



**AUSTRALIAN HARNESS RACING COUNCIL Inc.**

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ABN 19 877 460 923

Ref:ato-taxrulingsubmission23-1

January 23, 2008.

Mr K Yim  
Administration, Business & Personal  
Taxes Centre of Expertise  
Law & Practice

[Kendrick.Yim@ato.gov.au](mailto:Kendrick.Yim@ato.gov.au)

Dear Kendrick,

Attached is the Australian Harness Racing Council's Submission on the Draft Taxation Ruling TR2007/D9 for your consideration.

The submission attached has been developed using a number of professional resources throughout Australia in compiling our view on the standardbred industry nationally. This office has authored the Submission.

If you have any further queries please do not hesitate in contacting me.

Yours sincerely,

A handwritten signature in black ink that reads "Rod Pollock".

Rod Pollock  
Chief Executive



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# **AUSTRALIAN HARNESS RACING COUNCIL INC**

**DRAFT TAXATION RULING**

**TR2007/D9**

**SUBMISSION**

**Geoff Want  
Chairman**

**Rod Pollock  
Chief Executive**

**January 2008**

# 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 carrying on of a business.

## **Submission:**

### **Preamble**

The Australian Harness Racing Industry has considered the broad scope of Draft Taxation Ruling 2007/D9, which seeks to clarify the taxation position for industry participants, specifically encompassing:

- The racing of horses,
- The training of horses, and or
- The breeding of horses.

Importantly and key to this submission is the outcome of the Draft Ruling to encompass “cases of taxpayers where standardbred/horse related activities are carried out in combination with other unrelated or non-horse related activities for the purposes of deriving assessable income”.

This integrated combination is highly prevalent in the Australian Harness Racing Industry. The Australian Taxation Office should recognise that taxation provisions and their interpretations should be structured to deal with situations where the racing, training and breeding of horses is not only carried out as a stand alone commercial enterprise but is also carried out in conjunction with other/commercial activities that produces assessable income.

### **Background to Australian Standardbred Industry**

- The Australian Harness Racing Council has developed GDP estimation for our industry for the Season 2006/2007. This study has disclosed the following for the purposes of this submission for both these periods. Attachment One provides a State breakdown supporting the National GDP estimates for your information.
- These estimated economic statistical variables disclose the extent of the Australian Standardbred Industry. It is a substantial industry in its own account within the Australian Economy however is smaller than the Australian Thoroughbred Racing Industry. For details on Council’s further statistical information, please refer to the AHRC Segment of our National website [www.harness.org.au](http://www.harness.org.au). Similar information on the Australian Racing Board’s statistics can be accessed on their website for the Australian Thoroughbred Racing Industry in their Fact Book area.
- The Australian Taxation Office’s attention is drawn to a recent published Study by the Economic Development Committee of the Parliament of Victoria. The Review’s Report on its Inquiry into the Viability of the Victorian Thoroughbred/Standardbred Breeding Industries was concluded and published in August 2006. This Inquiry was chaired by Mr Tony Robinson, MP provides particularly useful information on the following areas of our industry in Victoria utilising an extensive range of consultative mechanisms in our leading jurisdiction:

- Introduction (Chapter 1),
- Overview of the Victorian Standardbred Breeding Industry (Chapter 2),
- Artificial Insemination, Skills and Training (Chapter 3),
- Investment Environment (Chapter 4),
- Equine Research (Chapter 5), and
- Tax and Regulation (Chapter 6).

This report when considered with the consultative transcripts of the Inquiry published on the V.E.D.C's website provides independently compiled information on our industry. It is commended to your reference for consideration. I have attached a copy for your information.

