



TAXREP 37/13 (ICAEWREP 105/13)

ICAEW TAX REPRESENTATION

COMMUNITY AMATEUR SPORTS CLUBS (CASCS) SCHEME

Comments submitted in August 2013 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales (ICAEW) to HMRC in response to the consultation published in June 2013

Contents	Paragraph
Introduction	1 – 3
Who we are	4 – 6
Major points	7 – 10
General points	11 – 19
Specific points	20 – 68
 Ten Tenets for a Better Tax System	 Appendix

COMMUNITY AMATEUR SPORTS CLUBS

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation, Community Amateur Sports Clubs Scheme, published by HMRC on 3 June 2013 at <https://www.gov.uk/government/consultations/community-amateur-sports-clubs-casc-scheme>
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in the Appendix, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

MAJOR POINTS

7. Most CASCs are run by volunteers. It is therefore very important that the CASC rules are kept as simple as possible.
8. We are concerned that these proposals are being driven by HMRC's concern that some of the eligibility rules are unclear and cause confusion. Having reviewed the current proposals, the new system would be so rule bound, it would cause many local amateur clubs to buckle under the new record keeping requirements necessary to track who is giving them money, what it is for and the extent to which each individual is participating actively in the sport.
9. We welcome the proposed extension of tax relief for donations to CASCs, to gifts by CASC subsidiary companies.
10. There is a danger that many CASC's could fail the proposed new tests. The cessation provisions following loss of CASC status could be catastrophic to clubs which have owned land for many years as they would be unable to pay the corporation tax charge on the capital gain on their property. The loss of business rates relief would be devastating to any operating from premises.

GENERAL POINTS

11. ICAEW supports the drive for legal and tax simplification, accompanied by a reduced administrative burden. In 1999 we published our Ten Tenets for a better tax system, attached as an appendix to this document.

12. We welcome the proposed extension of tax relief for donations to CASCs, to gifts by CASC subsidiary companies.
13. We are concerned that these proposals add considerable complexity to the rules for CASCs. We are concerned that changes will be made using secondary legislation which does not receive the same parliamentary scrutiny, nor the same public profile, as primary legislation. Further, this consultation has been during the summer months when many people will have been on holiday and not have had time to discuss the implications with their club committees and members.
14. The vast majority of amateur sports clubs only charge subscriptions and raise funds to finance their sports activities; they are not looking for any undue enrichment. They are usually run by volunteers and many of these individuals will not have a financial or tax background. This legislation adds considerably to the existing rules governing CASCs.
15. Excessive record keeping requirements and rules, while adding certainty for those with the time to study them in depth, will lead to people being reluctant to take on the voluntary roles which keep these clubs going.
16. Diversifying income is important to sports clubs which need to immunise themselves against the risk of shortfalls, for example through local redundancies or the ravages of the British weather. For example, many outdoor clubs suffered in 2012 when many golf courses, rugby and football pitches were flooded or generally unfit for play.
17. There is a danger that many CASC's might fail the proposed new tests. The cessation provisions following loss of CASC status could be catastrophic as clubs which have owned land for many years would be unable to pay the corporation tax charge on the capital gain on their property. The immediate loss of business rates relief would be devastating at any club affected.
18. It is essential that any scheme for promotion of sport is simple to understand and the restrictions imposed by the tax regime must be relaxed. This will ensure that small sports clubs have longevity and are able to thrive and survive within the CASC environment.
19. In conclusion, the CASC rules should be kept as simple as possible.

SPECIFIC POINTS

We have answered the consultation questions, grouped together where appropriate, from the prospective of a person running a CASC as a business and the associated administration. Different sports clubs will have made comments specific to their own circumstance.

Q1 – Are there any other costs from participating in a sport that should be specifically included or excluded? If so, what are your reasons?

Q2 – Where the costs of participation are high, are there any other arrangements clubs could make to enable members to participate fully at a lower cost?

20. We have had numerous comments from our members on the proposed 'cost of participation' principle.
21. The HMRC website currently lists 6,342 registered CASCs. The sports offered are diverse, including for example football, rugby, cricket, tennis, golf, swimming, gymnastics, martial arts and motoring clubs. The new rules require the normal costs of participating in these activities to be included together with the annual subscription and ongoing participation fee in deciding whether the cost of participation exceeds the limit set by legislation.

