Tax Law Rewrite

Response to Paper

CC/SC (08) 06

CASCS (community amateur sports clubs)

This document is available on the internet at:

http://www.hmrc.gov.uk/rewrite

8th August 2008

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Introduction

1. In February 2008 we published Committee Paper CC/SC (08) 06 on the HMRC internet website www.hmrc.gov.uk/rewrite. The closing date for responses was 9th May 2008. The draft clauses rewrite the legislation on community amateur sports clubs.

2. The purpose of this response document is to provide details of the substantive technical points made and to explain our analysis and proposals in respect of them. Minor points, such as suggestions to improve punctuation, are not covered but all comments have been carefully considered.

3. We received written responses from the following;

- The Chartered Institute of Taxation
- CASCS Development Forum
- The Institute of Chartered Accountants in England and Wales

4. The following abbreviation for tax legislation is used in this response document:

- FA 2002 Finance Act 2002

5. We are grateful for all the comments made and we appreciate the time and effort that went into them. We are sending each respondent a copy of this response document.

Clause 1: Meaning of "community amateur sports club" and "registered club"

In subsection (4)(b), it might be the case that the officer was never satisfied that the club was entitled to be registered. Thus, as part of the rewrite change, we would suggest that the closing words be "if the officer is not satisfied that the club is any longer entitled to be registered"

6. If the officer had never been satisfied the club would not have been registered and so there would be no registration to cancel. The suggested amendment indicates that the club was previously entitled to be registered without the officer's approval.

7. ***We do not consider an amendment necessary.***

Clause 2: Meaning of "open to the whole community"

The term " waged" (subsection (3)) is rather misleading. However, provided that HMRC is happy for CASCs to use it in a narrow sense (either to cover just employees or, perhaps, to limit it to those employees paid on a weekly basis for the provision of unskilled labour) then we do not object to its use in legislation.

8. "Waged" has its normal meaning of income from work.

9. ***We do not consider an amendment necessary.***

Clause 3: Meaning of "organised on an amateur basis"

There appears to be a distinction between officials in subsection (4)(g) and (h). The former would appear to cover (or be limited to) non-playing officials of the club, say the coaching team, whereas the latter appears to be limited to the match referees (etc). If so, it would seem appropriate for a rewrite change to be introduced so as to permit the coaching staff also to partake in post-match refreshments.

10. There is no need for a change here because coaches are already included in "match officials".

11. ***The explanatory notes will make clear that coaches are included in "match officials".***

The opening words of subsection (5) can be misleading. The source legislation makes it clear that the definition of ordinary benefits does not preclude arm's length transactions with members/guests. However, in the rewritten version, the link is only implicit. As the new version is a step towards simplification we suggest "A club may…".

12. We consider it clear from the rewritten clause that the provision of ordinary benefits does not prevent arm's length transactions between the club and its members. Paragraph 3(4) of Schedule 18 to FA 2002 couches the provision in a similar way, ("does not prevent"). If this provision were rewritten in terms that ordinary benefits may be provided where arm's length transactions take place, the emphasis might be misconstrued as encouraging the two to be linked when this is not the case.

13. ***We do not consider an amendment necessary.***

Clause 5: Exemption for UK trading income

Subsection (1) would be clearer if the requirement for a claim were a third condition. Arguably, the requirement for the club to be registered throughout the accounting period should also be set out as a condition (although this would need to be considered in the light of subsection (4)).

14. We are satisfied that the requirement to be registered throughout an accounting period should be part of the subsection rather than a separate condition. It has already been established as to what is meant by a "registered club" in clause 1 and in these circumstances an additional condition would not seem to be required.

15. ***We do not consider an amendment necessary.***

In subsection (4)(b) It may be clearer to replace 'were proportionately reduced' by 'were the proportionately reduced amount of its UK trading income for the actual accounting period'.

16. We consider that the subsection is already sufficiently clear and has the advantage of being shorter.

17. ***We do not consider an amendment necessary.***

Clause 7: Exemption for interest and gift aid income

Subsection (3) would be clearer if the parenthetical note in the definition of interest income included the words "as trading income".

18. ***We agree and the clause will be amended.***

Clause 9: Exemptions reduced if non-qualifying expenditure incurred

We appreciate that the rephrasing of paragraph 8 ensures that a single definition of appropriate fraction can be used. However this does not seem to be a sufficient benefit to compensate for the other changes. In particular it is not immediately clear (without resort to the source legislation) what is meant by "the [amount] exempted…is reduced by the amount found by the appropriate fraction" We would prefer the existing paragraph 8(2) and (3) to be replicated.

19. The phrase referred to means that the amount of income and gains which would have been exempt is reduced by the non qualifying expenditure. Therefore the relevant income and gains which would have been exempt if there had been no non-qualifying expenditure, are reduced by the fraction of the non-qualifying expenditure divided by the total income and gains for the period (whether qualifying or not). The reason that the formula in the source legislation was not used was because it is not clear. The rewritten legislation breaks the formula down into its component parts and sets out each part. Another respondent welcomed the way that the formula had been rewritten.

20. ***We do not consider that the formula need be retained.***

Similarly it is helpful to have an explicit statement (as in paragraph 8(4) of Schedule 18 to FA 2002) dealing with the case when N=T and just one

provision (rather than two-subsections (6) and (7) dealing with cases where N>T).

21. The provisions dealing with N>T are set out in subsections (7), (8) and (9). However the rewritten legislation breaks the formula down into its component parts for greater clarity.

22. ***We do not consider that an amendment is necessary.***

We would prefer the meaningless word "relevant" to be dropped from the defined term "relevant surplus amount".

23. ***We agree. The word "relevant" will be excised from clauses 9 and 10.***

Clause 11: How income and gains are attributed

We would be tempted to dispense with subsection (1).

24. ***We accept that the original draft can be improved . We propose to combine subsections (1) and (2).***

The clause would be clearer if a rewrite change were introduced specifically empowering HMRC to give a notice requiring a specification to be made.

25. We would not wish to introduce such a change. It would place an obligation on the taxpayer which is not currently there.

26. ***We do not consider the change desirable.***

Clause 12: Asset ceasing to be held for qualifying purposes etc

An assessment might be made (subsection (6)) within three years after the end of the accounting period in which the chargeable gain accrues. Accordingly, should '3 years or more' be replaced by 'more than 3 years' (after the end of the accounting period)?

27. ***We agree. An amendment will be made.***