- The recent Equine Influenza Outbreak in Queensland and New South Wales and precautionary measures undertaken throughout Australia are testimony to the size and importance of the Equine Industry utilizing valid economic indicators where all industry stakeholders and participants, irrespective of size and level of involvement, are significant contributors to the Australian economy. As a result, the Racing Industry **is a significant livestock industry** within the Agriculture portfolios of Government. However it does not have a status and recognition as a Primary Industry despite its coverage under the Ministerial Portfolio of the Minister of Agriculture, Fisheries and Forestry.
- The Australian Harness Racing Council and the Australian Racing Board with the Australian Horse Industry Council, the former representing commercial livestock industries where the latter has coverage of the recreational and other breeds involved in the Australian Equine Industry. It should also be noted that the Australian Harness Racing Council and Australian Racing Board are significantly involved through the Racing Industry Standing Committee in the Agri-Food Skills Council which involves the key national Primary Livestock Industries in Australia.
- It is against this background that Council's submission is framed to heighten your perception of our industry's approach in terms of the draft tax ruling document and our industry. The entities of individuals and other corporate bodies involved are common to other agricultural livestock industries where **the majority of industry participants are involved in small or medium sized business undertakings/entities** irrespective of entity structure. **The majority in our industry are sole traders or partnerships.** By necessity, they function in our business **in association** with undertaking other employment of a professional or trade occupation. This is a **fundamental premise to the functioning of the Racing Industry** as a whole where often the returns do not equal the recovery of costs.

## Carrying On Business

- It is considered the concept of carrying on business should be judged by the person/entity in their own terms with the intention of making a profit and therefore assessable income. **Considerations of matching income/revenue against expenditure** of varying types in a specialised industry such as the racing industry **is fundamental to all businesses.** In harness racing, many commercial and environment conditions impact on this equation as they do in all primary industries, such that business outcomes cannot be accurately predicted.
- The harness racing industry's participants are owners, breeders, trainers, drivers, and stablehands, often within family units. They are supported by studmasters, veterinarians, transport operators etc and other ancillary support entities. In the range of activities and functions **they combine and revise these functional roles regularly in carrying on their own business** with its range of activities, irrespective

of scale. These range from breeding to sell either commercially or by private means to adding value such as breaking in and preparatory training then sell, trade or otherwise dispose of trading stock with the intention of making a profit or minimising a loss transaction. In itself, this is a very commercial approach.

- This exercising of judgement is the essence of carrying on business. It is also only after completing a transaction that a profit or loss after the assignment of relevant costs/deductions occurs. Importantly, clarity of this transaction for taxation can be assisted with the Australian Taxation Office providing relevant indicators like the Product Ruling mechanisms. This would assist our industry to have valid and up to date direction. These could be communicated through the Australian Taxation Office's website and our Industry websites similar to the excellent co-operation undertaken at the time of the introduction of GST utilising seminars etc.
- The Australian Harness Racing Council worked with the Australian Taxation Office in this effective project. The combined ATO/Industry Working Party considerably aided this process and should be reinstated to work through the specialist issues confronting our industry in meeting its obligations given the Federal legislation. **Specialist areas of our industry require attention and focus to ensure common interpretation which is equitable to all individuals/entities** in their ongoing relationship with the administration and interpretation of the legislation by the Australian Taxation Office.
- The horse industry is a "livestock" industry and possesses all of the animal welfare issues inherent in being a Primary Industry without being designated as such. A number of entities because of the rural characteristics are able to be classified as primary producers in their business operations. There are elements in their business that are common to all businesses but particularly to rural enterprises. They are subject to all the environmental and climatic influences including drought and fire together with the normal animal husbandry events associated with breeding such as poor conformation , abnormalities etc.
- Council believes **that a Working Party between the Australian Taxation Office and the Horse Industry should be established to construct an agreed template of identifying Pre-Business Evaluation**. This mechanism will then allow all to identify established criteria as to whether a business operation is acceptable or not at an early pre-evaluation time. This should minimise the post-event/establishment processes where the Australian Taxation Office disagrees with the individual/entity concept of carrying on business. This is recommended for your consideration. Identification and determination of this Pre-Business Evaluation will allow Tax Agents/Professional Advisors, the ability to act with certainty and awareness in their own knowledge and expertise in educating and administering the commercial operations of their clients in carrying on business.
- The example of the horse preparation market of breaking in and developing/educating young horses for domestic racing and export is one where a number of actions occur. The horse's breeder/owner(s) can buy weanlings or yearlings to do this and may fit all categories of licenses and registered entities yet be paid on a contingency basis when the horse races and wins overseas. They are carrying on business but revenue generation and cash flow are highly irregular in incidence, such is our industry.

