee in the yard.

The riding fees and prize money received by the Trainee Jockey under the Rules of Racing are taxed under PAYE and are also liable to Class 1 National Insurance, subject to certain exceptions, as described in Section 8.3.

8.1 Sources of Income

The principal sources of income for Trainee Jockeys are the riding fees and prize money as allocated under the Rules of Racing.

Additionally, it is possible for the Trainee Jockey to earn income from other sources, namely those described in Sections 2.5, 2.6, 2.7 and 2.8.

In broad terms the Trainee Jockey is assessable on all forms of income and rewards received from riding and related activities some of which are assessable under self employment and some under PAYE. The status position is further considered at 8.3, because of these complexities it is recommended that the Trainee Jockey seeks professional advice on their own tax position.

8.2 Allowable Expenses

The Allowable Expenses will be determined on the basis of the income which is assessable under either self employment or PAYE. For income under self employment the expenses will be allowable as described at 8.3.

However, for income assessable under PAYE the expenses allowed as a deduction are subjected to a more stringent test and it is necessary to show that the expense is wholly exclusively and necessarily incurred in the performance of the duties as opposed to merely showing that the expense was wholly and exclusively for the business as under self employment.

8.3 Tax Status

The Inland Revenue have always regarded the Trainee Jockeys income from all rides as taxable under PAYE, employed income. Whereas, the Contribution Agency have always deemed income from the rides (home) of the Trainers to which the Trainee Jockey is attached as employed income, subject to Class 1 National Insurance and rides (away) for other trainers as self employed income, subject to Class 2 and 4 National Insurance.

The two agencies are now bound by each other rulings. Consequently, a ruling by the Contributions Agency has now bound the Inland Revenue to treating away rides as self employed income. Whilst, home rides remain unaffected and are treated as income of the employments.

9 General

9.1 Record Keeping

Following the introduction of self-assessment Jockeys are now required to keep all records of a financial nature, both business and private. Fines can be imposed for failure to do so.

9.2 Notification to HM Inspector of Taxes

Jockeys must advise the Inland Revenue of their commencement of riding by the 31 January next following the tax year in which they commence as failure to do so could incur penalties for non payment of national insurance. In addition, if they have not previously registered for self assessment or completed a tax return and are self employed, they should also register for self assessment by the 5 October next following the tax year in which they commenced as a Jockey.

9.3 Professional Advice

If a Jockey intends to seek advice, it is recommended he does so as soon as he starts riding, or beforehand, so that the adviser can discuss record keeping etc.

10 Value Added Tax

10.1 A Jockey’s income from race riding, is deemed a supply of business services for VAT purposes, namely:

- Riding fees
- Retainers
- Solicited Gifts (that is, gifts or presents promised verbally or in writing by an owner before a race)
- Interview Fees
- Riding Out Fees
- Journalism/Fees for Articles
- Appearance/Sponsorship Fees
- Overseas Riding Fees and Prizes* (for race riding services which are performed outside the UK and EC countries)
- EC Riding Fees and Prizes* (provided services are actually performed outside the UK, see Section 10.3).

(*these are zero rated services and nil tax is calculated)

With the exception of some of the sources of income, as detailed in Section 2, which are outside the scope of VAT, namely:

- Prize Money
- Non Solicited Gifts

Professional Riders Insurance Scheme benefits

If a Jockey has any doubts about the source of income not covered in the aforementioned, then he must consult his accountants to find out the correct treatment.

10.2 Registration

If a Jockey’s total income, as detailed above, has exceeded the current level of £73,000 from 1.4.11 in the past 12 months or circumstances are such that the Jockey expects to exceed the level, then there is the need to register.

In reality very few Jockeys exceed the level, but there is nothing stopping the Jockey applying for voluntary registration. There appears to be definite advantages since the introduction of the Racehorse Owners Scheme permitting owners to register for VAT.

10.3 Riding In An EC Country?

If a Jockey race rides in an EC country then the VAT regulations of that country have to be considered. The Jockeys have to consider registering in that country and appointing a local agent to handle their affairs.

NB: If you do ride in an EC country then you are advised to consult your accountant. The main racing countries are considered to be Ireland, France, Germany, Italy and Spain.

10.4 VAT and the Trainee Jockey

Until recently the status of a Trainee Jockey was deemed by HM Customs & Excise to be that of an employed person; in consequence the riding fee being a standard rated supply of services provided by the trainer to the owner. This then put the responsibility of accounting for the VAT on the trainer.

A recent tribunal hearing has changed the above treatment and concluded that Trainee Jockeys are self employed individuals, therefore, now able to register in their own right.

A trainee Jockey considering registering for VAT should make his status quite clear on the application form, thus ensuring the full facts are disclosed and there can be no comebacks. This action will also provide a degree of protection to the Trainee Jockey should the ruling be subsequently overturned and registration is precluded.

10.5 General

VAT is a complex tax, with pitfalls for the unwary. If a Jockey thinks he should be registered then he should be registered then he should either see his accountant or speak to a local HM Customs & Excise: VAT Office. The latter produces a booklet “Should I Be Registered for VAT?” which is a useful source of information.

