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DOCUMENT

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Some of your questions answered and an explanation of the new income conditions

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CASC Your Questions Answered

1. For the purposes of CASC income conditions, does “non-members” include all non-voting members and guests of the Club?

See attached guidance note.

2. Does the HMRC turnover limit of £100,000 for non-member income include income generated through members’ guests?

See attached guidance note.

3. Historically HMRC have been satisfied that our calculations of “net profit for the purposes of Corporation Tax” was based on a ratio formulae of the total number of rounds that could be played in any one year against the number of non-member rounds, is this still the correct way of working out our non-member profits?

[The HMRC Detailed Guidance 2015](#) and [CASC Regulations](#) do not specify a method of calculating non-member income. HMRC has commented in earlier CASC consultation documents that (in line with licencing rules) a club could categorise receipts at the point of sale. Consultation with HMR about your club is advisable to ensure a method with HMRC approval is adopted for your club.

4. If the Club deems that we no longer meet the upper limit for non-member income and we decide to operate a trading subsidiary, is there any guidance on how the costs between the non-member and member revenue should be split. Some apportionment of staff and running costs would also be necessary.

The NGCAA is seeking tax advice on how CASCs may effectively incorporate a trading subsidiary. Further guidance will be published shortly.

5. We currently have partial exemption for VAT. Is this in any way affected by the changes to CASC conditions, particularly if a trading subsidiary is established?

See answer to question 4.

6. If we cannot meet the new requirements and HMRC deregister the Club, apart from the obvious tax implications regarding potential back-tax on interest and profits on property income, can they effectively “claw-back” the 80% relief we have enjoyed on business rates?

See answer to question 4.

7. Does payment to players include the club paying for members to attend dinners and social events? For example, the Club pay for any player who has won an award to attend the annual presentation dinner – would this need to be included in the total amount paid to all players. We currently have almost 700 playing members and this equates to just over £14 per person per year.

[Regulation 13](#) deals with payments to players. It covers payments made to players for entering competitions, normally on an arms-length basis. The question (no 7) appears to be about prizes issued to members that play and win a competition.

- 8. When calculating the costs associated with membership, is it necessary to include the cost of equipment. Our current full membership costs are just below the threshold limit and by adding notional sums for equipment we would exceed the upper cost limit.**

If the equipment is required to participate it will need to be taken into account. See [HMRC detailed guidance](#) (In particular Para 2.7).

- 9. The club pay affiliation fees to England Golf and our County Golf Union on behalf of their playing members. These costs are not separately identified in the membership fees however the club deem that the funding for these costs comes directly from the membership. Is this acceptable or should we be declaring this as payments to players (see question 7 above)?**

[Regulation 8](#) of the CASC Regulations 2015 defines membership fees as:

“(a) any joining fees, and

(b) any supplementary fees, subscriptions or other costs, charged by the club as a condition of membership.

(2) In calculating the costs associated with membership—

(a) where a club charges a membership fee which relates to more than one member, that fee is to be divided the number of members to which it relates, and

(b) where a club charges membership fees which vary, whether by reference to the duration of the membership or otherwise, the highest fee is to be used.”

- 10. We have deemed that match fees and club t-shirts/jumpers are not mandatory and that members have the choice whether to enter competitions or put themselves forward for club team events. Is this acceptable or should we presume that all members will, at some stage, be required to enter competitions and represent the club in matches? If so, we would presume that the cost of club jumpers and ties be added to the “costs associated with membership” – is this correct?**

Para 2.7.5 of HMRC detailed guidance (2015) deals with this:

“The sporting activity costs are the costs that the members are required to pay in order to fully participate in the club’s activities for the year. These are the costs that are incurred in addition to the membership fee costs. When you calculate the sporting activity costs, include:

- any additional charges for using the club’s facilities - for example pitch hire, flood lighting*
- fees charged to play in a match*
- any fees charged by the club for hiring specialist equipment (this includes any necessary safety equipment)*
- the cost to purchase or hire any specialist equipment that’s necessary to participate in the sport (when not provided free of charge by the club)*
- the cost to purchase or hire any clothing that the club requires the member to wear (when not provided free of charge by the club)*
- insurance costs needed for the member to participate in the sport*

2.7.6 When calculating the cost to buy clothing or equipment for the purposes of this test you may use the lowest cost. For example, you can purchase a second hand set of golf clubs for £30 online.

