



## Trading subsidiaries of CASC's - RFU guidance on use of model structure and templates

### Background

Regulations effective from 1st April 2015 require a club's total taxable gross (i.e. before expenses) trading and property income to be less than £100,000pa. There is also a requirement for 50% of the club's members to "participate" (the "social members" test). HMRC have suggested that clubs can meet the income condition and remain CASC's by setting up a wholly owned trading subsidiary to take on the CASC's commercial activities. The subsidiary's profits can be donated to the CASC tax free.

Such a structure is similar to those used successfully by charities for many years (although some of the tax considerations are different) thus enabling the CASC to stay in the scheme and to save corporation tax (CT).

### Purpose of this guidance

This guidance outlines a suitable model structure, explains the main tax and related issues and provides the relevant template documents. It is designed for an incorporated CASC with a Club Premises Certificate for alcohol licensing purposes which needs to set up a supporters group to meet the 50% social members test. If a club is not in this position the documents may need to be amended.

The guidance summarises very technical matters and specialist advice may need to be taken on areas such as Vat, business rates and alcohol licensing. The template documents which are provided will need, in any event, to be adapted to cover each club's particular circumstances.

### Legal structure

The potential structure is illustrated on the **attached structure chart** which shows the two entities and activity/cash flows between them. The arrangements between the CASC and its subsidiary are governed by a Resource Sharing Agreement (**template RSA-attached**) which provides for charges by the CASC to the subsidiary for-

- a) the provision of support for the exploitation and use, of the CASC's data, name, logo and rights,
- b) rent for the use of premises,
- c) the sharing of common costs .

The governing principle of this structure is that the subsidiary carries on the commercial activities (including a supporters group) of the CASC and engages its own resources where possible although some will be shared. The precise activities within the subsidiary will need to be tailored to the individual needs and circumstances of each club. The structure will address the new income test but where established can also help deal with the social members test by transferring CASC membership to associate membership of the subsidiary (template **Articles of Association for the subsidiary are attached**).

It is assumed that the CASC will be incorporated as a Company Limited by Guarantee or Co-operative Community Benefit Society (CCBS-formerly IPS) and the subsidiary will be a Company Limited by Shares with minimal share capital owned by the CASC. **There are likely to be set up and ongoing costs involved e.g. it is understood that a subsidiary of a CCBS will require an annual audit.** There will **however** be potentially serious tax costs if the CASC is unincorporated and incorporation prior to setting up the structure is strongly recommended.

### **Tax and related considerations**

The main matters for consideration are -

1. The subsidiary will pay CT on its taxable income less deductible expenses and will have to register for, and file CT returns online in a format specified by HMRC. However its taxable profits can be eliminated by making a donation of those profits to the CASC within 9 months of its year end.
2. The CASC will have the £30,000 and £50,000pa exemptions from CT for property income and trading income respectively (increased as from 1st April 2015). The RSA will generate property income (from the rental of its premises -see b. above) and trading income (from support provided for and the use of its assets-see a. above). It is anticipated that cost sharing under c. will not create income for either party. Levels of income flows under the RSA should bear all of this in mind.
3. The CASC and its subsidiary should be able to form a tax group for CT, capital gains and Vat purposes thus simplifying the tax treatment of transaction flows between the two companies. This is unlikely to be the case if the CASC is not incorporated so incorporation is recommended.
4. Provided the subsidiary registers for Vat as part of the CASC's Vat group the existing Vat treatment should continue.
5. HMRC have stated that working capital funding cannot be provided by the CASC making a loan to the subsidiary e.g. by way of a secured term loan carrying interest. Alternative finance will need to be arranged for the subsidiary.
6. The RFU have taken professional advice on the continued availability of mandatory business rate relief given that part of the CASC's premises will be used at least partly for the subsidiary's "commercial" purposes. This advice indicates the new structure should not prejudice the rate relief position **provided the attached guidance is followed** and the RSA has been drafted accordingly.

7. The RFU have also taken professional advice on Alcohol Licensing for those clubs with only a Club Premises Certificate which confirms that the new structure should not affect the existing arrangements ***provided the attached guidance is followed***. Specifically associate members of the subsidiary should continue to be able to use the club bar and related facilities.

### **Action for clubs**

1. Continue to review the need to set up a trading subsidiary in order to -
  - a) mitigate CT liabilities if the club's taxable gross trading income or property income exceeds £50,000 or £30,000 pa respectively, and/or
  - b) meet the £100,000pa income test.

If necessary to meet the tests in a. and b. above proceed to set up the new structure. If these tests are currently met but the 50% social members test is not consider alternative action described in the guidance on Social membership-the 50% test.

2. Discuss the detail of the new structure with the club's accountants/ lawyers.
3. Use and adapt the RFU template documents (structure chart, RSA and trading subsidiary Articles) working with the club's professional advisers.
4. If required, seek further information/explanations from the RFU.

The ***following attachments highlighted in italics above*** accompany the guidance -

- Structure chart
- Resource sharing agreement
- Articles for the trading subsidiary
- Rate relief guidance
- Alcohol licensing guidance

### **Disclaimer**

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 incurred 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.

**8<sup>th</sup> December 2016**

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**TEAMWORK RESPECT ENJOYMENT DISCIPLINE SPORTSMANSHIP**