If the Jockey decides to register for VAT, the Jockey must inform Messrs Weatherbys of the date from which the registration will be effective. This must be done at the time of submitting the application to HM Customs & Excise, followed by a copy of the registration document when received. The Jockey must also advise Weatherbys of the date of de-registration for VAT.

11 Your Rights

This leaflet has no binding force and does not affect a person's Right of Appeal on points concerning their liability to tax.

12 Health Warning/Helpline

These notes are for your guidance only. As each Jockey's circumstances are going to be different; you are advised to seek professional help from your accountant or contact the JAGB adviser, Terry Boothby on 01635 265265.

National Insurance rates from 6 April 2011

National Insurance contributions (from 6 April 2011 to 5 April 2012) (NIC are not due from individuals who have reached pensionable age)

Class 1 Contribution		**employees**	**employers**
			earnings above £136 a week
Employees weekly wage	*£0-139*	n/a	nil
Earnings	£139 - £817	12%	13.8%
	Over £817	2%	13.8%

Class 1 Contributions (contracted out)		**employees**	**employers**		
				*SR schemes**	*MP*
			On first £136	*Remainder*	*Remainder*
Employees weekly earnings	*£0 - £139*	*nil*	nil	nil	il
	£139 - £817	10.40%	nil	10.1%	12.4%
	Over £817	1.0%	nil	13.8%	13.8%

Class 2 Contributions (self-employed)

£2.50 per week if earnings are greater than £5,315 per year

Class 3 Voluntary Contribution £12.60 per week

Class 4 Contributions (self-employed)

9% of taxable profits between £7,225 and £42,475 per year 2% of taxable profits over £42,475

* Salary related schemes
** Money purchase schemes

Current rates can be found at : http://www.hmrc.gov.uk/rates/nic.htm

APPENDIX IV

Inheritance tax – (IHT)

IHT replaced capital transfer tax with effect from 18 March 1986. It is levied on a chargeable estate on death at 40% or on certain lifetime transfers at 20% (i.e. half the death rate). As a transfer to a UK domiciled spouse is exempt from IHT, the tax charge normally arises on the death of the surviving spouse.

IHT is levied on a chronological and cumulative basis subject to a seven year time limit with progressively higher rates of tax applying to each transfer. Gifts made within seven years of death are chargeable subject to the following relief for tax due on the gifts.

Years between death and gift	Tapering relief %
0-3	Nil
3-4	20
4-5	40
5-6	60
6-7	80

Lifetime transfers to individuals escape IHT so long as the donor survives for seven years after the gift and does not continue to benefit from the asset or cash that was subject to the gift, so that significant savings can be made by passing wealth to dependants. Lifetime transfers to a trust (excluding trusts for disabled persons) are chargeable lifetime transfers at a rate of 20%, insofar as they exceed the nil rate band. But they are disregarded for IHT purposes after seven years so that it is possible to gift say £325,000 now, using the nil rate band, and transfer further funds to a new trust in seven years time without incurring a tax charge.

The IHT liability on a particular gift is based on the value of the chargeable transfer i.e. the amount by which the value of the donor's estate is reduced, after deducting any available exemptions and reliefs.

Note that where the gift qualified for Business Property Relief or Agricultural Property Relief, it must continue to do so for the earlier of 7 years of the death of the donor.

As far as chargeable lifetime gifts are concerned (i.e. gifts other than to individuals, or a disabled persons' trust the available exemptions are as follows:

- Annual exemption of £3,000

  If the gifts in a particular year fall short of £3,000 the shortfall is carried forward one year and added to the allowance for that year only. Even then the current year's exemption must be used in priority to any amount brought forward.

- Gifts up to £250 per annum to any individual.

- Gifts which are normal expenditure out of income are exempt as long as the donor can demonstrate that after making the gifts he retains sufficient income to maintain the same standard of living as they previously enjoyed.

- Wedding gifts as follows:

  - each parent can give up to £5,000 to one of the parties to the marriage.
  - grandparents and great grandparents can each give up to £2,500 and
  - other friends and relatives can each give up to £1,000.

- Transfers between UK domiciled husband and wife.

  There is no restriction on the amount of this exemption. Where the transferee spouse is not UK domiciled, only the first £55,000 is exempt.

- Gifts to charities, listed non-profit making bodies, and certain gifts to political parties.

These exemptions apply without limit.

The last two categories of exemptions also apply to transfers on death.

APPENDIX V

Overseas taxation – definitions

Residence

An individual is currently regarded as resident in the UK if any of the following conditions are met:

a) the individual comes to the UK with the intention of staying. He is resident in the UK from the date of his arrival.

b) the individual is in the UK for a temporary purpose and is physically present in the UK for six months (183 days) or more in aggregated in a tax year (the tax year runs from 6 April to the following 5 April), or,

c) the individual visits the UK year after year for a substantial period in each year. The UK Revenue regard this condition as being met if over a period of four consecutive years, his visits to the UK in each tax year average 91 days or more. In this case the individual will become resident at the start of the four years if his intention was to make such visits, or at the start of the fifth year if this was not the case.

