

QUESTION WE'VE BEEN ASKED QB 17/04

GOODS AND SERVICES TAX — WHETHER A RACING SYNDICATE CAN BE A REGISTERED PERSON

All legislative references are to the Goods and Services Tax Act 1985 (the Act) unless otherwise stated.

This Question We've Been Asked is about ss 6(1), 6(3) and 51.

Question

1. Can a racing syndicate, whose activities are limited to the ownership (or leasing) of one or more horses to race and the racing of these horses, be registered for goods and services tax (GST)?
2. The scope of this question is the racing of horses as a standalone activity. The view expressed does not extend to activities where the horse racing is an aspect of a wider activity like horse selling, breeding or training. The question relates to horse racing carried on by a syndicate. However, the same principles will apply where the horse racing activity is carried on by an individual, a partnership, a trust, a company or any other entity.

Answer

3. To be **registered for GST, a taxpayer must be carrying on a "taxable activity"**. A key requirement of a taxable activity is that the taxpayer must intend to make **supplies for a consideration**. The definition of "taxable activity" also expressly excludes any activity carried on essentially as a private recreational pursuit or hobby.
4. Whether any syndicate is carrying on a taxable activity will always depend on an examination of the totality of the evidence. The determining factor in deciding whether there is a taxable activity of racing is the goal or the object of the taxpayer (in this case the syndicate). In deciding whether a racing syndicate is carrying on a private recreational pursuit or hobby, the activity must be treated as if it were carried on by a natural person.
5. **In the Commissioner's view the activity of horse racing (as a standalone activity)** will not be carried on as a private recreational pursuit or hobby where the taxpayer can establish all of the following matters:
 - The syndicate is formed not for the personal interest or pleasure of the participants, but for the purpose of making a profit from the activity, and it is operated in that manner;
 - The activity of the syndicate is organised to achieve a pecuniary profit, and it operates in a systematic fashion that, on an objective assessment, appears to materially reduce the element that luck plays in whether any prize-money is won; and
 - A significant amount of time is involved in performing the activity undertaken by the manager of the syndicate (including acquiring and managing the

horses that are assisting in meeting financial imperatives and disposing of horses that are not).

6. The **Commissioner's** view is that, in the absence of these circumstances, the racing of horses as a standalone activity by a racing syndicate is a private recreational pursuit or hobby. Therefore, it is excluded from the definition of taxable activity and the syndicate cannot be registered for GST.
7. **This answer is based on the Commissioner's view that**, in the absence these particular circumstances, the activity of horse racing constitutes the participation in a sporting endeavour undertaken as a private pastime or pursuit carried on for the personal interest or pleasure of the person (or persons) concerned. The Commissioner considers that for a racing syndicate where the activity is limited to the ownership (or leasing) and racing of horses, the essence of the activity will most often be the personal interest or pleasure derived from seeing the horse compete in, and potentially win, races.
8. The view set out in this item is not applicable to those syndicates where horse racing is an aspect of a wider activity, for example, a horse breeding syndicate. However, the fact that a syndicate agreement provides for a race horse to be sold in certain circumstances will not, of itself, indicate that the taxpayer is carrying on a wider activity. It should also be noted that the Commissioner considers that if the horse racing activity is part of a wider activity, this does not preclude the wider activity of the syndicate being a recreational pastime or hobby.
9. Where a horse racing syndicate is incorrectly registered for GST, the view in this QWBA will be applied prospectively only. Consequently, those taxpayers will not be required to retrospectively deregister. Further information on the application of the QWBA to these taxpayers is set out in a separate operational position.

Explanation

10. This item considers the GST status of a horse racing syndicate formed solely to own (or lease) one or more horses to race them. In particular, the item considers whether a racing syndicate **is able to be a GST "registered person"**. To address this matter the item will discuss whether the activity of a racing syndicate is a taxable activity.

Racing Syndicate

11. A horse racing syndicate is a common form of multiple-person ownership used in both thoroughbred and harness racing to provide the means for the members to enjoy the benefits and share the costs involved in the ownership (or leasing) and racing of horses. Racing syndicates are a form of racing ownership recognised in the relevant rules of racing.

