RFU guidance-corporation tax and CASC status

Background

Corporation tax (CT) is a challenge for all unincorporated and incorporated rugby clubs whether registered as CASC's or not. The 2015 CASC Regulations have brought CT into sharper focus because of the new income condition for a CASC to be in the scheme. There are generally no special CT exemptions for clubs unless they are registered charities or CASC's.

CT and CASC's

CASC's are not allowed to have combined taxable trading and property income which total over £100,000pa; if they do they have to establish a trading subsidiary carrying on the CASC's "commercial" activities to stay in the scheme. Also if a CASC's trading income exceeds £50,000pa or if its property income exceeds £30,000pa CT will be payable on the profits generated by that income. If either of these income limits are exceeded CT is payable on each source of income less deductible expenses for CT purposes. Clubs therefore need to be able to calculate whether these limits are exceeded. The calculations are based on the CT rules which have been in place for many years.

Other types of profits such as interest income and capital gains are exempt from CT provided the funds are used for the club's sporting purposes. These together with trading and rental income are the main types of taxable income and profits earned by clubs.

Does the club trade for tax purposes?

This is often a difficult question to answer since clubs exist to promote and provide facilities for rugby not to make profits for members. Fortunately HMRC provide extensive guidance on their website and in CASC detailed guidance notes (Annex 1) on what they regard as trading income and property income respectively. Clubs should read these carefully before deciding what action to take.

Whether a trade exists is not laid down in legislation but guidance has developed based on Court decisions over many years. As a general rule a club that only provides social, recreational and sporting facilities to its members is unlikely to be trading. Difficulties arise where it also provides services which might be quite commercial to non-members in order to supplement the income which is used to support or subsidise its services to members. HMRC accept that generally income from members in respect of subscriptions, bar and catering sales are unlikely to constitute trading income. Sometimes clubs say that they are exempt from tax on member income under the mutual trading principle; this cannot apply to CASC's since in order for this to be available surpluses must be capable of being returned to members. This is not possible under a CASC compliant constitution.

HMRC assert that trading income comprises income from non-members such as that for the use of its sports facilities and from sales at the club bar, shop and cafe/restaurant. HMRC state in guidance that other income from non-members such as sponsorship, car parking, facility hire and, raffles etc. is taxable as trading income. Whilst the trading position is to be determined on the basis of the club's specific facts and circumstances in most cases HMRC will have a case for trading in relation to such non-member income.

Who is a member for these purposes?

This is not as clear as it might seem; HMRC accept the following as members for the purposes of CT and the new income test –

a) Full-voting members,
b) Juniors ,
c) Restricted memberships that usually have the same or similar rights to full memberships which could include students, senior citizens and those on low incomes.

HMRC do not accept the following as members –

d) Social members who will not normally be included as members unless they are offered the same rights as those of full participating members to vote at meetings, fully participate in all of the club's activities and generally exercise control over the running of the club .
e) Visitors (including opposing teams) and temporary members including members for the day under alcohol licensing rules.

Income from a. to c. would not be trading but from d. and e. would normally be treated as trading income by HMRC.

In practice clubs may have categories of membership which do not fall neatly into the above. In such cases clubs will need to look closely at the rights and obligations of the each category to determine its treatment by HMRC.
Ultimately whilst HMRC treatment of different categories of members in practice may be helpful to clubs the question to be answered by each club is whether and to what extent a trade is being carried on. This is a matter of fact;, clubs may "put their best foot forward " in calculating trading income provided there are reasonable arguments in support which are fully disclosed in corporation tax computations. They should however be prepared to justify their approach if challenged by HMRC.

Trading subsidiaries

Where a club has taxable property income of over £30.000pa or trading income over £50.000pa it should consider establishing a trading subsidiary to carry on the club's "commercial" activities. By doing this and the subsidiary donating its taxable profits to its CASC parent CT will be avoided. This structure will also deal with the new test of ensuring that the clubs taxable property and trading income does not exceed £100,000pa. Separate guidance is available on a possible trading subsidiary structure.

Record keeping requirements

Clubs must be able to identify their taxable income from trading and property respectively and so must keep adequate records for CT purposes. This has been a requirement historically and HMRC have provided guidance to its Inspectors in its Manuals. Segregating non-member from member income e.g. from the bar may not

be easy unless this is recorded at the point of sale. HMRC have recognised this and has in the past instructed its Inspectors in this situation to –

"accept a split between members and non-members based on the monitoring of takings for a representative sample period or periods".

Many clubs may not have sufficiently sophisticated cash tills to separately record member and non-member sales and so may very well rely on this relaxation for CT purposes. However HMRC have in the past insisted that detailed records must be kept for CASC purposes; specifically HMRC have stated –

"Sampling techniques would not be appropriate as the rules will be specified in the Regulations"

In the event the CASC Regulations do not specify any rules in relation to this neither does HMRC guidance. In fact the Regulations refer to trading income as calculated for CT purposes. As noted this hasn't changed and HMRC guidance on sampling for CT would still appear to be available and accepted by HMRC Inspectors in practice. Clubs which are unable to keep detailed records may therefore have to adopt a sampling technique.

CT filing and reporting

A CASC must file CT returns if requested by HMRC or if it has gross income from trading or property in excess of the tax exempt thresholds. If a tax exempt threshold is exceeded then all of the profits from that income will be taxable; there is no marginal relief. Allowable expenses of earning the income may be deducted in arriving at taxable profits. CT filing is on line and the CT return must be accompanied by the club's annual accounts using specified formats.

Professional advice and disclaimer

Corporation tax and the calculation of whether a CASC continues to satisfy the £100,000pa income test is not straight forward and a club should work closely with its accountant on its calculations taking additional specialist professional advice where necessary.

This guidance note provides generic information for clubs and whilst all reasonable care has been taken to ensure its contents are correct no responsibility can be accepted for any errors or omissions or for any loss caused or sustained by any reliance placed on the information contained within it. Before taking any specific action based on this guidance note clubs should take the appropriate professional advice.

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