An individual can be resident in more than one country for tax purposes (or even none) in any tax year.

The UK position in relation to residence is currently very uncertain. A consultation document was issued in June 2011. As soon as this becomes law, the guide will be updated.

Domicile

In general an individual is domiciled in the country in which he has his permanent roots and to which he intends to return. Domicile is distinct from residence or nationality, e.g. the holder of a UK passport need not necessarily be UK domiciled. Under general law, it is only possible to be domiciled in one place.

A domicile of origin is acquired at birth and is normally that of one's father. This domicile is retained until both a person's actions or intentions show that he has acquired a domicile of choice elsewhere. A person is deemed to be domiciled in the UK for inheritance tax (IHT) purposes only, if he has been resident in the UK for seventeen out of the previous twenty tax years. This rule does not affect an individual's domicile for income tax and capital gains tax purposes.

APPENDIX VI

Taxation treatment as a trade rather than a hobby

HM Revenue & Customs' decision as to whether a business is classified as a bona fide trade or as a hobby is fundamental to the tax position of many in the bloodstock industry. If it is deemed that a hobby rather than a trade is being carried on, no relief for losses suffered will be available against other profits.

The decision as to whether a trade is being carried on will be based on whether the enterprise bears the "badges of trade", as discussed below. If a trade is being carried on then, as above, s64(2)(a) ITA 2007 will restrict loss relief where it is not carried on a commercial basis.

Badges of Trade

The issue of badges of trade was addressed by the Royal Commission on Taxation of Profits and Income in its report in 1955 and, although bloodstock breeding and racing is a somewhat specialised industry, the general principles are worth bearing in mind should you need to convince the Inspector of Taxes that the activity should be treated as a taxable trade. In the report the major relevant factors which have a bearing on the "badges of trade" are as follows:

a) *The subject matter of the realisation*. While any form of tangible property can be traded, certain items are only rarely held as an investment. Property which does not produce income or personal enjoyment is more likely to be (but not necessarily) traded property. As the stallion or share in a syndicated stallion can be a good income-producing asset, HM Revenue & Customs could argue that it is being held as an investment and not trading stock. As the owner of a racehorse is likely to derive personal enjoyment from the activity, but is unlikely to realise profits, HM Revenue & Customs have traditionally argued that racing is a hobby and not a taxable trade. However, breeders who sell foals and yearlings on a regular basis are more likely to be considered as trading.

b) *The length of the period of ownership*. Normally property which is traded will be held short-term whereas an investment is normally acquired for long term income and capital growth. It should be stressed to the Inspector of Taxes that bloodstock breeding is a high risk, long-term venture and cannot be assessed only on the results of the first year or so.

c) *The frequency or number of similar transactions by the same person*. The larger the number of horses owned, the stronger the argument will be that a trade is being carried on. If only one brood mare is owned, then the Inspector is likely to argue that a hobby is being enjoyed, whereas if the investment encompasses a number of mares, stallions and stallion shares, then he is more likely to be persuaded that there is a bona fide trade.

d) *Supplementary work undertaken in connection with the asset*. Generally where supplementary work is undertaken on an asset it will normally be regarded as a trading asset. or a genuine bloodstock breeder, the brood mare will need constant attention and the breeder will, where he owns his own stud farm, norally (but not always) carry out work on the kept at the breeder's premises, the owner may not be involved in any supplementary work during its period of ownership although he may be liable for his share of its upkeep. However, if the share is being held to enable the breeder to send his broodmares to the stallion rather than for its income from nomination fees, it is more likely to be treated as trading stock, rather than as an investment.

e) *The reason for the sale*. As mentioned above, the length of ownership of an asset is important in determining whether it is trading stock or an investment. However, an asset that was initially acquired for the long term as an investment may have to be sold at an earlier date due to the need for emergency finance. Similarly, an item acquired as stock may be held for longer than anticipated due to the trader being unable to sell it and hence may be treated as an investment. The reason for a sale should therefore be considered alongside the other factors. Please note Broodmares are shown as 'stock' in the accounts even though they are the 'production line'.

f) *Motive.* This is perhaps the most important factor. In certain cases, it will be clear that the motive of the owner was to trade or alternatively to hold the horse as an investment. However, there will be many times when the distinction is not so clear cut. In such cases, evidence supporting the motive of the owner when the horse was acquired will be extremely important. For example, if it can be shown that a share in a syndicated stallion was acquired with a view to covering a brood mare at the stud farm and that arrangements were made for the brood mare to visit the stallion, then HM Revenue & Customs should accept that the share is stock even though, for some reason, the brood mare was unable to visit the stallion. It is the purpose at the time of the transaction, e.g. the acquisition of the syndicate share, which is important.

APPENDIX VII

HMRC Business Income Manual "Guidance on Sponsorship"

BIM42555 Specific deductions: Advertising expenses: sponsorship

Sponsorship is a way for businesses to obtain the commercial benefit of bringing their name, products or services to public attention.

