TC02754

Appeal number: TC/2011/02359 & 05554

Income tax - Alleged trade of managing professional golfers - Loss relief claims against earlier income - Whether Appellant was "trading" - if so, whether the trade was conducted on a commercial basis with a view to the realisation of profits - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR PHILIP IAN MURTAGH

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE HOWARD M. NOWLAN
MRS GILL HUNTER

Sitting in public at 45 Bedford Square in London on 7 and 8 May 2013
Anne Fairpo, counsel, on behalf of the Appellant
Tony O'Grady of HMRC on behalf of the Respondents

DECISION

Introduction

1. These Appeals related to whether the Appellant could establish that losses incurred in (or moneys laid out in the course of) managing young professional golfers were losses in a trade, and losses in a trade conducted on a commercial basis with a view to profit. If they were, his claims to set the losses against "other income", and other income of earlier years would be allowed. This would enable the Appellant to offset the losses against the income that he had derived from his earlier activity as a pharmacist, in which he had operated several pharmacy shops in partnership until the sale of that business in 2006. The losses in question arose in, and the tax years material to the claims were, the years 2005-6 to 2008-9.

2. HMRC disputed the claims on the basis that there had in their view been no trade. While we will of course summarise the attempts of the Appellant to provide his services as a golf manager to independent people, HMRC were obviously strongly influenced by the fact that all the monies in fact expended by the Appellant had been laid out to support the early professional golfing careers of his two sons, Chris Murtagh ("Chris") and Nicholas Murtagh ("Nicholas"). The losses were also very substantial. Aggregating the figures for seven years, the four that were formally the subject of the Appeals and those for three later periods in which the activity continued in a broadly similar manner, the total gross income received by the Appellant in the seven years was £8,865 (all but £2,963 of that income accruing in the three later years that were not the formal subject of the Appeals) whilst the losses for the seven years were in the total sum of £318,589.

3. Whilst the representatives for the two parties both made a number of distinct points material to the separate legal questions of whether there was a trade at all, whether the trade was being conducted on a commercial basis, and whether it was being conducted with a view to profit, or "with a view to profit in the period in which the losses were incurred or within a reasonable time thereafter", in our view the outcome of this case will inevitably be governed by our understanding of the facts in relation to one fundamental point. This was the issue of whether the activity was so influenced by the feature that the Appellant wished to support his sons in the way that many fathers would naturally wish to support their children undermined the various claims, i.e. that there had been a trade at all, or certainly a trade conducted on the requisite commercial basis with a view to profit.

4. Our decision is that the activity was not conducted in the requisite manner for the moneys expended to rank as trade losses in a trade conducted on a commercial basis with a view to profit. We consider that it overstates the position to say that the Appellant's objective from the very start was simply to subsidise his sons and that the various trappings of trade were added in an effort to secure tax deductions for the expenditure. Our conclusion, nevertheless, is that the terms on which the Appellant provided the services to his only two clients were likely, for one reason or another, to be so unappealing, when offered to "outsiders", either to the Appellant or to unrelated young golfers, that there was no chance of the activity being extended, in a genuine commercial trading manner, to anyone other than the Appellant's sons. The feature

that the effective subsidies were provided to his sons was accounted for by a father's natural desire to further the careers of his sons, at whatever the cost, and not because the sons happened by coincidence to be the first two customers for a trade that was capable of being extended to others on a commercial basis.

The evidence

5. Evidence was given by the Appellant, by his elder son Chris, by Mr. Jason Kelly ("Jason"), a golfing friend of Nicholas who was considering contracting with the Appellant for management services, and by Mr. James Graham of HMRC ("Mr. Graham").

6. We confirm that much of the evidence was relatively straightforward and that we accepted it. One material qualification to this was that the Appellant himself appeared to have given various different explanations for some of the facts, and claimed in giving his evidence to the Tribunal that statements attributed to him in the HMRC notes of meetings between himself and HMRC were wrong, notwithstanding that he had not drawn any of these points to the attention of HMRC when he was sent copies of the meeting notes shortly after the meetings. We will refer below, in summarising the facts, to one or two of the respects in which the Appellant's claims and answers seemed to vary.

The facts

7. The Appellant had been a relatively successful businessman in running his pharmacy business, which was sold for a considerable sum in 2006. Following the sale, the Appellant was keen to embark on some new business and considered the possibility of operating as a golfing manager. He had been a keen amateur golfer himself, he happened to live near Wentworth with its famous golf club, and both his sons were very keen golfers, with aspirations to turn professional.