Registration

12. Under s 8(1) of the Act, GST is charged on the supplies in New Zealand of goods and services made by a registered person in the course or furtherance of a taxable activity carried on by that person. Deductions for input tax can generally be claimed for the GST charged on the acquisition of goods and services by the person.
13. Registration is a key ingredient of the GST system because the tax is charged on the supplies of a registered person. **Section 2 provides that a "registered person"**

means a person who is registered or is liable to be registered under the Act. A racing syndicate is a “person” for GST purposes, as that term is defined to include “an unincorporated body of persons”.

14. Section 51(1) states that any person carrying on a taxable activity is liable to be registered if the total value of supplies made in New Zealand in a 12-month period exceeds \$60,000. Further, s 51(3) provides that a person under the \$60,000 threshold may apply to be registered if they can satisfy the Commissioner that they are carrying on a taxable activity.

Taxable activity

15. Section 6(1) sets out the meaning of “taxable activity” in the following terms:

For the purposes of this Act, the term **taxable activity** means—

- (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:

...

16. Section 6(1) necessitates the organisation of an activity in some coherent way. The activity must be carried on continuously or regularly and involve (or be intended to involve) the supply of goods and services to any other person for consideration. The definition of a taxable activity is very broad and applies to any **activity carried on continuously and regularly by any person, “whether or not for pecuniary profit”**. This means that a taxable activity is not limited to a “business” as used, for example, in the income tax context of a profession, trade or undertaking carried on for profit. Section 6(1) includes any activity carried on in **the form of a “business, trade, manufacture, profession, vocation, association, or club”**. In the context of the section, these activities must be carried on with the goal of supplying goods and services to any person for a consideration.
17. It is not entirely clear whether a horse owner who carries on horse racing as a standalone activity makes any supplies for consideration. **The Commissioner’s** view is that, by entering a horse in a race, the owner is supplying a service to the race organiser. There do not appear to be any other possible supplies made by the horse owner.
18. Also uncertain is whether that supply is made for consideration. It could be argued that the payment of stake money is too contingent or remote to be consideration. **However, the Commissioner’s position is that**, due to the breadth of the “consideration” definition, stake money can be consideration for the supply of entering a horse into a race. This is consistent with the position taken by the Australian Tax Office in its Goods and Services Tax Ruling GSTR 2002/3 *Goods and services tax: prizes*.
19. The focus of this QWBA is on whether horse racing is excluding from being a taxable activity under s 6(3).

Exclusion from taxable activity definition

20. Despite the breadth of s 6(1), not all activities will be a taxable activity. Section 6(3) sets out some exclusions from the term. It provides, relevantly:

Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term **taxable activity** shall not include, in relation to any person,—

- (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
- (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; or

...

21. The effect of s 6(3)(a) and (aa) is that, despite an activity meeting the requirements of s 6(1), it is not a **“taxable activity”** if the activity is carried on essentially as a private recreational pursuit or hobby.

Is horse racing a private recreational pursuit or hobby?

22. There is no New Zealand GST Court decision dealing directly with the application of s 6(3) in the context of horse racing as a standalone activity. The only New Zealand GST decision to consider this provision and a racing syndicate is **Case N27** (1991) 13 NZTC 3,229. That case concerned a partnership of six people with a taxable activity stated to be **“horse trading”**. The Commissioner contended in that case that the taxpayer did not have a taxable activity as the activity carried on was essentially a private recreational pursuit or hobby. However, the Taxation Review Authority (TRA) found the taxpayer was involved in the purchase, racing, and sale of a horse and, on the facts, that was a taxable activity.