Sponsorship is often a form of advertising. A business tries to obtain benefits for its products, goodwill or reputation and public image by association with a popular or successful event or person.

Although often associated with sporting or cultural events, business sponsorship is not confined to those areas. For example, there is growing expenditure on 'product placement' – paying to ensure that a particular product or service features prominently in a successful television series or film.

Sports clubs and cultural venues offer a range of options for potential sponsors.

These include:

- corporate sponsorship packages, often advertised on the club or venue website
- sponsoring individual productions, players or races
- long term deals such as sponsoring a football club.

These packages may include both advertising (for example in the event's programme, on clothing, at the venue, through to the name of the event) and hospitality. the hospitality may simply be a certain number of tickets or it may include meals or access to hospitality boxes.

Sponsorship costs are allowable in arriving at the profits of a trade or profession **except** where they are:

- capital expenditure,
- expenditure not made wholly and exclusively for business purposes, or
- expenditure which is specifically disallowed (such as any entertaining expenditure – see BIM45000 onwards).

Capital expenditure

Sponsorship costs may be disallowable as capital expenditure (see BIM35105) if, for example

- a contribution to a permanent exhibition provides an enduring benefit, or
- the sponsor buys capital assets such as racehorses or cars.

Where enduring benefit takes the form of an intangible asset and the sponsor is incorporated, relief may be available under the Intangible Assets regime. Guidance on this can be found in the CIRD Manual.

Relief will not be available under the Intangible Assets regime where the intangible asset is linked to a right over land or over a tangible, moveable property (FA02/Sch29/Para 73). See CIRD25030 for further guidance on this point.

Where the sponsor acquires capital assets such as horses or cars they may be able to claim Capital Allowances. Guidance on the type of asset that qualifies for relief can be found in the Capital Allowances Manual. Guidance on animals as plant is at CA211220.

Wholly & Exclusively

Sponsorship costs are subject to the 'wholly and exclusively for business purposes' test in CTA 2009 s 53(1) and ITTOIA05/S34. This means that if there is a non-business purpose to the sponsorship (even if there is also a business purpose) no allowance is due. See BIM38220 for guidance on purpose.

The purpose or purposes of expenditure is a question of fact to be determined by the Commissioners, in cases of dispute. Further guidance on the type of evidence to look for is at BIM42557.

For an example of where the Special Commissioners found that payments of sponsorship were not paid wholly & exclusively for the purposes of the trade, see the discussion of Executive Network v O'Connor SpC56 at BIM42558.

BIM42560 Specific deductions: Advertising expenses: Sponsorship: Entertaining and Benefits in kind

In addition to the advertising, the sponsor may receive other benefits such as tickets to the event or access to hospitality boxes.

For example, a trader may enter a corporate sponsorship package with a theatre. The package includes advertising in the programme and in the foyer. In addition the package includes tickets and meals.

Although the theatre may emphasise the opportunities for business entertaining in its advertisements for Sponsorship, the trader may have no use for these tickets or may use the tickets to entertain staff or guests. It is important to establish the facts of the particular case.

The type of evidence to look for would include any business plan relating to the sponsorship, minutes of directors meetings and evidence as to how the facilities were actually used.

Entertaining

Where the sponsorship costs include an element of hospitality, this is disallowable under CTA 2009 s.1298 or ITTOIA/S45. Further guidance on this point is at BIM45055.

Where a single sum is paid for a package that includes both advertising and hospitality, then the sum should be apportioned (see BIM37007).

You should look to see if the sponsored party also offers elements of the package as this will provide evidence as to the value of the different parts of the package.

Employment-related benefits in kind

Sponsorship may result in a taxable benefit for employees, including directors.

For example, the controlling director or a company has an existing personal interest in motor racing and is a member of a racing team. The director decides that the company will sponsor that team.
The company pays bills for maintaining the team’s cars. You should consider whether the expenditure gives rise to benefits taxable on the director as part of their remuneration. See EIM20001 for further guidance on employment-related benefits.

Where corporate hospitality is provided to an employee or director by reason of their employment it may represent an employment-related benefit (EIM21729). If expenditure is incurred as part of the remuneration package then it should be considered as part of the cost of employing the person concerned.

BIM42565 Specific deductions: Advertising expenses: Sponsorship: purpose

To be an allowable expense the cost of sponsorship must be incurred wholly and exclusively for the purposes of the trade or profession. Commercial sponsorship is rarely limited to paying over funds to the sponsored activity. The sponsorship will be part of a targeted marketing scheme. When significant sums are involved, the payer will look to maximum exploitation of the sponsorship vehicle.