2.7.7 You should calculate these costs on the basis that the member participates on 52 occasions a year (unless you are a seasonal club claiming the seasonal apportionment). [Annex 4](#) gives more details.

2.7.8 Match fees should only be included on the basis that the member takes part on 52 occasions a year if there is a match every week. For example, if your club only holds matches on 40 occasions a year then the cost of playing in a match should be included on this basis.

11. With regards to the 50% participation level, our club does not have a tee booking system so records are not kept of which members are on the course at any given time. Do we have to keep records to the extent that show that of our 700 playing members, at least 350 have used the course at least 12 times in any given year or is it suffice to show that the course has been used at least 4,200 times by members (12 x 350) irrespective if one individual has played 52 times and another has only played 6?

The requirement is at least 50% to be fully participating sporting members. In order to be a fully participating member for the purposes of the 50% rule, an individual must participate in the sport on at least 12 days a year. How you go about keeping records is not a matter specified in the Regulations. I doubt it would suffice to show the course has been used at least 4,200 as this could be the product of a minority using the club more than 12 times a year.

12. Do we have to be compliant with all the new regulations during the year to 31st March 2016? Our financial year ends 30th June 2015 so the new regulations regarding corporation tax and non-trading profit could have implications on the way any of our tax liabilities are calculated.

The deadline for complying with the new rules is no 1 April 2016. A club may decide to leave the CASC scheme before this deadline. Provided a CASC leaves because it decides not to comply with the new rules (and it was fully compliant with the rules before 1 April 2015) there will be no CGT exit charge.

Guidance on Income Conditions for CASCs

Q: Are the following treated as a 'member' or 'non-member' for the purposes of the CASC income conditions?

- a) non-voting members*
- b) social members*
- c) junior members*
- d) temporary members*
- e) guests of members*

Introduction

The new CASC Regulations mean there's no longer a limit on the amount of trading income from 'members'. However, CASCs can't earn more than £100,000 a year from trading with non-members or property.

This guidance note considers what is meant by 'member' for the purposes of this income condition.

Background

In the 2013 HMRC consultation document a few options were outlined for possible income conditions for CASCs. The first option was based on there being no limit on income from members and capped income from non-members. The new CASC Regulations implemented this option meaning income from members is not taken into account for these purposes.

HMRC's 2013 consultation document said *"there would need to be rules to clearly define what was meant by a 'member' to ensure there could be no attempt by clubs to circumvent the rules, for example by allowing 'temporary day memberships' to non-members wishing to hire out a venue"*.

It is therefore noteworthy that the new 2015 CASC Regulations and HMRC Detailed Guidance Document (2015) do not contain a definition of 'member'.

Looking back to 2014 HMRC's 2014 technical guidance document said: *"All income, except property income, from full voting members will not normally be taxable" and "while there is no limit on such income a club may receive for the 'income condition', a club must meet the main purpose test which requires a club's main purpose to be the provision of facilities for, and the promotion of participation in one or more eligible sports."* (Para 2.4)

HMRC 2014 guidance offers a definition of 'full voting member' as *"someone who, with other members, exercises control over the running of the club (usually by having a full vote at the club's annual general meeting) and participates in club activities. This means that income from transactions with individuals who are not full voting members (for example 'associate members') will be counted towards the income condition even if a club calls those persons 'members', alongside income from transactions with other non-members"*. (Para 3.4).