23. The TRA decided that for an activity to be carried on essentially as a private **recreational pursuit or hobby that activity must be “in essence”** of such a nature. The TRA then considered the meaning of the phrase **“private recreational pursuit or hobby”** and stated at 3,240:

I do not attempt to give an all-embracing or exclusive definition of the phrase **“... essentially as a private recreational pursuit or hobby”**, but observe that would seem to require, in essence, a private pastime or pursuit carried on for the personal refreshment, pleasure or recreation of the person (or persons) concerned. In the context of the Act it is not an activity of a business, organised in some coherent fashion to achieve a pecuniary profit. Whether an activity is essentially that of a private recreational pursuit or hobby, or not, is a question of fact in each case. It depends on the totality of the evidence.

24. The key distinguishing feature, therefore, **concerns the “essence” of the form of the activity** carried on. Where the essence of the activity involves the supply of goods and services for consideration carried on in the form of a business, trade, manufacture, profession, vocation, association or club, then such an activity is a taxable activity. However, where the essence of the activity is a private pastime or pursuit carried on for the personal refreshment, pleasure or recreation of the person concerned, then the activity is a private recreational pursuit or hobby.
25. In deciding on the essence of an activity in the context of a private recreational pursuit or hobby, the courts begin their enquiry by asking: what is the object of the activity in the mind of the participating taxpayer? In other words, a key determining factor concerns the goal or the object in mind.
26. As previously noted, the **definition of “taxable activity” does not require an activity to be carried on for a pecuniary profit**. For this reason charities, for example, can carry on a taxable activity as they have a purpose that is neither profit-making, nor a private recreational pursuit. **However, in the Commissioner’s view, horse racing can only be carried on either for the purpose of making a profit**

(in which case, it is likely to amount to business) or as a private recreational pursuit or hobby.

27. Over time the courts have contrasted a private recreational pursuit or hobby with the activity of a business. In applying this distinction the courts have noted that the object of the activity of being in business or working in a trade is that it is an occupation by which the person intends to profit as a means of earning a living. The object of a business activity is contrasted with what has been called "the pursuit of a pastime" in which, in essence, the activity is not organised towards the end of making a profit as a means of earning a living. Rather, the activity is undertaken for pleasure or enjoyment.
28. In some circumstances the distinction can seem difficult to draw. For example, the cost involved in "the pursuit of a pastime" can amount to many thousands of dollars. However, the object of the activity is not determined on the basis of cost. Also, a private recreational pursuit or hobby can be undertaken in a very organised, systematic and cost efficient manner. Therefore, it may be run in a business-like manner. However, despite how the activity is undertaken, the underlying object of a particular activity remains. The essence of the activity, as undertaken by the relevant taxpayer, is either business-like or a private recreational pursuit or hobby.
29. A racing syndicate is an "unincorporated body of persons" for GST purposes and is, accordingly, a "person". Section 6(3)(aa) provides that where a person is not a natural person then the term "taxable activity" shall not include, in relation to that person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby. In deciding whether horse racing (as a standalone activity) of a racing syndicate is being carried on as a private recreational pursuit or hobby, the activity must be treated as if it were carried on by a natural person.
30. The object of any activity is always a question of fact. There may be factors that point in either direction and accordingly it is not possible to be definitive (refer to the discussion on **Case N27** above).
31. However, the Commissioner considers that for a racing syndicate where the activity is limited to the ownership (or leasing) and racing of horses, the essence of the activity will most often be the personal interest or pleasure derived from seeing the horse compete in, and potentially win, races. For GST purposes, this is an activity carried on essentially as a private recreational pursuit or hobby and accordingly is not a taxable activity. The factors that lead to this conclusion are:
 - It is difficult to control or organise the activity of horse racing in a systematic fashion to achieve a pecuniary profit. This is because of the significant element that luck plays in whether any prize-money is won, given the effect of uncontrollable factors, the aspect of competition and the likelihood of winning. This has been noted by the courts (see, for example, **Shepherd v FCT** 75 ATC 4244). Purchasing a well-bred horse and employing a top trainer and jockey may increase the possibility of obtaining a profit from the activity. However, they will not, of themselves, be sufficient to demonstrate an intention to profit. It is acknowledged that an element of luck or risk is present in most businesses. However, the fact that luck plays such a significant part in whether any profit can be made from horse racing activities means that this is a relevant objective factor in determining the taxpayer's purpose in carrying out the activity.