The following principles need to be taken into account in deciding whether the sponsorship was paid wholly and exclusively for the purposes of the trade:

- To find out whether the payment was made for the purposes of the taxpayer's trade it is necessary to discover the taxpayer's object in making the payment.
- The general rule is that establishing the object behind making the payment involves an inquiry into the taxpayer's subjective intentions at the time of the payment.
- The taxpayer's subjective intentions are not limited to the conscious motives which were in the taxpayer's mind at the time of the payment.
- The 'purposes of the trade' means 'to serve the purposes of the trade'.
- The "purposes of the trade are not the same as "the purposes of the taxpayer".
- The "purposes of the trade" does not mean 'for the benefit of the taxpayer'.
- The purpose for making the payment is not the same as the effect of the payment.
- A payment may be made exclusively for the purposes of the trade even though it also secures a private benefit. This will be the case if the securing of the private benefit was not the object of the payment but merely a consequential and incidental effect of the payment.
- Some consequences are so inevitably and inextricably involved in the payment that unless merely incidental they must be taken to be a purpose for which the payment was made.

These principles are drawn from the judgement of Miller LJ in **Vodafone Cellular & Others v Shaw** [1997] 69TC376 at page 436G to 437H. Further information on this case can be found at BIM38220.

Typically (but not exclusively) there may be a non-business purpose where

- The sponsored person is a relative or close friend of the business proprietor or controlling director, or
- The business proprietor or controlling director has a personal involvement in the sponsored activity (such involvement often pre-existing the sponsorship).

The purpose or purposes of expenditure is ultimately a question of fact to be determined by the Commissioners. It is important to obtain and review the contemporary factual evidence.

The type of evidence to look for includes (but is not limited to):

- details of negotiations, including correspondence and contracts;
- how did they become aware of that particular event/person?

- why was it decided to sponsor that particular event/person?
- what alternatives were considered and why were they rejected?
- a copy of the business plan that is usually prepared in commercial sponsorship cases;
- copies of any material prepared by the person/entity seeking sponsorship;
- details of how the sponsorship was intended to bring the name of the business or its produces before the intended target audience (including how prominent are any adverts);
- how the sponsorship is exploited in terms of point of sale publicity, the local media, or other available avenues?
- The arrangements to assess and refine the effect of the sponsorship.
  The Internet is a useful additional source of information.
- What is said about the sponsorship on the web-site of the business?
- Is there any information on general sites about that sort of activity?
- Do they show evidence of previous involvement in the sport or activity?
- What does the person/entity sponsored have to say about their sponsors?

A demonstrable lack of commerciality in the transaction may indicate a non-trade purpose. However, this requires more than simply poor commercial judgement. A sponsor may make a poor choice of vehicle for sponsorship, but that decision may still have been taken purely for business purposes. A bad decision made with purely commercial motives, is still a decision made for the purposes of the trade. Lord Reid makes the point in **Ransom v Higgs** (50TC1 at page 82) that:

> *"If a trader is actuated by none but commercial motives the Revenue cannot merely say that he has paid too much. He may have been foolish or he may have had what could be fairly regarded as a good commercial reason for paying too much."*

The type of evidence that may show a demonstrable lack of commerciality includes:

- Sponsoring a relative or close friend,
- Paying as much as the sponsored party wants without negotiation of consideration,
- Not appearing to have regard to the commercial effect of the activity sponsored, for example, a small local business operating solely in the Newcastle-upon-Tyne area of

sponsoring an event in Plymouth,

- Not considering any other option.

In particular where the parties are connected you should pay close attention to commercial ity of the sponsorship.

The case of **Executive Network (Consultants) Ltd v O'Connor**, [1996] SpC56 (See BIM37970), is an example of where the Special Commissioner found that sponsorship payments were not made wholly & exclusively for the purposes of the trade. The Special Commissioner found that the fact that the amount paid was determined by the amount that the sponsored party needed. This showed that the purpose of the payment was at least partly that of the sponsored party.

As the test is the purpose of the expenditure, the success (or otherwise) of the sponsorship (either in terms of generating commensurately more income or the success of the sponsored person/entity in their chosen field of endeavour) is not by itself a relevant factor. Where the sponsorship fails to generate commensurately more sales it is reasonable to expect, in a purely commercial arrangement, that steps will be taken to improve matters. Failure to identify and take the necessary measure may indicate that the arrangement is uncommercial.

The type of evidence that may show a lack of commerciality includes:

- No review of the effect on the trade of the sponsorship

- The review only considers the success of the sponsored party, not the effect on the trade.

Novices

The fact that a trader chooses to sponsor a novice does not, of itself, mean that they have not acted from a commercial motive. Novice sportspersons do seek commercial sponsorship.

The trader may be able to demonstrate that they wanted their name and brand to be associated with a rising star and obtain publicity as a result. If this is their only purpose then the sponsorship is allowable. If the novice sportsperson is a relative or associate of the proprietor/director(s), then there may also be a non-business purpose to the sponsorship as in Executive Network (Consultants) Ltd v O'Connor. If so, the whole of the expenditure is disallowable.

For example, a trader may decide, for purely commercial reasons, to sponsor a novice athlete who had appealed for sponsorship in the local media after reaching the finals of a major tournament at an unusually early age. There is an agreement between the parties setting out how much the trader will be paying and what services the sportsperson will perform in return; including a requirement that their equipment will be prominently marked with the sponsor's name. In addition they will appear at certain corporate events. The cost of the sponsorship is allowable (apart from any sums disallowable as capital or entertaining – see BIM42555).

