1. Introduction

This guidance note has been prepared for member trusts of the FSA (and formerly Supporters Direct ("SD")) which are incorporated as Community Benefit Societies ("CBSs"), as will be the case for the vast majority of member trusts. There is a common misconception that CBSs are not liable to pay corporation tax ("CT") and this note seeks to explain the true position.

It is acknowledged that some member organisations will operate purely as supporter trusts while others are supporter owned football clubs. The latter will have more varied activities and so their tax issues will be more complex. However many trusts with no investment in their club also undertake commercial activities and so they too will have a potential exposure to CT.

For supporter trusts acting as a parent company to a football club incorporated as a company limited by shares, the guidance will be relevant only to the parent trust and the tax affairs of the subsidiary football club will be outside the scope of this note. Trusts with such a structure should undertake planning to minimise their overall tax liability, taking professional advice where necessary.

The note is general in nature and does not aspire to address the individual circumstances of all trusts and so members should exercise appropriate caution when acting on the guidance set out herein and should obtain professional advice if further clarification of the CT rules applicable to their circumstances is needed.

2. Corporate structures

The Co-operatives and Community Benefit Societies Act 2014 governs both co-operative societies (also known as mutual societies) and community benefit societies. Both are regulated by the Financial Conduct Authority ("FCA").

The principal difference between the two is that a co-operative society is run for the mutual benefit of members who use its services whereas a CBS is run primarily for the benefit of the community at large, rather than just for members of the society. A CBS should have an overarching community purpose that reaches beyond its membership.

When SD first established the supporter trust movement it was determined that a CBS was the most appropriate model for supporter groups established for the benefit of the wider community, albeit with many representatives of that community as members. Although incorporated as CBSs, both the FCA and Co-operatives UK confirm that the objectives and activities of supporter trusts would not be consistent with mutual status and so consent for trusts to incorporate as co-operatives would not be granted.

The option of obtaining charitable status, usually exempt from tax, is also unlikely to be available to trusts for the same reason.

3. Corporation tax and CBSs

A CBS is a company for tax purposes and is liable to corporation tax if it has taxable profits. These are computed in accordance with the normal rules apart from differences in the treatment of payments of dividends, share interest and loan interest which are not likely to be relevant to trusts (see HMRC Company Taxation Manual CTM40505).

Taxable profits can comprise income and gains from the following taxable sources -

a. Interest income
b. Income from investments whether taxed at source or not
c. Income from property e.g. renting it out
d. Trading income which can include that from regular fund raising activities
e. Capital gains from the sale of investments or property.

Not all income is within the tax net e.g. unsolicited donations where nothing is given by the CBS in return.

The profits from each taxable source have to be calculated in accordance with the rules for that source and then added together to give total profits which (after any available deductions from total profits such as donations made to charity) are then subject to Corporation Tax at the prevailing rate (currently 19% for small profits below £50,000 pa).

The most likely sources of taxable income for trusts are interest and trading income. In practice the former is likely to be taxable in full with no reduction for expenses apart from interest paid. Taxable profits from trading income can be more difficult to determine.

Unfortunately there are no tax reliefs in the tax legislation easing the CT burden of trusts which have taxable profits.

4. Is the Trust trading?

A trust's income recorded in its annual accounts needs to be analysed in detail to determine whether there are elements of trade. As a CBS it will be receiving membership fees and subscriptions from members in return for the provision of services and benefits. HMRC devotes many pages in its Business Income Manual to the taxation of members' clubs. As a general rule under this guidance a club that only provides social, recreational or sporting facilities to its members is unlikely to be regarded as trading by HMRC. However where there are other sources of income raised to support the trust's activities which are more commercial in nature these may constitute trading income.

It is sometimes said that the surpluses from transactions with members constitutes "mutual trading". This is seldom the case since the more fundamental argument is that the trust is not trading with its members in the first place. If it was trading with members then the mutual trading exemption would in any event not be available to use (see Appendix 1).

Trusts should be able to follow HMRC's guidance for members' clubs. Accordingly non-trading income should include the following.

- Membership fees and subscriptions;
- Donations and gifts from members and grants (where no services under a service level agreement are required to be provided in return).

It should be noted that, where donations and gifts from members or grants are conditional on being spent on a specific purpose, the associated expenditure would then not be deductible for tax purposes but should be set against the donation and gift income.