- The amount of time required to perform the activity undertaken by the racing syndicate, if that activity were undertaken by a natural person, is not sufficient to suggest that the object is to undertake a business.
 - The activity undertaken is associated with a sporting endeavour. Sport is usually undertaken for the personal pleasure of the participant.
 - The activity most often arises from the members of the syndicate seeking personal interest or pleasure from participating in the racing industry (following the industry itself promoting their participation on that basis, rather than promoting participation in a business). Deriving personal pleasure from an activity does not, of itself, mean that an activity is a hobby (many people obtain enjoyment from their business). Similarly, the fact that a person may hope to make a return from an activity does not convert it from a hobby into a taxable activity. **The key factor is whether the taxpayer's participation in the activity is driven by personal enjoyment or the desire to make a profit.**
 - Racing horses may be undertaken in an organised or coherent fashion. However, despite this there is usually insufficient organisation in the activity to objectively demonstrate a profit-making purpose. This is because financial **success is largely dependent on factors outside of the syndicate's control.** Generally people race horses for personal interest or the pleasure that they gain from their participation and are often willing to incur financial losses because of this.
32. The TRA in **Case N27** noted that whether an activity is essentially that of a private recreational pursuit or hobby, or not, is a question of fact in each case depending on the totality of evidence. The TRA also formed the view that it was wrong for the Commissioner to make what, in effect, appeared to be a policy decision that racing syndicates were necessarily carried on essentially as a private recreational pursuit or hobby of those involved.
33. The Commissioner agrees that whether any syndicate is carrying on a hobby or taxable activity will always depend on an examination of the totality of the evidence. However, for a racing syndicate not to be engaged in a private recreational pursuit or hobby would require it to demonstrate the presence of sufficient factors to draw a different inference. The onus of proof lies with the taxpayer to demonstrate this. The Commissioner considers that, for syndicates whose activities are limited to racing horses, a taxpayer would need to establish all of the following matters:
- The syndicate is formed not for the personal interest or pleasure of the participants, but for the purpose of making a profit from the activity, and it is operated in that manner;
 - The activity of the syndicate is organised to achieve a pecuniary profit, and it operates in a systematic fashion that, on an objective assessment, appears to materially reduce the element that luck plays in whether any prize-money is won; and
 - A significant amount of time is involved in performing the activity undertaken by the manager of the syndicate (including acquiring and managing the horses that are assisting in meeting financial imperatives and disposing of horses that are not).