APPENDIX VIII

Agreements with HM Revenue and Customs

Link to HMRC agreements (VAT Notice 700/57)

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=tru&_pageLabel=pageLibrary_PublicNoticesAndInfoSheets&propertyType=document&columns+1&id=HMCE_CL_00012

1. Agreement with the Thoroughbred Breeders' Association about arrangements under which racehorse owners may register for VAT and the procedures that must be followed (March 1993).

2. Agreement with the British Horseracing Board about the revised arrangements under which racehorse owners may register for VAT and the procedures that must be followed (January 1998).

3. Agreement with the British Horseracing Board and Thoroughbred Breeders' Association about Racehorses applied permanently to personal or other non-business use.

4. Agreement with the British Horseracing Board and Thoroughbred Breeders' Association about keeping of stallions at stud.

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5. Agreement with the British Horseracing Board and Thoroughbred Breeders' Association about Racehorses and time limits for exportation.

APPENDIX IX

A GUIDE TO THE VAT "SCHEME"

A Significant benefit for Racehorse Owners

1 Introduction

The Memorandum of Understanding, concluded between the racing industry and HM Customs & Excise, enables racehorse owners to register their racing activity as a business for VAT purposes, The potential benefit is significant and all racehorse owners are urged to take full advantage of the opportunity offered.

2 Declaration of Intent

A condition of the "Scheme" is that owners must sign a declaration form confirming their intention to seek income from prize money, appearance money and from sponsorship or advertising. Owners registering for VAT after 31st December 1997 must also certify that they have received business income and/or have entered into a sponsorship agreement. Arrangements have been made to support the business activity. A special scheme for appearance money is already in existence and a guide has been published to help owners develop sponsorship and advertising opportunities.

3 Registration

Owners who wish to take advantage of The Scheme must register for VAT with their local VAT office. The procedure for owners who are not currently registered for VAT for other purposes is as follows:

i) Complete the enclosed declaration form (Dl for all categories of ownership other than partnerships; D2 for partnership only), and submit it to Weatherbys in the envelope provided. Additional forms are available from Weatherbys on request.

ii) The completed declaration will be certified by Weatherbys and will be returned together with the standard form for VAT registration (VAT 1). The completed VAT registration application and the certified declaration should be submitted to your local VAT office. I-3M Customs & Excise will then allocate a VAT registration number.

Since the VAT registration number must appear on all invoices raised by, or on behalf of, the owner, the owner must notify Weatherbys of this number Failure to do this within three months of the effective date of registration will mean that any income in respect of prize/appearance money won will be deemed to be VAT inclusive.

iv) Owners will be able to recover VAT retrospectively on expenses as follows:

a) For assets on hand at the time of registration e.g. racehorses, full recovery will be allowed subject to the purchase taking place up to 3 years before the effective date of registration.

b) For supplies of services, e.g. training fees, veterinary costs, transport charges etc, recovery will be allowed for all supplies invoiced up to six months prior to the effective date of registration.

It should be noted that these provisions do not remove the need for the expenses to have been incurred by the VAT registered person in connection with his racehorse owning activities and that proper VAT invoices should be available to evidence the claim for VAT recovery.

v) The person who is liable to or eligible for a VAT registration is the person who actually benefits from the proceeds of the horse's racing activities. If a horse is leased to a person or persons for racing purposes it is only that person who can register in respect of the racing activity. If a horse is owned by one person and races in the name of another without a leasing arrangement having been entered into, VAT registration must normally be in the name of the owner.

vi) Owners qualify to register under the Scheme when they have an asset which can be exploited to generate income. This will normally be when a horse goes into training. Once VAT registration is effected, recovery of expenses relating to the production, purchase etc. of that asset will be allowed retrospectively.

vii) An owner who is already registered for VAT in his own name for other business purposes should complete the declaration form (see 3 (i)) and send it to Weatherbys for certification. On its return the owner should then send it to the local VAT office to advise them that the original registration is being extended to cover racehorse ownership.

viii) All businesses registered for VAT are subject to periodic inspection by prior appointment. Owners are therefore required by H.M. Customs & Excise to retain for six years all documentation relating to the business.

4 Partnerships

i) An application for registration must be made in the name of the legal owner of the horse. Where a legal partnership exists registration must be as a partnership and an additional form (VAT2) must be submitted to the VAT office with the standard registration form (VAT This form simply requires the names, addresses and signatures of all the partners.