### **Breeding is an integral part of "Carrying on Business"**

- Racing is a rural livestock industry and the **use of a primary producer approach should be broadened to include all breeding as a fundamental premise or condition**. In this way, the process of breeding horses which is a complex and strategically difficult business transaction often requiring professional advice for

genetic matching of sire and dam. Again timing is a difficult consideration because of the life cycles of the horse. Importantly, all participants should be allowed to spread costs over time to match against revenues obtained. Could consideration be given to spreading the revenues? This is a proposition for review because the nature of our industry rewards excellence in performance through stake money earned or sale prices achieved.

- The business strategy of breeders typically encompasses two main revenue streams, firstly breed to sell and/or secondly breed to race for stake money. The latter maybe is a more cost effective option to obtain a good horse but the probability of success may not be enhanced. They should be allowed the ability to offset costs through the “**matching**” convention. Integration and alignment with other parts of a horse’s life cycle are important in the choices available to entities who must be flexible in their approach if they are to capitalise on their investment in the pursuit of profit over the different timeframes involved in breeding.

## Syndications

- In considering this within the context of standardbred stallion purchase, Australians are importers of both shuttle stallions between our country, and in the main, from Canada and the United States. They are often leased rather than purchased. They can also be stood on a contingency transactional share of service fee basis (i.e. Live Foal Guarantee etc). Investors in stallions (or those purchasing life time shares) meet the joint roles of both carrying on business and/or are primary producers. The writedown of stallions from the current writedown rate to that of the New Zealand annual rate of 50% should be given active consideration. This results in revenue exiting Australia rather than being reinvested here. It goes without saying that we cannot afford the prices of stallions when compared to other international jurisdictions. Semen transportation mitigates this as a viable commercial option to stallion purchase.
- Importantly, many aspects of our industry view the Australasian horse industry market as one unit. The ability of harness racing to utilise artificial breeding techniques including semen transport both domestically and internationally allows for resource deployment and transfer pricing applications to be effectively utilised. Without pursuing this further it allows entities to seek out where the best opportunities to earn money to occur. In breeding it is estimated that 98% plus of our artificial insemination breeding is undertaken by semen transportation. Accordingly, the recent changes in the New Zealand tax regime on **depreciation dictate that this should be greater in Australia now**. In this manner, there can be **no contemplation of a flight of capital, resource allocation and residency** from Australia to New Zealand. Given the high incidence and use of semen transportation between our Australasian partner, Australia does not wish to have any segments of our industry relocating to New Zealand through the establishment of satellite or principal operations there. Accordingly, Australian depreciation policy and rates should be superior.
- It is considered that specifically the 100% writedown of mares should decrease from 12 to at least 8 or 9 years given the propensity of our industry to hold mares for this period. The climatic conditions and practice of checking progeny for racing and breeding purposes in this period suggest this.
- In harness racing, broodmare syndicates are not significant within our breeding operations. Whilst limited in numbers, the aspect of deductibility of costs should also be considered.
- It is important as a principal to encourage growth and development through **positive initiatives to grow the business base**. In this way, all parties to commercial

transactions benefit and the Australian Taxation Office criteria “of protecting the tax basis of revenue is secured” through incentive, education and disclosure.

- When considering the lifecycle of the standardbred, racing as a singular activity is important for the breeder and/or current owners. The industry as such has had limited success in the syndication of racehorses. Encouragement is necessary because the industry revolves around ownership and reinvestment. The CGT threshold is now obsolete and requires drastic action to revise and update it. The response that the “hobbyist” is the recipient of singular purpose promotion is challenged because the advancement of an industry occurs where the highest economic rewards are located as a focus. **Racing is the generator or engine room of our industry where the other allied imperative is the sale of an asset.** It is considered that many in our industry would be unaware of the CGT threshold and its application in their business affairs.
- The metropolitan professional trainers in our industry are those where the highly commercial racing standardbred horses escalate to, often from rural training environments in the pursuit of enhanced stake money hence assessable income in the hands of industry participants involved. Successful performance establishes a higher probability of creating a sales situation.