34. **In the Commissioner's view** the key determining factor in deciding whether there is a taxable activity of racing concerns the goal or the object of the taxpayer. In this regard, indications of intention drawn from the syndicate agreement and other relevant documents will be relevant. However, the relevant evidence will go beyond this and include anything that supports or negates the stated intention of the syndicate and its members. Therefore, merely including a statement in the syndicate agreement that it is intended to make a profit from horse racing will not be sufficient.
35. Before finding that there is a taxable activity, the Commissioner would expect evidence to show that the factors in paragraph 33 above are satisfied. In the **absence of this, the Commissioner's view is that the horse racing activity will be** being carried on as a private recreational pursuit or hobby.
36. **The Commissioner's view that** there is a relatively high bar to demonstrating that horse racing as a standalone activity is not carried on as a private recreational pursuit or hobby is consistent with the approach taken by courts in both the United Kingdom and Australia.
37. For example, in the early cases of *The Earl of Jersey's Executors v Bassom (H.M. Inspector Taxes)* and *The Earl of Derby v Bassom (H.M. Inspector of Taxes)* (1924-26) 10 TC 357 (KBD) both appellants bred, owned and raced thoroughbred horses. The findings made were that the breeding and racing of horses was carried on by the taxpayers as a hobby. While accepting that one of the objects of the activities was to improve the breed of horse, the chief object of the activities was the pleasure derived from seeing the horses bred by them win big races.
38. The treatment of horse racing as a recreational activity has also been considered in a VAT context in the United Kingdom. In *Brian Gubby Ltd* (1985) 2 BVC 205, 360 the VAT Tribunal was required to decide whether or not the horse related activities of the company constituted a business for tax purposes.
- Against that background we ask ourselves whether or not during the period of the assessment **either the activity of training horses or the activity of racing horses constituted a 'business' or an intended 'business' of the Appellant Company which generated or would generate taxable supplies.** We consider that in relation to neither such activity was either of such requirements satisfied. As to training, we consider and hold that, throughout the period of assessment, Mr Brian Gubby personally carried out the training as his hobby and a personal interest, and that he had no intention of training horses for any outsider. Therefore no taxable supply was made, or intended to be made in the future, in the course of this activity. As to racing, we consider and hold again that, throughout the period of assessment, Mr Brian Gubby was involved therein as his hobby and personal interest.
39. The decision of the Supreme Court of New South Wales in *Shepherd* shows that, in relation to winning prize money from the racing of horses, it is ordinarily difficult to displace the implication that there is no ability to organise the activity toward the end of making a profit (because of the significant element of chance involved, per [31] above).
40. In *Shepherd*, the taxpayer owned and raced various racehorses, but on the facts of the case neither her prize money nor betting wins were found to be the product of a business. Rath J held that the taxpayer, while having a passion for horses, indulged in horse racing as a pastime; although a keen follower of horse racing, racing was not her business. His Honour referred to *Martin v FCT* (1953) 90 CLR 470 and the judgment of Rowlatt J in *Graham v Green* (1925) 2 K.B. 37 in reaching his conclusion, at 4252:

The common reason why betting winnings were not regarded as “profit or gain” in *Graham v. Green*, or “income” in *Martin’s* case is that in those cases there was no organization of the activity towards the end of making a profit. In that sense, such gains as arose in the course of the activity had a significant element of chance, and there was no system, or no sufficient system, in relation to the chances involved as to lead to the conclusion that a system for profit making had been devised. **There is a similar element of chance in relation to winning prize money from the racing of horses. Owner competes against owner, and the chance of one owner’s horse winning is dependent to an extent on considerations as to which no system or organization would usually apply, for example the form of the various horses and the weather conditions.** Skill is involved, in bringing a horse to its peak and in the selection of riders; but skill which is displayed in a pastime, as the passage quoted from the judgment of *Rowlatt J.* shows, is not decisive of the question as to whether a business is being carried on, and may not in many cases be even relevant to that question. [Emphasis added]

41. *Drummond v CIR* (2013) 26 NZTC 21,023 was a New Zealand income tax case concerning whether s EC 39(1)(c) of the Income Tax Act 2007 requires an existing breeding business. In the course of its decision the High Court stated:
- [87] The defendant has argued that there was no business at all. I disagree. On my analysis there was clearly a racing business. I have read the Adjudication Report from the Office of the Chief Counsel dated 23 November 2011. I agree with the conclusion in that regard.
42. The High Court commented in *Drummond* that the syndicate was in the business of racing which demonstrates that it is possible to have such a business. However, the Court did not consider or discuss the distinction between a business and a hobby and, therefore, did not give reasons why it thought that the taxpayers were not carrying on a hobby. In this regard, it does not assist in determining what considerations are relevant to deciding whether a taxpayer is carrying on a taxable activity or a hobby.
43. Furthermore, the actual issue before the Court in *Drummond* was whether at the relevant time there was an existing breeding business. The Court found that the taxpayers had a contingent intention to breed, even though the breeding business **had not yet commenced. Accordingly, the partnership’s potential activity was wider than just racing.** It is not clear the extent to which this contributed to the Court’s finding that the taxpayer was carrying on a racing business.
44. *Case K40* (1988) 10 NZTC 343 could also be taken to suggest that a lower bar exists for establishing a business of horse racing than the Commissioner is putting forward in this item. There, Keane DJ stated:
- First, it is scarcely contestable that horse racing investment is pursued as a business enterprise, just as frequently as it is indulged in as a hobby. Perhaps more frequently.
45. However, that case related to a breeding business that also involved racing. In finding that the taxpayer was carrying on a business rather than a hobby, Keane DJ found the following considerations relevant:
- The taxpayer had no interest in racing;
 - The taxpayer committed her entire savings to the venture and the scale of **operations increased with the taxpayer’s means; and**
 - The care taken in selecting the horses.
46. In finding that there was a business in the relevant years, Keane DJ considered the pattern of activity over the whole period. By that time the taxpayers owned a number of horses and had successfully bred and sold progeny from their horses.