HM Customs & Excise has accepted that, though a racing partnership may not be a legal partnership in the true sense, it can be registered as a partnership for VAT purposes.

ii) An owner, whether or not he owns racehorses in partnership, will be able to register his interest as an individual, if he wishes, unless the arrangement constitutes a legal partnership. However, an owner will only be able to register where his interest in any horse is at least 50 per cent. An interest of less than 50 per cent in a horse can not be included in the individual's registration although the interest can still be registered for VAT through a racing partnership. Therefore, in these cases it will be appropriate to register the racing partnership as a VAT partnership.

iii) Where more than one horse is owned by the same partnership (i.e. by exactly the same group of people, with no omissions or additional parties), only one VAT registration should be made. However, whenever the people involved are in any way different, a separate VAT registration must be made.

iv) An owner who is VAT-registered as an individual for racing purposes may also be involved in one or more partnerships. These partnerships, in addition to the individual owner, may also be registered for VAT.

v) Where some of the partners in a horse or horses change and the new partnership continues with the same horse or horses, the existing VAT registration will be allowed to continue.

vi) If a partnership is disbanded on the sale of the horse or horses but the principal partner or partners reinvest in another horse then a new VAT registration need not be obtained.

vii) Any change in the partnership must be notified to Customs & Excise

viii) A trainer is entitled to invoice a partnership, or indeed anyone, for training fees at any level he chooses. What this could mean is that where a trainer is a partner in a horse in his yard and the partnership is registered for VAT, he can set his training fees accordingly. It must be clear from the invoicing and supporting accounts that this is the full and final sum due from the partnership. Providing no other supplies or payments are made to or by the partnership, VAT will be calculated on the invoiced training fee.

Exceptionally trainers can continue to invoice individual partners with their share of the training fees and VAT can be recovered against these invoices providing:

a) the person completing the VAT return holds the original invoices.

b) the horse's name is shown on the invoice and the fact that it relates to a partnership asset is clear, and

c) there is no possibility of duplication of claims for VAT recovery.

ix) If a horse has been purchased by a VAT registered person who subsequently sells shares in the animal to other parties with whom he joins in a separate VAT partnership, the original invoicing arrangements will not be disturbed, i.e. the seller will not be required to raise a further VAT invoice for his retained share in the horse raced by the partnership.

ix) Where a VAT registered partnership, e.g. husband and wife training business, is involved also in a racing partnership and the other members of the racing partnership do not wish to register for VAT, the VAT registered partnership can recover the VAT on their own share of ownership subject to the normal rules of the Memorandum.

5 Recoverable VAT on Expenditure

Enclosed are guidelines setting out the various areas of expenditure on which an owner may wish to reclaim VAT. It would be prejudicial to the Scheme if owners sought to extend the boundaries unreasonably.

6 Accounting Services

Once an owner's VAT registration details have been recorded by Weatherbys, the following accounting arrangements will apply:

i) Statements of account will be produced at least on a monthly basis.

ii) Each statement will be accompanied by a transaction analysis summarising the VAT status of the items on the statement. This will enable the owner to complete the quarterly VAT return. The transaction analysis will not include items, (such as privately negotiated sponsorship arrangements), which have not appeared on the statement. VAT on these items should be incorporated by the owner in his VAT return.

VAT will be added to prize money excluding all stakes (the "sweepstake element") and to appearance money. The VAT on prize money must be declared on the VAT return as well as VAT on appearance money and sponsorship income.

iv) VAT law requires the VAT partnership - not its individual members - to be invoiced. Statements will be sent to the partner who has signed the Declaration. VAT returns must be made in the partnership's name.

v) Where an owner, trainer, breeder or dealer has either

a) registered for VAT but not notified Weatherbys of the VAT registration number or

b) applied for VAT registration hut not received a number, providing notification of the VAT number is made within 3 months of the effective date of VAT registration, Weatherbys will issue tax invoices in respect of prize/appearance money won as necessary. However beyond this time it will be the owners responsibility to issue such invoices, failing which the income will be deemed to be VAT inclusive.

7 Assistance for Owners

A Help Desk is available at Weatherbys (Tel. No.: 01933 440077) to handle enquiries on all aspects of VAT registration, with a similar facility offered by the Racehorse Owners Association (Tel. No.: 0171 486 6977). Weatherbys also offer their clients a full personal VAT returns service and, for those registered for VAT as a partnership, additional account options to help in the division of costs and income between the partners. Charges and further details are available from Weatherbys' Accounting Services Department.

8 Breeders, Trainers and Dealers

Breeders, trainers and dealers who are already registered for VAT should consult their representative organisations for information about the extended VAT arrangements affecting their operations. In any event, any of the above who intend to race horses must advise Weatherbys of their VAT number. Failure to do this will result in any prize money and appearance money won being treated as VAT inclusive, unless tax invoices are raised by the individuals.

9 Fees

Each VAT registration recorded by Weatherbys will be charged an annual fee by the British Horseracing Board, to cover the cost of administering The "Scheme".

10 Conclusion

This guide has been made as comprehensive as possible in the firm belief that it will enable racehorse owners generally to register for VAT in accordance with the conditions laid down in the "Scheme". Any owner who is uncertain about the practical application of The "Scheme" to his particular circumstances should seek professional advice.

RECOVERY OF VAT ON DIRECT AND PERIPHERAL EXPENDITURE

The following guidelines, which have been agreed with Customs & Excise, are for those racehorse owners registered for VAT under the "Scheme". They identify various areas of expenditure relating to the owner's racing activity on which the owner may wish to reclaim the VAT he/she has paid (the 'input tax').

