



Decision Impact Statement

Block & Ors v Commissioner of Taxation

i This document is not a public ruling, but provides a statement of the Commissioner's position in relation to the decision and how the law will be administered as a consequence of the decision. Any proposals for changes in the law are matters for government and it is not appropriate for the Commissioner to comment.

Court Citation(s):

[2007] AATA 1897
2007 ATC 2735

Venue: Administrative Appeals Tribunal
Venue Reference No: WT 2006/754-770
WT 2006/771-774
WT 2006/775-778
Judge Name: Senior Member Sweidan
Judgment date: 26 October 2007
Appeals on foot: No

Administrative Treatment (Implication on current Public Rulings and Determinations)

Relevant Rulings/Determinations:

- TR 2007/D9

Subject References:

Income tax
GST
partnership
enterprise
horse racing
horse breeding
sheep breeding

Brief Summary of Facts

1. The first applicant (the partnership) was formed in 1996.
2. The second and third applicants are the partners in the partnership.
3. The partnership had carried on horse racing and breeding and sheep breeding activities since 1996 on a property owned by the partners.
4. The partnership registered for GST and lodged business activity statements for the tax periods ended 31 December 2001 to 30 September 2005.
5. The partnership's activities incurred significant losses.
6. The partners claimed deductions for their respective shares of the partnership losses in their individual tax returns.

7. The Commissioner considered that the partnership's activities did not amount to carrying on a business or an enterprise for GST purposes.
8. Consequently, the Commissioner disallowed income tax deductions claimed by the partners for their shares of the partnership losses, cancelled the GST registration and issued assessments of net amounts for the relevant tax periods.
9. Objections were lodged by the applicants and disallowed by the Commissioner. The applicants applied for review of the objection decisions.
10. The Tribunal accepted the evidence given by the third applicant and found that the partnership conducted its activities in a businesslike and commercial manner, preparing and maintaining all appropriate books and records and engaging accountants to prepare the tax returns and accounts for the business. The Tribunal had regard to a range of other matters which included substantial improvements made to the property and the partners' history and experience relevant to the industry.
11. While the partnership incurred significant losses, the Tribunal accepted that these were the result of capital costs in setting up the business, the subsequent restructuring of the business and a series of unforeseeable setbacks.
12. The objection decisions were therefore set aside.

Issues decided by the Court or Tribunal

1. The first applicant was carrying on a business of horse and sheep breeding at all relevant times and was entitled to be registered for GST.
2. The first applicant correctly returned taxable supplies and creditable acquisitions in its business activity statements.
3. The first applicant was entitled to the deductions claimed in its income tax returns.
4. The second and third applicants were entitled to deductions for their respective interests in the first applicant's net loss incurred in each of the years of income.

Tax Office view of Decision

The Commissioner accepts that the decision is one that was open to the Tribunal on the view of the evidence taken by the Tribunal and will not appeal the decision.

Administrative Treatment

Implications on current Public Rulings & Determinations

The Commissioner will take the decision of the Tribunal into account in finalising the draft taxation ruling TR 2007/D9 Income tax: various income tax issues relating to the horse industry; including whether racing, training and breeding activities (carried out as stand-alone activities or in combination) amount to the carrying on of a business

We invite you to advise us if you feel this decision has consequences we have not identified, or if a precedential decision such as a Public Ruling or an ATO ID requires reconsideration or amendment. Please forward your comments to the contact officer by the due date.

Date Issued:	21 December 2007
Due Date:	15 February 2008
Contact officer:	Chandra Sharma
Email address:	chandra.sharma@ato.gov.au

Telephone: (08) 9268 5171
Facsimile: (08) 9268 5250

After that date any comments on the consequences of this case for any ATO publication should be sent to the following mail box:

ato.coenmt@ato.gov.au

Legislative References:

A New Tax System (Goods and Services Tax) Act 1999

9-5

9-20(1)

9-20(2)

9-40

11-5

11-20

23-10

195-1

Income Tax Assessment Act 1997

8-1

Income Tax Assessment Act 1936

92(2)

© Commonwealth of Australia

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the Copyright Act 1968, all other rights are reserved.

Requests and inquiries concerning reproduction and rights should be addressed to Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>