47. As set out above, GST is charged on the supplies in New Zealand of goods and services made by a registered person in the course or furtherance of a taxable activity carried on by that person. A racing syndicate involved solely in racing horses, in the absence of the circumstances set out above at [33], is not undertaking a taxable activity, as it is undertaking a private recreational pursuit or hobby. Therefore it cannot be registered for GST purposes.

Section 5(11CB)

48. Section 5(11CB) treats a prize received by a registered horse owner as consideration for a supply of services provided to the racing club. It applies only when a registered person is carrying on the racing in the course of a taxable activity. It does not deem horse racing to be carried on as a taxable activity. As such s 5(11CB) will not apply to prize money received by horse owners where the horse racing is carried on essentially as a private recreational pursuit or hobby.

Examples

49. The following examples are included to assist in explaining the **Commissioner's** view of the application of the law.

Example 1 – Horse racing syndicate not carrying on a taxable activity

50. Fast Horses Ltd breeds race horses. Some of its horses are sold outright to third parties. Others are syndicated with shares being offered to members of the public. Fast Horses Ltd is currently offering shares in one of its horses "Apportionment Method". Sixty shares are being offered for \$2,000 each. These are being promoted online and in newspapers. The advertisements emphasise **the "buzz" and "excitement" that come from following the horse's performance and the opportunity to join the other owners in the "winner's circle" if Apportionment Method performs well.**
51. Simon is thinking about investing in the syndicate and wants to know whether it will be carrying on a taxable activity. The syndicate will not be carrying on a taxable activity. The syndicate is being formed for the personal interest or pleasure of the members. There is no evidence that the syndicate will be operated for the purpose of making a profit from racing.

Example 2 – Horse racing syndicate not carrying on a taxable activity

52. **Tom's uncle has left him \$10,000 in his will. Tom's wife Edith has wanted to own a race horse for some time. Many of Edith's friends invest in horse racing syndicates and Edith thinks that she would enjoy this too. Tom and Edith decide to form a syndicate for the purpose of purchasing and racing a horse. Tom and Edith do not know much about horses, so they seek advice from their friends about the type of horse to buy.**
53. Based on the advice received, Tom and Edith purchase a \$5,000 thoroughbred **yearling colt called "Straight-line Method".** Tom and Edith would also like to make some money from horse racing and they are optimistic about their chances. They hire a trainer to train and manage the day to day racing of their colt. Straight-line Method is gelded and is then entered into several 2yo races. When Straight-line Method is being raced locally, Tom and Edith go and watch. Otherwise the trainer provides them with the results after each race. Tom and Edith want to know whether their syndicate is carrying on a taxable activity.

54. **Tom and Edith's** syndicate is not carrying on a taxable activity. The syndicate **was formed for Tom and Edith's personal interest or pleasure, not for the purpose** of making a profit from racing. The syndicate has a trainer and some degree of organisation. However, there is no evidence that the syndicate is run in a way to maximise the likelihood of achieving a pecuniary profit. The syndicate has only a single horse and there is nothing to suggest that either the horse will be replaced if it performs poorly, or additional horses will be purchased.