There may however be ancillary forms of income which constitute trading income where income is received from non-members. Examples of such income could include income from the following.

- Bar and catering;
- Fundraising events;
- Retail.
- Lotteries, raffles and prize draws

5. Analysing the Annual Accounts

Most member trusts are likely to generate income from a range of sources both taxable and non-taxable. This can give rise to complications. In practice a trust should review its accounts carefully and identify its taxable income. HMRC is likely to accept that only profits from transactions with non-members are taxable as trading income. Hence it will be necessary to identify gross income from non-members and allocate expenditure between member and non-member income on some reasonable basis to arrive at the net taxable trading surplus from non-members.

This may involve splitting income from a single source, e.g. bar and catering, to determine taxable sales to non-members. The direct cost of earning that taxable income can be offset in full (e.g. the cost of food and beverage sold to non-members) together with a proportion of general overheads/ running costs computed on a reasonable basis. Deductions for capital expenditure used to generate trading income may be available under the capital allowances regime.

Importantly, in relation to fundraising activities, trusts should be sure to take advantage of the "Peterhead" principle[1] in calculating costs associated with those activities. This 1953 court case ruled that, in relation to weekly fundraising dances, the taxpayer could make a deduction for costs that would have been incurred had proper commercial rates been paid for the facilities and services provided free or at undercharge. The taxpayer in question had been making extensive use of volunteer staff to deliver the events and quite reasonably argued that the “surplus” from the events was being overstated as a consequence. Trusts wishing to take advantage of this ruling should therefore maintain appropriate records and cost the volunteer services appropriately.

Some supporters’ trusts may generate income from fundraising activities with a view to donating any surpluses to their club, in which they hold no material investment. Depending on the specific circumstances it is possible that the fundraising income might be subject to tax whereas the donation to the club might not automatically attract relief. It is therefore recommended that such trusts should seek professional advice to minimise the risk of these activities being liable to taxation.

Moreover, trusts investing surpluses generated from trading activities by purchasing shares in their club should be aware that, whereas the fundraising income is likely to be taxable, the cost of shares would not be tax deductible.

Once any net trading income has been calculated any other sources of taxable income and gains contained in the accounts should be added to that income to arrive at taxable profits. Even if interest income is the only source of taxable income comprising the trust’s taxable profits then a CT return must be filed and CT paid whatever the amount involved. However it is possible to avoid this if HMRC agrees to designate the trust as “dormant” for corporation tax purposes.

1 British Legion, Peterhead Branch v CIR [1953] https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim24475

6. Dormant treatment

HMRC may treat some “small clubs” with very small CT liabilities as “dormant” for CT purposes and therefore exempt from the requirement to file CT returns annually and pay CT. In order to qualify –

a. The club’s annual CT liability must not be expected to exceed £100, and
b. The club must be run exclusively for the benefit of its members.

If these conditions are met HMRC will not send a “Notice to deliver a company tax return” and the club will be treated as dormant. Dormant treatment will be reviewed by HMRC at least every 5 years provided the above conditions are still met. Trusts should consider whether they can meet the conditions for dormancy and seek confirmation from HMRC in writing if they wish to be regarded as dormant if appropriate. Failure of HMRC to agree dormant status will mean that CT returns will still have to be filed with possible penalties for failure to do so.

7. Corporation Tax Compliance and record keeping

Regardless of a trust’s own view of its mutual status or whether or not it is generating surpluses it should consider whether it should be currently preparing and filing tax returns (HMRC form CT600). It is the trust’s responsibility to submit returns if it has taxable profits or if HMRC request it. If the trust’s review concludes CT returns are due the position for earlier years should also be considered. Failure to file returns and pay the tax due may result in interest charges and financial penalties. If a trust becomes liable to CT for the first time it should advise HMRC to provide it with the relevant information needed to deal with the trust’s CT affairs. HMRC’s website has further details of the relevant requirements including registering for, and using, its online service.

For limited companies, CT600’s now have to be filed online, supported by accounts and a tax computation which, in most cases, have to be submitted in iXBRL format which allows HMRC’s software to read the submissions. HMRC point out that companies must keep and retain adequate business and accounting records in order to file accurate CT returns and make accurate CT payments. Conversion to iXBRL format requires specialist software, not commercially available for small companies, and so trusts are likely to need to rely either on their professional advisers or one of the specialist services advertising online in order to convert these documents.