22. To add costs which are not recorded by the organisation but which might be incurred by a participant who happens to be a club member seems very subjective. Specifically including/excluding such costs to measure the total cost adds considerably to the ongoing administrative burden for the volunteers running these clubs.
23. The amounts stated in para 4.29, £1,040 a year, while fine for many clubs, will be low for other legitimate sports and we suggest higher levels could be permitted if it could be shown that these were required for expenditure directly relating to the provision of the sport.
24. Participation can be extended to beginners, juniors and students and those of limited means through reduced subscriptions. However, it would not be possible to have an unlimited number of places available for those members who do not contribute sufficient funds to finance a full cost of use of the sporting facilities without relying heavily on other sources of income.
25. It is for this reason that clubs have to resort to alternative means to raise income mainly through fund raising, social events and the operation of food and bar facilities. However, the consultation proposes restrictions on the level of this type of income. Allowing this income to be generated through a trading subsidiary which can then donate the money to the CASC would be one way of dealing with this, although this imposes an administrative reporting burden on that trading subsidiary, ie, accounts preparation, a corporation tax computation and a corporation tax return filed online using Inline Extensible Business Reporting language (iXBRL).

Q3 – How should ‘full participation’ be defined? Do you agree with the proposals above or should the minimum requirements be more or less than those set out above? If so, what would you suggest and why?

26. Participation is different for different sports and will be very subjective. For example, many club rugby participants spend months suffering from injury, yet still regard themselves as participating. We do not consider that legislating for this and imposing further administration on club officials is helpful or necessary.
27. The aim of every sports club should be to encourage all members to participate. To alienate a section of membership would increase the chances of failure of the club.

Q4 – How often should access to a club’s facilities be available to members? Should limits be defined differently for individual and team sports, and during different playing seasons? If so, what would you suggest and why?

No comment

Q5 – What is an appropriate maximum annual membership and participation fee and still be considered open to the whole of community? What are the factors that need to be considered when setting the maximum limit?

Q6 – Should the maximum annual amount be higher or lower than £1,040? If so what should the maximum annual amount be and what are the reasons for your view?

Q7 – Should the maximum limit be updated in future years? If so how?

28. The amounts stated in para 4.29, £1,040 a year, while fine for many clubs, will be low for other legitimate sports and we suggest higher levels could be permitted if it could be shown that these were required for expenditure directly relating to the provision of the sport.
29. The fee will also vary depending on where the club is located as running costs and land costs will be different depending on where it is located.
30. The fee should be increased in line with inflation.

Q8 – Where a club needs to charge a higher fee because the overall costs of participation are higher than the maximum amount what provisions should clubs put in place for those on low and modest incomes?

31. Participation can be extended to beginners, juniors and students and those of limited means through reduced subscriptions. However, it would not be possible to have an unlimited number of subsidised places available without relying heavily on other sources of income.
32. It is for this reason that clubs have to resort to alternative sources of income mainly through fund raising, social events and the operation of food and bar facilities. This consultation proposes restrictions on the level of this type of income which seems contradictory.
33. Allowing this income to be generated through a trading subsidiary which can then donate the money to the CASC would be one way of dealing with this, although this imposes an administrative reporting burden on that trading subsidiary, ie, accounts preparation a corporation tax computation and a corporation tax return filed online using iXBRL.

Q9 – Should CASCs be allowed to pay players? What are your reasons for your view?

If you agree that clubs should be allowed to pay players, do you agree that:

- A club should be allowed to have a maximum of one paid player at any time?
- The maximum a club could pay a player in any one year should be a maximum of £5,000?

If not, what limits would you suggest?

Q10 – Are there any payments that should be excluded from the definition of a payment to a player? For example should sponsorship payments by third parties be included or excluded? Why?