HMRC's CASC 2015 guidance note says *"It's up to a club to set out in its governing documents the rights of the members. Usually clubs allow members to attend general meetings and decide resolutions by majority vote"*. (Para. 2.3.2)

At Para 2.3.5 HMRC adds (in relation to unincorporated clubs): *"membership rights are those which exist under the contract between members. Full membership is determined by the*

members' rights. However a club may accept juniors as members without a right to vote until they reach the age of 18."

In relation to incorporated clubs limited by shares HMRC *"would expect to see an equal shareholding for each member but this can be difficult to achieve where members come and go. It can be done by making sure that each member is allocated a single share and that this is reallocated upon leaving"* (Para 2.3.4).

HMRC's Annex 1 overview of Corporation Tax and VAT rules for CASCS (2015) clearly adds *"supplies made to non-members will normally be trading income" and "Income from '**social members**' will also be considered trading income unless they are offered the same rights to vote at meetings, participate fully in club activities and generally exercise control over the running of the club as those of full participating members."*

As regards social members, HMRC guidance is clear: *"Income from 'social members' will be considered trading income [i.e. income from non-members] unless they are offered the same rights to vote at meetings, participate fully in club activities and generally exercise control over the running of the club as those of full participating members."* (Para 3.6)

The emphasis we on 'social members' (in underlined bold) above is ours not HMRC. Does HMRC intend just to restrict its guidance to social (as opposed to sporting) members? It's not clear from HMRC's Annex 1 overview document.

What about temporary memberships?

HMRC says: *"visitors may become 'temporary members' of the club. This doesn't prevent receipts from their use of the club's facilities from being taken into account for tax, unless their rights as temporary members (such as rights to vote at meetings, participating in club activities and exercising control over running the club), are similar to those of full members. In computing the taxable income derived from non-members in this way the related expenses will be deductible".* (Annex 1 overview of Corporation Tax and VAT rules for CASCS)

Normally income from so-called temporary members will therefore be treated as trading income and count towards the cap. The position may arguably be the different, however, if a temporary member had the same rights as full members in relation voting, participation in club activities and control over the club) but in reality that is unlikely to be the case.

What about guests of members?

This is not dealt with in the HMRC 2015 guidance but if a guest is not a member income derived from a guest will count towards the income cap on trading.

Summary

Before one can ask what is a member one must first be satisfied that a membership 'club' exists as opposed to a proprietary entity. A club is not created for the purpose of profit. Any income it receives from its members are for the common purpose of the members. On winding up any surplus is to be returned to the members.

The mutuality doctrine is that one cannot make a profit out of oneself. The fact the assets are legally owned by a separate person, such as an incorporated company does not matter. What matters is that a member has the necessary right to share in the club surpluses and have a say in the running of the club.

The label 'member' is not itself determinative. If a club has different classes of membership one must look at the rights of that class, in context, to determine whether they are genuine members.

A key factor is equivalence of rights. For example, does an associate or temporary member have the same rights as a full member? Usually that will mean a right to vote, participate in club activities and generally have a say / display control over the running of the club.

Based on HMRC's guidance, with the exception of juniors who otherwise are full members, non-voting members (whether playing or social, temporary or associate) will normally to be treated as non-members for the purposes of the CASC income conditions and therefore income derived from them will count towards the cap.

Any club seeking to argue that non-voting members are 'members' for the purposes of the income test will be swimming against the tide. To succeed with such an argument a club would likely need to demonstrate on its own facts that non-voting members are able to exert real control over the club, share in any surplus on winding up and participate in club activities in an equivalent way (despite the absence of voting rights).

CASC golf clubs that may be near to (or over) the limit (for trading income and property income) should without delay consider whether they should set up of a trading subsidiary or take steps to leave the scheme during the 12 months grace period. Clubs should always seek their own advice (on their circumstances) before leaving the scheme as they could be substantial tax and legal implications.

The NGCAA is currently working with its appointed lawyers to put a package together for CASC clubs interested in setting up a trading subsidiary. Please contact Jackie Howe for further information.

The contents of this document are for general guidance only and should not be treated as legal or other advice.