These are necessarily only guidelines, firm rules cannot be drawn up because of the difference in individual owners' circumstances. However, the British Horseracing Board is anxious that all owners and their financial advisers have due regard to these guidelines which have been agreed as being fair and reasonable. It would be prejudicial to The Scheme if a few owners sought to extend the boundaries unreasonably.

In general, it should be noted that:-

a) in all cases it is the VAT element of the cost which is being reclaimed, not the whole cost.

b) VAT can now be reclaimed only if the owner is in possession of a valid VAT invoice made out to the owner(s). (This, in turn, depends upon the supplier of the goods or service himself being registered for VAT). Owners must retain originals of all such invoices, for presentation to Customs & Excise officials in the event of an inspection.

c) VAT is only recoverable on costs that are invoiced to the VAT-Registered entity for supplies made to that entity. Therefore, the same VAT cost cannot be reclaimed by more than one entity. For example, in the case of a sole owner, any cost shared with the owner's relatives or friends must first be apportioned and only the owner's own share claimed. In the case of a VAT-Registered Partnership, the VAT Return may include the admissible expenses incurred by each partner.

ADMISSIBLE EXPENDITURE HEADS

VAT on the following should normally be fully recoverable:

- Racehorse purchase
- Training fees
- Veterinary fees
- Blacksmith's fees
- Transport of the horse
- Livery yard fees*
- Keep costs while horse is at owner's premises*
- Gallop fees
- Jockeys' riding fees and retainers

* For the period immediately prior to the horse entering training and during temporary absence from the trainer's premises.

The following require further explanation/qualification:

Travel costs of the owner. It is accepted that, in the business of his racing activity, the owner may wish to see his horse race and, from time to time, when it is in training. The cost of travel to race meetings at which die horse is declared to run and to its trainer's stable may be admissible. This would also apply when the owner travels to buy or sell horses. The following modes of transport have been considered.

a) By private car Owners may pay a fixed quarterly output tax charge per vehicle in accordance with the agreed scale available from local VAT offices or Weatherbys Help Desk. They are then able to set against this the VAT on all the fuel and repair costs of that car, not just those costs incurred in travelling to and from racecourses etc. This is the only available option with regard to VAT recovery on fuel costs. Owners must therefore assess the likely level of use to judge the cost-effectiveness of this option.

b) By public transport under current legislation, public transport is (normally) zero-rated and so no VAT costs would be incurred.

c) By hired car - Hire costs (but not the fuel costs) may be admissible, though the owner may need to demonstrate that there was a genuine need to hire a car.

d) By taxi - The owner may need to demonstrate the need to use a taxi.

e) By light chartered aircraft - The owner will need to justify this option, as against any public aeroplane transport alternative.

* Accommodation costs of the owner. Where the race meeting/stable to which the owner travels to see his horse is distant from the owner's home, it is accepted that the owner may require overnight accommodation. It is not possible to specify an allowable minimum distance, but the owner must be in a position to justify this if challenged. Normally, only one night's accommodation will be allowable per visit.

- Subsistence costs of the owner. Reasonable costs of meals and refreshments, (not to include entertainment of others), in association with visits to the owner's horse(s) will be admissible.

- Owner's costs of racecourse admission. As explained above, cost relating to racecourse visits will only be admissible where the owner's horse has been declared to run. In most cases, owners receive free admission in such circumstance. However, where this is not the case, (as perhaps, with some partners in an extended partnership), this is an admissible cost, (but note particularly the requirement to be in possession of a VAT invoice).

- Telephone. It is accepted that the owner will wish to make contact with his trainers, relevant racecourses, etc., in the course of his business activity. In recognition of this, Customs & Excise have agreed a 10% allowable apportionment of an owner's telephone costs. This may include mobile and car telephones, and incorporate, where applicable, the cost of the calls, installation and rental or purchase.

- Professional advisers. Where related to the business activity of racehorse ownership, charges from such professional advisers as Bloodstock Agents, Accountants, etc will be admissible.

- Professional subscriptions. Subscriptions to the Racehorse Owners' Association qualify.

- BHB charges. All VATable fees relating to the Orders of the British Horseracing Board and the Rules of Racing qualify.

- Specialist newspapers and journals. Currently, VAT does not apply to publications. Should this change, such costs would qualify.

- Advertising. Advertising of the owner's racing activity - e.g. seeking sponsorship - will be admissible.

- Horseboxes. These will not normally be admissible where the owner has placed his horse(s) in the care of a licensed trainer. Such purchases, (or a proportion thereof), may be allowable in the case of Permit Trainers and those with breeding operations covered within the Scheme. If in doubt, a case should be made to local Customs & Excise.

- Construction of loose boxes at owner's premises. When in keeping with the scale of the owner's racing activities, this may be admissible. However, particularly if they are built to an extravagant standard, they may be adjudged a luxury. In addition, problems may arise if the owner's racing activities prove short-lived. If in doubt, a case should be made to local Customs & Excise.

- Office. The admissibility of costs relating to an office will depend upon the scale of the owner's racing operations. Except for owners with substantial interests, an office will not be deemed a legitimate business expense. If in doubt, a case should be made to local Customs & Excise.