8. For some years, Wentworth had apparently run a scheme under which very promising young golfers could obtain what were referred to as scholarships. Generally two or three young golfers were enrolled into the scheme annually, usually being enrolled at the age of 12 to 14 and then being included in the scheme until they were roughly 19. These scholarships provided coaching to the chosen golfers and subsidies towards their costs of competing in amateur tournaments. In 2005 the first of the young golfers who had been enrolled into the scheme were leaving and some turned professional. One of the results of turning professional was that the golfers no longer received the subsidies and financial assistance that they had enjoyed under the Wentworth scheme, and they thus faced considerable expense in furthering their professional careers, regularly travelling to and paying entrance fees to play at tournaments in countless countries.

9. Both Chris and Nicholas were obviously excellent golfers and both won one of the Wentworth awards, Nicholas about three years after his brother.

10. It was explained to us that in several countries, continuing subsidies were provided to the very promising golfers to enable them to further their careers. That was not the case in the UK, and the only way in which young professionals who had

left the Wentworth scheme (or who were in some other way striving to build up a successful professional career) could obtain financial assistance was to sign up with a company providing golfing management services. We were told that there were about 15 such companies operating in the UK. Several of them had been set up by prominent golfers. Several were substantial businesses that could provide support to new members in one of two related ways. One was simply that if they engaged people for a few years (say 3 years) and promised them some financial support in return for receiving say 10% of tournament prizes and 25% of sponsorship moneys that they had managed to arrange for the golfers, the front-end subsidies could be funded either out of those percentage receipts, or more obviously out of such receipts from the most high-earning golfers on their books. Thus when the companies had numerous golfers on their books, they could subsidise the youngest entrants out of the manager's earnings from the more mature players. The second similar way in which the management companies managed to subsidise their newest members was that if they arranged sponsorship for one or more of their top members, they could often do this on the basis that the sponsor would contribute, say, £10,000 to subsidise each of a number of new entrants alongside the deal in which the more successful player would receive the majority of the sponsorship money.

11. We were told that it generally took many years before a professional golfer had a reasonable chance of making serious money. One or two of the earliest students who had graduated from the Wentworth scheme were said to be making prize money and sponsorship money in the millions, and we were told that many more golfers were making a respectable income in excess of, say, £100,000. They were, however, relatively unlikely to be doing this and succeeding on the European tour until they were in their early to mid-thirties. There was therefore a long period, on turning professional at around the age of 19 before such golfers were likely to earn fairly significant income, so that some form of support through management companies was needed to bridge this gap.

12. In July 2006, when his son Chris was at the point of turning professional, the Appellant commenced his management business, and took some accounting and legal advice, and produced a contract between Chris and himself that the family solicitor had been asked to ensure was fair to both parties. Its most important terms were that the manager undertook to fund all the golfer's reasonable tournament, travelling and golfing expenses for a 10-year period, and in return the golfer undertook to reimburse the manager for the sums expended and to pay 25% of his professional golfing earnings implicitly for that same 10-year period. The Appellant said that he would also have a close involvement in choosing coaches for the golfer; in deciding with the coach which tournaments the golfer would participate in, and he would deal with travel arrangements for the golfer. At some stage he also added the provision of nutritional advice and the facility to use some sort of device that assisted golfers in perfecting their putting. One of his claims was that he offered a more flexible, and hands-on, service than the large management companies.

13. In due course the Appellant's younger son, Nicholas, entered into an identical contract with the Appellant. The Appellant also claimed that between July and October 2008 a third player, Johnny Evans, had entered into an identical contract. In the event that contract was terminated, and we were told that the Appellant had never in fact incurred any expenditure on behalf of Johnny Evans. In giving our findings

of facts we will refer again to this alleged contract and the circumstances surrounding the claimed deal with Johnny Evans.

14. As we have indicated, evidence was given by Jason, a golfing friend and contemporary of Nicholas, and it was said that both the Appellant and Jason were ready to enter into a contract, save for the fact that the Appellant wanted to resolve the dispute with HMRC before entering into any such contract. The Appellant said that he had expected the dispute to be concluded within a year, and that he had had no idea that it would run on for five years from the date of the first enquiries in May 2008.

15. We asked the Appellant whether the financial terms of any deal with Jason would be the same as those for the Appellant's two sons, and he said that it was perfectly possible that different financial terms would be negotiated.