## Personal Use Aspect

- Our industry’s profile of participants discloses a significant number of smaller entities or individuals who regularly carry on business in association with other employment. As a result, this involvement varies in terms of commitment yet still fulfils the many indicative criteria of carrying on business. **The current \$10,000 threshold on Capital Gain Tax is no longer valid** for the harness racing industry. It is obsolete also for the Thoroughbred Industry. Our industry is such that this limit requires revision to a more modern current level of say \$50,000 then escalated annually with \$5,000 increments to firstly catch up to a modern threshold level then move with the times given current sales (auction or otherwise).
- Currently our industry migrates horses from rural areas through to metropolitan owners and trainers. They are often sold in this progression. Individuals do not obtain a “high class commercial” standardbred often. The process of buying and selling is an important feature. Two recommended changes on offsetting and C/F expenditure are suggested in this. **Given horses in the development phase, their owners should have the capacity to offset expenditure against the sales price in determining a profit for CGT application. To enable this to occur the carry forward of expenditure for a specific period should be considered, say for three to five years.** In this manner, matching in an equitable sense can occur for all parties. The establishment of criteria will outline and define this transactional basis. Alternatively, profits derived from such transactions could be deemed exempt as occurs internationally.
- Often participants in our industry only obtain a “high class” horse once in their breeding, racing and training career. So that unlikely event of owning one gives them the opportunity to sell it, such is the racing industry. In this event, the participant as part of his business operations **often sells and reinvests** in our industry.
- The \$10,000 threshold on personal use assets is **no longer relevant** because every statistic in our industry on service fees, sales information and transactions point to this level being obsolete to our current economic circumstances. It acts as a disincentive to all participants, **where known**. Importantly, carry forward provisions should be considered to operate in this area. Costs of development, maintenance,

training and other expenditure should be capable of matching against income/revenue. The small and medium sized participant/entity underpins our industry in structural entity and transactional analysis.

### **Education & Awareness Training**

- The communication of information on the areas mentioned earlier in this submission through industry websites is considered to be an important ingredient to inform participants. This could be established as part of the recommended Working Party's charter.

### **New Zealand Industry Participation**

- Council and its Members considers and encourages a significant range of activities between key stakeholders, registered persons and licensees in both the breeding and racing operations. Importantly, Council works co-operatively with Harness Racing New Zealand in many areas. However, importantly Australian Harness Racing Council Members have established a range of policies to effectively administer their functional activities. The inclusion of New Zealand participants could be evaluated by the joint industry/ATO Working Party as an area of review, if established.

### **Recent Appeal – M.R. & S.L. Block, Administrative Appeals Tribunal**

- Consideration of the implications of the criteria and elements on this appeal should be evaluated given their relevance to the Draft Ruling and Council's Submission. Refer to Block and Commissioner of Taxation (2007) AATA 1897 (26 October 2007), Decision for Applicants.

## **RECOMMENDATIONS**

- 1. Recognition that all individuals/entities are “carrying on business” irrespective of size or scale of operations. Importantly, the taxation provisions and their application must encompass the situations of standardbred/horse related activities being carried out in conjunction with other assessable income streams.**
- 2. Harness Racing is a significant primary livestock industry given its Animal Welfare, Health and Livestock characteristics on an Australian basis.**
- 3. It is the essence of the Standardbred Racing Industry that as a contingency based industry receiving stake money and the prospect of winning or being placed in a competitive racing environment that carrying on business in a commercial evaluation methodology be judged against relevant criteria as the basis of establishing this Australian Taxation Office recognition.**
- 4. The preliminary evaluation of a business is determined by qualification against agreed criteria to be established.**
- 5. Establishment of a ATO/Racing Industry Working Party on both a Standing and Periodic Review basis to work through the specialist issues confronting the constantly changing environment in which our industry operates. The prior ruling of the 1990’s and current draft ruling in 2007 are indicators that the industry/ATO relationship should be established on a continuing basis. Communication through industry websites is an integral part of this.**
- 6. The current threshold on Capital Gains Tax of \$10,000 requires evaluation and review with an escalated basis of at least \$50,000 plus.**
- 7. Both the matching of revenue and expenditure as an agreed principle on individual horse transactions and the carrying forward provisions of expenditure should be promulgated to allow this normal primary industry livestock methodology.**
- 8. Incentives for re-investment of sales proceedings should be encouraged as part of the review of Capital Gains Tax recognition.**
- 9. Breeding standardbreds should be uniformly recognised as a cost effective mechanism and part of “carrying on business” by individuals/entities engaged in the harness racing industry in the development of racing and trading stock.**
- 10. Syndication in varying types should recognise the group (and individual) components within the standardbred industry syndication of twenty (20) shares/parts.**
- 11. The review by the Australian Taxation Office should also extend its consideration of industry operations between Australia and New Zealand given the significance and commonality of both nations and industry participants. Harness Racing views in many respects the industry in both countries as one market. Industry participants should have common application of the incidence of taxation in its varied forms between both countries given the integrated nature of the breeding and racing environments.**