CT returns must reach HMRC within 12 months from the date to which the trust’s annual accounts are made up. Trusts are encouraged to file on time or before the deadline since generally HMRC will only have 12 months after that date to open an enquiry. If HMRC do not challenge within that period they cannot subsequently make an enquiry unless relevant details have not been fully disclosed to them.

Any tax is due within 9 months and one day of the end of the accounting period (i.e. 3 months before submission of the CT return). Penalties and interest may be due for returns and payments which are late.

8. Conclusion

Member trusts have no automatic exemption from CT. Income from services provided to members will generally not be taxable. However, elements of a trust’s activities, in particular services and facilities provided to non-members, are likely to be taxable as will be any interest income.

All trusts should consider whether they should submit annual corporation tax returns to HMRC. Obtaining HMRC's agreement to dormant status where applicable may be worth considering in view of the potential saving in both time and money.

It is recommended that trusts should seek professional advice regarding their individual position.

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Appendix 1 – Mutual Trading

What is it?

HMRC confirms that "a mutual trader is not liable to pay tax on trading profits that arise from their mutual trade" but less helpfully observes that "there is no statutory definition of mutual trading".[2] However HMRC also indicates that when in the context of a members' club "the members come to together to provide facilities for themselves their activities do not normally constitute a trade because they lack the necessary commerciality" – see HMRC's Business Income Manual BIM24200. The remainder of this note assumes that a trade with members exists.

The key issue for supporter trusts will be whether it is possible to obtain partial exemption for the element of its activities which can be deemed to be "mutual trading". Although there is no formal guidance to this effect, tax experts have suggested HMRC accepts this approach.

HMRC's "Company Taxation Manual" provides some further guidance on mutual trading.[3]

> *"For a body to be engaged in mutual trading there must be:*
>
> - *Complete identity, as a class, between the contributors to the mutual surplus and the participators therein (see BIM24105), and*
> - *arrangements which ensure that the surplus ultimately finds its way back to the contributors and no arrangements for it to go to anybody else (see BIM24110), and*
> - *a reasonable relationship between the amount a person contributes to the surplus and the amount distributed to them on winding up (see BIM24115), and*
> - *arrangements which place control in the hands of the contributors to the common fund (see BIM24120).*
>
> *A body will not pass the tests for mutual trading if its legal framework does not include these rules."*

In layman's terms this mean that, for a trust to be exclusively engaged in mutual trading, it will generate all of its income from its members, whether by fees and subscriptions or by members buying goods and services from it. It will then spend its resources on providing benefits to those members. Annual surpluses should be reinvested in the trust while any residual surplus on winding up would have to be returned to members. The treatment of surpluses in a winding up will be dictated by its constitution.

In practice, most supporter trusts' activities could be a combination of mutual and non-mutual trading and so, in order to minimise their liability to tax, trusts' accounting records would need to identify its different sources of income, direct costs associated with that income and other indirect costs which will need to be fairly apportioned between mutual and non-mutual activities.

2 https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim24015
3 https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm40960

Model Clauses in Trust Rules

HMRC guidance emphasises the importance of the organisation having a set of rules or constitution which governs the relationship between it and its members. All member trusts incorporated as CBSs will have a set of rules which comply with best practice as communicated by the FCA.

The Model Rules which the FSA (formerly SD) has recommended to member trusts contain the following dissolution clause which, although helpful in establishing CBS status, is not consistent with mutual trading status for tax purposes.

> *"If on the winding up or dissolution of the Society there remains, after the satisfaction of all its debts and liabilities any property whatsoever the same is to be transferred to:*
>
> 1. *a sporting charity or sporting charities operating in the Area; and/or*
> 2. *one or more societies established for the benefit of the community operating in the Area; and/or*
> 3. *one or more societies established for the benefit of the community"*

To achieve mutual status, the dissolution clause would need to provide for any residual surplus to be returned to members although, as mentioned above, the FCA would not consent to this.

Conclusion on mutual trading

Trusts using the Model Rules accepted by the FCA and recommended by the FSA (formerly SD) will not qualify for mutual trading tax status. However this is likely to be of no practical effect since the income from members which would have been exempt from CT under mutual trading should not be taxable as trading income following HMRC's long accepted practice in BIM 24200.