16. In April 2010 HMRC asked the Appellant whether his elder son was still under contract with the Appellant, since HMRC had obtained information that Chris had decided to become a coach and was training to take up that role. We were told that no reply was received to that question by the date of Mr. Graham's Witness Statement, 14 May 2012, though we now understand that Chris has adopted the course mentioned. The consequence of this is that whatever earnings he might now make will not feature in the calculation of any obligation to reimburse expenditure once met on his behalf or to pay 25% of professional earnings. One of the consequences of the fact that the contract with Chris has now been terminated is that since the date of termination the expenditure incurred by the Appellant has dropped, though HMRC pointed out that it is currently running at a level marginally in excess of half the level when two golfers were being subsidised.

The relevant law

17. Without quoting the relevant statutory provisions, we can summarise the legal points at stake in these Appeals quite shortly.

18. The first issue is whether the right analysis is that the Appellant was conducting a trade. The dual significance of this is that if he was conducting a trade, then without meeting further conditions he would be able to carry forward trading losses against later profits of the same trade. This was not what he was actually claiming to do, but nevertheless if the right analysis is that he was trading then this would automatically be the result. The further relevance of the trading question is that in order to be able to set-off trading losses against other income, and income of earlier periods, the Appellant must demonstrate that he was trading, and that further conditions were satisfied. Accordingly, and very obviously, if the Appellant falls at the first hurdle of demonstrating that he was trading at all, then all claims for any offset of losses (either against later profits of the trade, or against other income of the same or earlier periods) fail.

19. In order to offset losses against other income and income of earlier periods, further conditions have to be satisfied, and there is a distinction as to how one of these further conditions applies. So far as trading losses of any year are concerned, it has to be shown that the trade was being conducted on a commercial basis and with a view to the earning of profits. There is thus no statutory indication of when the profits

need to be anticipated. That provision then provides for a one-year carry back. There is a distinct rule for losses arising in the first four years during which a new trade is conducted. The conditions for that form of relief are that the trade must have been conducted on a commercial basis and with a view to the realisation of profits "either in that period or within a reasonable time thereafter". Where these tests are satisfied, then any losses of the first four years of trading may be carried back against profits of the earlier three periods, being offset against the profits of the earlier periods first.

20. The slightly perverse consequence in this case of this slight difference in wording, was that the losses in the first period of trading were claimed under the general rule that could be invoked in any period of trading, since the resultant one-year carry back encompassed the year in which income from the pharmacy business accrued to the Appellant. Accordingly for that period, it merely needed to be shown that the Appellant was trading with a view to the realisation of profits, without specifically identifying the period by which profits should have been achieved. It was only in the following year, when the need arose to achieve the three-year carry back that the claim was made under the provision dealing with losses in a new trade had to be made. That then involved the slightly stricter requirement as regards the need to show that it was reasonable to anticipate profits in the year of loss or within a reasonable time thereafter.

21. We conclude in this case that these fine distinctions are of relatively little significance. As regards trading, it is certainly the case that a trade can be said to be being conducted even if it is not on a commercial basis. However if we conclude, as indeed we do, that the Appellant's activity was pursued largely to support his own sons in their golfing careers, that conclusion is likely to undermine the trading contention and the feature of anything being conducted on a commercial basis. Accordingly it barely becomes necessary to distinguish between the two issues.

22. The same applies to the slight distinction in relation to the period during which profits have to be shown to be foreseeable. Since in this case it was of the essence of the activity that it would take a considerable time before the Appellant might engage the young golfer who eventually made the very high earnings, and (as we are told) a considerable time before any young golfer would make really serious money, we would have been inclined to say that in the context of this case "a reasonable time thereafter" would reflect this reality, such that the period would be quite a long period. If, however, we agree with HMRC, to the effect that on the present basis of trading, and by signing up more golfers, the Appellant would be much more likely to erode his accumulated capital and lose his nerve well before making any significant profits, the distinction between the two rules is fairly academic.