Example 3 – Horse racing syndicate not carrying on a taxable activity

55. Les, Sally and Bruce are former professional jockeys. They have all been involved in the horse racing industry for most of their lives. In their spare time, they love attending the races. Les, Sally and Bruce decide to pool their money and purchase a race horse. Their main purpose is to make attending the races even more exciting; however, they also hope to win some money and feel confident that they will be able to. They purchase a ready to race gelding called **"Bright-line" from a well-known local stud farm** for \$15,000.
56. Les, Sally and Bruce decide to undertake the management duties themselves and spend, on average, 5 hours each a week on this. They hire a trainer and together they develop a business plan and a training programme aimed at giving Bright-line the best chance of winning his races. Les, Sally and Bruce attend all of **Bright-line's races**. Bright-line is moderately successful, winning 10% of his races and placing in another 20%. Les, Sally and Bruce use their winnings to purchase a second horse, which is also raced. Les, Sally and Bruce want to know whether their syndicate is carrying on a taxable activity.
57. **Les, Sally and Bruce's** syndicate is not carrying on a taxable activity. Whether a taxpayer is carrying on a taxable activity or a private recreational pursuit or hobby depends on the object of the taxpayer in undertaking the activity. Les, **Sally and Bruce's** syndicate was formed primarily for personal interest or pleasure, not for the purpose of making a profit from racing. The syndicate is operated in a coherent way with a view to increasing the chances of making a profit and a moderate amount of time is invested in the activity. However, this does not change the fact that the essence of the racing activity is being carried on as a private recreational pursuit or hobby.

Example 4 – Horse racing syndicate carrying on a taxable activity

58. Burt, Trevor and Cyril are retired. They have found that their pensions are not sufficient to support them in their retirement. Therefore, they each wish to invest a significant portion of their savings to earn income to supplement their pensions. They are attracted by an advertisement from a local stud farm that suggests that a well organised horse racing syndicate could return a healthy profit.
59. Burt, Trevor and Cyril form a syndicate and engage a bloodstock agent to find them horses of suitable pedigree or form. The syndicate purchases two yearlings of good pedigree from the national yearling sales held at Karaka for \$50,000 each and a three-year old with great racing form from a private seller for \$300,000. The syndicate is also searching for one more horse. The syndicate hires a trainer to manage the day to day activities of their horses and detailed plans are **developed for each horse's racing career**.
60. The syndicate undertakes substantial research and analysis to develop a business plan that identifies relevant risks and how to minimise them and optimise the likely returns. The business plan includes financial projections that show how the

syndicate could make a profit from its horse racing activity and also outlines possible further capital requirements for a range of contingencies. Burt, Trevor and Cyril have ensured that they access to funds to meet any potential further capital requirements. The business plan also requires the trainer to regularly **monitor each horse's performance with a view to replacing horses that are not performing.**

61. Neither Burt nor Trevor has ever had much interest in racing; however, they occasionally attend races where one of their horses is running. Cyril, on the other hand, has always enjoyed attending the races and continues to do so regularly. Burt, Trevor and Cyril want to know whether their syndicate is carrying on a taxable activity.
62. **Burt, Trevor and Cyril's** syndicate is carrying on a taxable activity. **Notwithstanding, Cyril's interest in racing, the** syndicate was not formed for the personal pleasure of the members. Rather it was formed primarily for the purpose of making a profit from horse racing. Further, the syndicate is operated in a systematic fashion that, objectively, increases the likelihood of achieving a profit and materially reduces the element that luck plays. This is demonstrated by the way the horses are initially selected, the detailed planning aimed at maximising their chances of winning races, and the fact that non-performing horses will be replaced.

References

Subject references

Racing Syndicates
Registered persons

Legislative references

Goods and Services Act 1985, ss 6(1), 6(3), 51

Case references

Brian Gubby Ltd (1985) 2 BVC 205,360
Case K40 (1988) 10 NZTC 343

Case N27 (1991) 13 NZTC 3,229
Drummond v CIR (2013) 26 NZTC 21,023
Graham v Green (1925) 2 K.B. 37
Martin v FCT (1953) 90 CLR 470
Shepherd v FCT 75 ATC 4244 (NSWSC)
The Earl of Jersey's Executors v Bassom (H.M. Inspector Taxes) and *The Earl of Derby v Bassom (H.M. Inspector of Taxes)* (1924-26) 10 TC 357 (KBD)