# Australian Harness Racing Council

## National Estimation

2006/07 Harness Racing Season

Variables	Australia	NSW	VIC	SA	WA	QLD	TAS
Population	20,971,671	6,866,633	5,195,596	1,579,750	2,092,162	4,190,915	493,630
Raceclubs	114	31	36	12	18	8	9
Meetings	1,921	511	500	172	282	357	99
Races	15,588	4,097	4,138	1,430	2,262	2,831	830
Starters	145,599	36,663	39,445	12,754	23,190	25,618	7,929
Horses in Training	15,027	3,169	5,392	1,644	2,219	1,816	787
Sires	272	52	113	12	40	36	19
Services	6,982	1,562	3,936	94	715	536	139
Foals	5,933	1,567	2,496	293	780	551	246
Owners	25,161	9,515	5,988	2,345	3,399	2,563	1,351
Trainers	4,484	1,278	1,507	345	670	440	244
Drivers	3,173	1,032	905	216	537	337	146
Stakemoney	\$90,249,103	\$20,064,894	\$29,232,280	\$4,768,089	\$19,738,220	\$11,074,973	\$5,370,647
Wagering	\$1,950,218,567	\$620,158,857	\$570,745,574	\$121,613,900	\$315,353,209	\$230,673,279	\$52,887,097
<b>Estimated GDP</b>	<b><u>\$1,561,898,724</u></b>	<b><u>\$761,161,967</u></b>	<b><u>\$379,139,686</u></b>	<b><u>\$66,481,151</u></b>	<b><u>\$124,357,127</u></b>	<b><u>\$192,261,273</u></b>	<b><u>\$38,497,520</u></b>
<b>GDP Growth</b>	<b>5.69%</b>	<b>6.69%</b>	<b>5.53%</b>	<b>4.86%</b>	<b>7.24%</b>	<b>1.18%</b>	<b>7.52%</b>

### Notes:

1. Bold Fonts were extracted from AHRC Annual Online and HARVEY.
2. Wagering provided by the TAB and Government Department of Racing in each state.
3. Population provided by Australian Bureau Statistics.
4. Italics were based on the statistical estimation.
5. GDP was based on multiple regression estimation with all the variables in each state.
6. Season 2007/08 commenced on 2th September 2006 following short extension of the 2006/07 Season.



## Australian Harness Racing Council

2005/06 Harness Racing Season

<i>Variables</i>	Australia	NSW	VIC	SA	WA	QLD	TAS
Population	20,701,488	6,817,182	5,128,310	1,568,204	2,059,045	4,091,546	489,922
Raceclubs	116	34	36	12	18	7	9
Meetings	1,949	543	512	171	274	358	91
Races	15,666	4,321	4,236	1,367	2,194	2,807	741
Starters	145,878	38,518	40,047	12,113	22,187	25,820	7,151
Horses in Training	15,696	3,643	5,596	1,561	2,271	1,899	725
Sires	295	62	102	19	45	47	20
Services	7,837	2,135	3,995	141	743	618	205
Foals	5,869	1,681	2,451	278	695	520	244
Owners	26,658	10,965	5,974	2,253	3,547	2,593	1,326
Trainers	4,770	1,470	1,564	323	711	476	226
Drivers	3,486	1,307	937	216	528	360	138
Stakemoney	\$90,091,195	\$21,205,451	\$28,959,460	\$3,902,726	\$17,983,712	\$11,202,537	\$6,837,310
Wagering	\$1,831,482,740	\$615,194,743	\$522,892,420	\$113,133,288	\$281,013,214	\$218,752,227	\$46,043,391
<b>Estimated GDP</b>	<b>\$1,477,875,697</b>	<b>\$713,406,306</b>	<b>\$359,281,405</b>	<b>\$63,398,675</b>	<b>\$115,964,569</b>	<b>\$190,020,788</b>	<b>\$35,803,954</b>

### Notes:

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