23. Both parties referred during the hearing to various authorities on the various subjects of trading, "trading on a commercial basis", and the issue of when profits should be anticipated. None of the authorities were, however, particularly relevant to the circumstances of this case. The critical point, it seems to us, in this case is to decide whether the Appellant's activity was fundamentally that of a service trade, carried on with a view to making profits and carried on in such a way that whilst for various reasons his first clients were his sons, the activity could have been extended to third parties. In addressing this, we must consider the terms on which the activity

was conducted with the Appellant's sons. It is immaterial that there might be differences between the way in which the existing major management companies operated when providing services to young professional golfers, and the way in which the Appellant operated. If however we conclude that there are features of the activity undertaken by the Appellant that are more obviously accounted for by the desire of a father simply to support his sons, almost regardless of the cost and whether there was a reasonable prospect of recovering any significant amount of his outlay, then that reality will undermine the notion that there was a trade as such, and certainly the notion that there was a trade carried on commercially with a view to profit. This will be particularly so should the terms of the activity with the Appellant's sons be terms that would be fundamentally unappealing either to the Appellant or to "outsiders" if we consider their application to contracts with such "outsiders".

Findings of fact

24. Before giving and explaining our decision, it is appropriate to record certain findings of fact, or observations in relation to conflicts in the evidence given.

25. The first of these related to Johnny Evans, and the claim that he had been engaged as a client from July to October 2008, and that the contract that he had signed had been identical to that signed by the Appellant's two sons.

26. There were worrying differences in the evidence in relation to Johnny Evans, first as regards whether the contract with him was indeed on the same terms as that for the Appellant's two sons, and as to whether HMRC could or could not see a copy of that contract. Secondly the whole issue of whether Johnny Evans was in fact engaged as a client at all seemed doubtful.

27. In relation to the alleged contract and most significantly to whether HMRC could be shown a copy of the contract, it was asserted at different times, either in meeting notes made by HMRC or in evidence given to us, that:

- yes, a copy would be provided;
- no, a copy would not be provided because you will only ask more questions;
- no, you cannot have a copy because our solicitor points out that it was entered into in a year that was not the subject of the enquiries (which actually seems to be wrong anyway);
- no, you cannot have it, because I, the Appellant, am getting tired of the enquiries and I am minded to be awkward; and finally
- as no moneys were advanced under it, and no income was received under it, it is anyway immaterial, and I have been advised not to produce it.

28. We consider that it was entirely proper for HMRC to seek to ascertain whether non-relatives had been engaged as clients, and if so whether the terms were, as was definitely claimed, identical. If the terms were identical, then we cannot understand any reason why the Appellant would not have been readily prepared to produce the agreement. We find this very damaging, and to be a point that bears on whether the method of operating in relation to the Appellant's sons was consistent with the basis on which he was prepared to operate for non-relatives.

29. We are also unclear whether the agreement was ever in fact entered into. We were variously told that:

- it was entered into, and then it was terminated when Johnny Evans, having failed by one point to qualify for the European Tour, decided to take part in the Far East Tour which the Appellant thought was inappropriate, such that he was no longer prepared to fund his expenses;
- for a long period, Johnny Evans was "stringing the Appellant along", treating him as a fall back should other management arrangements not be available, but he did eventually sign;
- but the Appellant might not have returned the contract to Johnny Evans at all (in other words presumably on the basis that he had not signed and delivered it himself at all), so that the contract was never really in force.

30. In short, we found the whole of the evidence in relation to whether at any time there had in fact been a contract, and in particular a contract on identical terms to that for the sons, in force with an independent golfer to have been woefully unsatisfactory.

31. A similar point arises in relation to the claim that once the dispute with HMRC had been resolved, the Appellant and Jason were likely to enter into a contract. First, the Appellant confirmed specifically that the financial terms of such a contract might well differ from those that applied to his sons. We will revert later to why we consider this to be a significant and fairly obvious point. Secondly, if as a commercial matter the Appellant was keen to sign up Jason, there would have appeared to be no step that could have better enhanced his chances of prevailing in the present Appeals than to have proceeded to do just that. Particularly if the contract had been on identical terms, which we doubt, that would have been of considerable assistance to the Appellant. As it is the facts remain that the Appellant has only provided his services and his financial support to his sons.

32. There were also discrepancies in the evidence as to the income that Chris and Nicholas had earned. There was one particular record in a meeting note, expressly confirmed by Mr. Graham, that the Appellant had said that at some point during the tournament season, one of his sons had already earned £50,000 in prize money and that more could be expected. It was later said that this must have been just an estimate of hoped for takings, and that in fact the figure received was nearer to £5,000. The phrasing of the meeting note, particularly with the reference to the hope that further moneys would be won later in the tournament cycle, seems to be in obvious conflict with the estimate claim.