34. Where the sport's rules and the club's constitution allow it to pay players, then it seems reasonable that within reason this should be allowed for the reason stated, that is to inspire others and to help with coaching and developing other players. Provided the club is run on a democratic basis, then its status should not be jeopardised by voluntary expenditure of this nature.
35. Additionally, if the player(s) can be paid from non-member contributions (eg benefactors, sponsors), and perhaps not even paid via the club, then this should be permissible.
36. The £5,000 limit covers all payments and benefits that the player receives from the club (para 5.5), although travel and subsistence costs that qualify for tax relief under the normal employee expenses rules are not to be classed as a benefit (para 5.6). However, not all such paid players will be employees. Many club professionals are self employed workers. Is the intention that similar payments to these workers will be ignored or that self-employed tax rules will apply?
37. If the club inadvertently exceeds the limit, will it be given the opportunity to remedy the position in some way?
38. This legislation is potentially complex and we are concerned that the consequences of inadvertently breaking the rules could be serious for the club. Will the result be that the CASC immediately loses its status, or at the end of the year, or at some other time?

Q11 – Clubs would not be allowed to make payments to club officials or anyone connected with them for playing. Are there any other people who should be excluded from receiving payments to play? What are your reasons for these suggestions?

39. No comment.

Q12 – Are there any other safeguards that should be put in place?

40. No comment.

Q13 – Do you consider 2 hours travelling in each direction (4 hours total) to be acceptable reasonable daily travel to a match? If not, what would be acceptable reasonable daily travel to and from a match and why?

41. This is another arbitrary rule which in our view adds to the administrative burden.

42. All sports are different. Some matches take only minutes, while others take all day. Some require enormous physical strength and fitness, others rely on a short burst of concentration. If a club reaches the final stages of a national (or even an international) competition this might necessitate a team travelling to the other end of the country (or abroad) and would require overnight accommodation.

Q14 – Are the arrangements proposed above clear and flexible enough for clubs to operate or do you feel that there are more appropriate alternatives? If so, what is your proposal and why?

43. No further comment.

Q15 – What limits should there be on overnight stays? For example should hotel costs be capped by amount per night etc? What limits would you suggest?

44. The limit should be that reasonable match expenses incurred wholly and exclusively to travel to and attend club matches should be allowed to be paid from subscription income.

Q16 – Should there be an annual limit on how much a club can spend on travel and subsistence in any given year?

45. The limit should be set by the club within its budget for expenditure and would be determined by what is affordable.

Where a club is paying a playing member's travel and subsistence costs:

Q17 – What type of tours would be acceptable? Are domestic and overseas tours acceptable or should there be restrictions? If so, what restrictions would you recommend and why?

Q18 – Should members who are on tour be required to play a certain amount of hours or days either in training sessions or playing matches? If so, how many hours or days should players be involved in these activities? Or should the requirement be that only a certain number or proportion of days in any tour should be non-playing days?

Q19 – Should there be an annual limit on how much a club can spend on tours in regards to travel and subsistence in any given year?

46. A reasonableness test is often used in tax. Rather than having more rules, we suggest that the club which is run democratically will only pay for what is fair and reasonable.

47. Many amateur clubs have players who are students and the club will sometimes pay out of pocket expenses for players to travel to training and matches. Provided that none of the expenses paid exceed costs incurred by the players and the mileage rates are within the rates set out by the Authorised Mileage rates allowed by HMRC for employment taxes, the players make no profit and so excessive legislation which will require more record keeping for club officials, seems unnecessary.

Q20 - Do you agree that at least 50% of a CASC's full members should be participating in the club's sport? Should the percentage of participating members be higher or lower? If so, what amount would you propose and why?

Q21 – How often should a member participate in a sport or a clubs sporting activities in order to be deemed a participating member rather than a social member?

Q22 – Are there other ways in which to define a member and a non-member? If so what would you suggest?

48. A set percentage for participating versus non-participating members seems unnecessary. In most clubs, 50% would probably not be an issue, but it will depend on the sport. How will family memberships be attributed? Children may be participating, but parents may want to be non-playing members. Who will record the split and how often? How are injured players to be categorised?

49. If tax avoidance is the concern here, then that should be addressed specifically rather than imposing a record keeping obligation with dire consequences (loss of CASC status) for getting this wrong.