33. It is also the case that the actual prize earnings of both sons appears to have been at the annual level of about £5,000, and that as Chris has now abandoned the tournament circuit, there is no prospect of the Appellant receiving anything in respect of Chris' earnings as a coach. The Appellant also appears to have been somewhat reticent in revealing to HMRC that Chris had abandoned the professional circuit in favour of coaching.

Our Decision

34. HMRC advanced their case in part on the basis that the trappings of trade had been attached to the Appellant's venture with a view to seeking the tax advantage of recovering tax in relation to what was, in truth and from the very start, a plan by the Appellant just to support his sons in their golfing careers.

35. As we have already said, we consider that that considerably overstates the reality. The Appellant said that he had not even appreciated that he might obtain tax relief against the tax on his earlier income for losses until his accountant had drawn this to his attention, and we consider that that claim was a credible one. We also consider it improbable that there would have been efforts to enter into a contract with Johnny Evans, and perhaps one or two others, simply as a smoke screen to conceal the family motivation.

36. We do, however, consider that the Appellant's business plan was seriously flawed, and we consider that but for the fact that he simultaneously had the desire to support his sons, he would soon have realised the fallacies in the business plan and abandoned the project. The result of this was that the activity with the sons was fundamentally pursued to foster their careers, as any father might well wish to do, and it was not in reality a trading venture. If we are wrong on that, we consider that it was not conducted on a commercial basis, and if we are wrong on that we consider that the prospect of profits was always remote and not remotely foreseeable.

37. Our reasons for these conclusions are as follows.

38. We were first told that the Appellant was competing in a market where there were approximately 15 management companies. Several, possibly most of them, were sizeable established companies with many players on their books. That feature of course spreads the risks, and most significantly must have increased the chances of the companies negotiating sponsorship deals for their players. So far as we are aware, apart from the provision of a small amount of sporting equipment, the Appellant did not manage to negotiate any sponsorship for his two sons. We were told, however, that for professional golfers, and particularly successful ones, sponsorship income could double their total earnings.

39. We were also told that some of the 15 management companies were operated by highly regarded ex-professionals, under whose name young players would wish to progress their careers. We were told that one of the companies (it may not have been amongst the 15) was operated by a wealthy solicitor, but that that company had numerous people on its books and the solicitor in question had had very substantial capital to build up the critical mass, enhancing the chances that the successful would carry the less successful.

40. It also seems relatively obvious that the companies with the sort of advantages that we have just enumerated, and the critical mass, and the muscle to negotiate sponsorships would be able to attract young golfers on financial terms that would make better sense to both parties, the manager and the client, than the Appellant could do. The Appellant largely admitted this and conceded that many young golfers were not prepared to surrender 25% of their hoped-for income for a 10-year period. We were not given details of the terms of any management contracts used by any of the major companies, but we understood that they often placed some limits on the

subsidies offered, they often involved claims on the players' earnings for shorter periods, and the figures mentioned, of 10% of tournament prizes and 25% of sponsorship income, tied up for say only three years would be much more attractive to confident and ambitious young players than the terms that the Appellant had to offer. There would be doubtless little objection to surrendering 25% of sponsorship income earned by the bargaining muscle of a major management company, when comparing that with failing to secure any sponsorship money in the first place. And 10% of tournament earnings was a more modest claim, and for a shorter period than the Appellant's 25% claim.

41. Addressing now the financial terms of the contracts with the Appellant's two sons, we first note an oddity. There is no doubt that the proper reading of the contract was that when the player had received subsidies of say £30,000, he was obliged not only to pay the Appellant 25% of his tournament and sponsorship income (were there any of the latter) but he was also obliged to repay the £30,000. The contract failed to provide for the profile of the reimbursement obligation in relation to the £30,000. All that it did say was that if the manager failed to take reimbursement of the subsidies initially given, that did not mean that the reimbursement was waived. It simply left the continuing obligation at some time to reimburse the subsidies.

42. The overall net effect of the terms seems to us to have been relatively unattractive to both parties. We were told two things about the prospects of promising young golfers. First we were told that it was always difficult to predict which golfer would ultimately succeed and earn very substantial amounts. Secondly we were told that the Appellant's aim was to sign people up at about the age of 19, but that it was generally expected that golfers did not succeed at the top level until their early to mid-thirties. This reality seems to us to involve the most unattractive profile so far as the Appellant himself was concerned. He appeared to be committed to subsidise a golfer for 10 years, with every chance that throughout that period he would be laying out more money than recovering money. And the money flowing to the golfer would stem largely from the Appellant's capital, not the widely spread portfolios of the big management companies, and not from the sponsorship income that they were better able to access. When we were told that even the eventually successful golfers were unlikely to be making significant income until their early- to mid-thirties, the feature that the contract only provided for reimbursements and 25% of income to be paid for the 10-year period of the contract, seemed to make the terms of the contract extremely unattractive so far as the Appellant was concerned, save where the main motivation was to support his sons.

43. Perversely, the financial deal appears also to be fairly unappealing to the golfer as well. In one of the meeting notes, the Appellant confirmed to HMRC that golfers were averse to tying themselves up for long periods. The second-ranking golfer with less confidence and less ambition might be highly attracted to 10 years of subsidies, and not too dismayed at the prospect of having to make the reverse payments to the manager, if the expectation of having to make them was modest. But then nobody, including the Appellant, would be wishing to sign up the golfer with that mindset. The confident and ambitious golfer would be far happier to receive some subsidy and to tie his career for a period either to a major company or to a highly regarded tournament name, and perfectly ready to sacrifice 25% of sponsorship earnings if he learnt that his particular manager had managed to negotiate numerous

sponsorship deals. He might, by contrast, be very reluctant to be faced with having to refund all the subsidies initially received and then shed 25% of his earnings for a 10-year period.

44. We have already mentioned that the Appellant's contract provided for the golfer to reimburse all sums advanced, but that the contract did not specify whether the reimbursement should precede or follow the payment of the 25% commission, or whether it was only out of some proportion of the golfer's earnings that he was liable to reimburse the sums initially paid. During the hearing there was some notion that the right reading was that the reimbursement should be made first, and the 25% commission payments be paid thereafter. Whatever the intention, we simply record that by comparing the gross receipts that the Appellant declared with the earnings of his sons, it seems that the sons only ever paid 25% of their earnings, and did not make any of the reimbursement payments in the periods that we considered. We are not suggesting that this was an unrealistic way in which to proceed. Any other would have left the Appellant's sons effectively with no income in hand until their cumulative gross earnings exceeded 125% of everything that had been spent on their behalf, which would appear to have left them with no retained income at all for many years. The unappealing nature of this and the feature that in fact, with the Appellant's sons, no reimbursement appeared to have been received by the Appellant in the years under review, fortifies the respect in which we say that the contract was either unappealing to the golfer, or workable only when somewhat modified when the Appellant was dealing with his sons.

45. We should record that it was said that the Appellant was well known at Wentworth, that his sons had been popular there, and that Chris in particular might in his teaching role be able to put promising young golfers into the hands of his father's management business. Notwithstanding this, we still conclude that the business plan in question was very seriously flawed; that if Jason was eventually signed up, it would not be on the terms that we must consider for the purposes of these Appeals, and (the relevant point) that the Appellant conducted his activity with his two sons (whatever the initial aspirations may have been) largely to support their sporting ambitions, and not from any business or commercial profit-making motives of his own. This conclusion undermines the Appellant's case. As HMRC conceded themselves, this was a very laudable approach to take, but it is not one where the outcome should be that HMRC should provide tax relief for an activity that we consider failed all the tests of trading, commerciality and anticipation of profit.

46. We should make one final point. It was said that both the Appellant's sons had received offers of management contracts with one of the major companies and that there was therefore no reason why their father needed to support them. We pay little regard to this claim. No information was given at all as to the basis on which they might have contracted with one of the major companies. In the case of the father/son relationships, it is indeed entirely understandable that the sponsorship receipts in the lean period might have been far higher in the deal on offer from their father, and if either of the sons had happened to make colossal income in the 10-year period, it is always possible that their father would have modified the deal in favour of his son. In any event, we have absolutely no information about the alleged claim that other deals had been on offer, and this feature does not modify our conclusions.

47. Our conclusions are that the Appeals are dismissed. Should it be material to any point (for instance the possible carry forward of trading losses against later profits of the trade), we re-confirm that our decision is that the Appellant fails on all three grounds of (i) trading, (ii) trading on a commercial basis and (iii) trading with a view to profit.

Right of Appeal

48. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JUDGE HOWARD M. NOWLAN

TRIBUNAL JUDGE

RELEASE DATE: 6 June 2013