Q23 – Do you agree that a guest should be defined as someone who accompanies the member to a sporting activity and is not charged a fee by the club? If not what alternatives would you suggest and why?

50. No comment.

Main purpose of a club – the income condition

Q24 – What are the pros and cons of each of the options?

Option 1 – no limit on income raised from members, turnover from non-members to be limited to an amount, such as, 20% of turnover with an upper limit of £50,000.

51. Clubs rely on their ability to raise funds to subsidise cheaper membership for those who can't afford the full rate and to help pay for match fees and expenses. Capping this could be problematic for those near the margin.

52. Assuming the club already records income from members/non-members separately, this has the advantage of simplicity. However, what will happen as the club's income from non-members approaches the limit? In extreme circumstances, it could have to close its bar to non-members for the last month of the year to avoid losing its CASC status. This seems impractical.

53. We presume the reason for this rule is to ensure the club doesn't compete unfairly with other local pubs and businesses which are not tax exempt, but consider this solution to be unworkable. The bar staff are often club members who work on an unpaid voluntary basis in any case, so the business models are anyway not comparable.

Option 2 – limiting the turnover from non-sporting activities.

54. Although this seems a simple test, the same problem that clubs need to raise funds remains.

55. The definition of sporting and non-sporting income would cause difficulties as, for example, many fundraising events would also include some food or drink.

Option 3 – different levels for different sorts of income

56. Too administratively burdensome and complex to be workable. Without a de minimis, all clubs would be affected, not just large ones.

Option 4 – days open test

57. A 'Days Open Test' would not be easy to assess and in particular making decisions on what might be incidental to sport. The social side of any sport is very important to the concept of 'team building' and cannot easily be separated from playing the game.

Q25 – Which option should the Government consider adopting? What are your reasons?

58. We consider that any change in this area should be simple and easy to implement. As the consultation goes on to propose allowing a club to use a trading subsidiary which would be allowed tax relief on profits donated to the CASC, there would seem to be no net tax effect to the Exchequer either way. In this case, we wonder why these additional rules are being introduced at all?
59. In any case, the difference between subscription income and fees levied to allow use of sports facilities should be recognised. The money raised directly from members is from the members' own after-tax resources and will indeed be so for most non-members as well.
60. Clubs generally operate on a mutual basis and do not set out to make super profits, but just try to generate sufficient funds to allow sport to be played each year with some funds left over to provide funds for replacement of capital equipment used to maintain the sports facilities. We do not see any reason to change the current tax position.

Q26 – Are the suggested thresholds set at the right level? Should they be increased or decreased? What are your reasons?

61. No comment

Q27 – If none of the options is suitable, why is this the case? What alternative options would you suggest and why?

62. No further comment

Q28 – What are the one off or ongoing administrative costs? Please provide details of these.

63. Clubs which decide to set up a subsidiary will need to comply with company tax rules. This will include accounts preparation and corporate filing requirements. As most clubs are run by volunteers, usually with no tax knowledge, they will need to pay for professional advice. A corporation tax return must be filed online with the accounts and computation tagged using iXBRL. The administrative burden of this will be huge for small clubs and most volunteers will refuse to help.
64. Any additional record keeping requirements will take time to set up. This will usually be from unpaid volunteers and so is a hidden cost, but new book-keeping systems or tills will be needed by some. We cannot quantify this without research which we are not in a position to do.

Q29 – Should the Government allow companies that are wholly owned by a CASC to be able to make qualifying Gift Aid donations to the CASC that owns the company? Please give reasons for your view?

65. Yes provided such income is then used to enable the CASC to fulfil its obligations.

Q30 – Should the Government consider extending this to all types of company? If so why?

66. Yes. This would provide an incentive for other companies to donate to sports activities and to promote health and fitness in the UK.

Q31 – Do you agree that the exemptions on trading activities and rental income should be increased to £40,000 and £25,000 respectively? If not, what figures would you suggest and why?

67. We do not have any research to support a particular figure for these, but these amounts seem low. An overall limit of £100,000 of profit from these activities would seem reasonable.

Q32 – Do you have any other ideas and suggestions for improving the CASC scheme? All suggestions will be considered as part of the consultation process.

68. No further comment.

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ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99. See www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx