



# TAXREP 59/14 (ICAEW REPRESENTATION 148/14)

## COMMUNITY AMATEUR SPORTS CLUBS – TECHNICAL CONSULTATION AND DRAFT REGULATIONS

Response submitted on 5 November 2014 by ICAEW to the consultation [Community Amateur Sports Clubs – Technical Consultation](#) and draft regulations, published by HM Revenue & Customs on 9 October 2014

This response was prepared on behalf of ICAEW by the Tax Faculty and the Charities Special Interest Group.

Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## COMMUNITY AMATEUR SPORTS CLUBS – TECHNICAL CONSULTATION AND DRAFT REGULATIONS

### GENERAL COMMENTS

1. These comments are made in response to the consultation published by HMRC on 9 October 2014, [Community Amateur Sports Clubs – Technical Consultation](#), together with the draft regulations and explanatory memorandum.
2. Although this consultation only involves secondary legislation, it concerns the detailed rules which govern the tax treatment of most community amateur sports clubs (CASCs) in the country. Given the importance of these rules to the clubs and their members, it is disappointing that the consultation period has been limited to four weeks and that a correctly numbered draft of the new regulations was not published until 15 October 2014. The shortened consultation period has made it difficult for representative bodies to consult effectively with those of their members that have relevant experience of running or advising CASCs.
3. The draft regulations amend both the existing legislation in Chapter 9 Part 13 of the Corporation Tax Act 2010 and the amendments to this legislation under schedule 21 Finance Act 2013. However, it appears that the Treasury order that required by paragraph 9(2) of schedule 21 to bring the amendments into force has not yet been made.
4. As we said in our earlier representations made in TAXREP 37/13, submitted in August 2013, we remain concerned by the additional complexity and potential administrative burden being introduced by these changes. Most CASCs are run by volunteers and it is therefore very important that the CASC rules are kept as simple as possible.
5. We are concerned that these proposals are being driven by HMRC's concern that some of the eligibility rules are unclear and cause confusion. In our opinion, the new system is excessively rule bound, and could 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.

### SPECIFIC COMMENTS

6. References in this section of this response are to the version of the draft regulations that was published on 15 October 2014.

#### *Regulation 4 (the Income condition)*

7. When the Government outlined the proposed new rules in November 2013 following the summer 2013 consultation on possible changes to the current regime, HMRC commented on the scope of the new income condition in paragraphs 8.40 to 8.52 of its Summary of Responses paper. This stated that:
  - investment income and donations received would be excluded from the income condition (8.42); and
  - clubs would be able to generate unlimited income from transactions with their members (8.41); but
  - the income condition would apply to receipts from "broadly commercial" transactions with non-members where the club is offering a commercial service or supply, e.g. sales of equipment, food or drink, or the hire of facilities (8.43).
8. Section 3 of the current consultation paper explains the scope of draft regulation 4 in more detail. The main difference from the November 2013 proposals appears to be that under regulation 4 transactions with members will only be excluded from the income condition if

they are derived from trading with a full voting member, i.e. receipts from property and non-trading transactions with members will now be taken into account in calculating the relevant threshold.

9. The wording of draft new s 661CA, CTA 2010 does not specifically exclude from the income condition any transactions with members except to the extent that they would constitute trading income that is not chargeable to corporation tax under Chapter 2 of Part 3 of CTA 2009. It appears that trading transactions with full voting members would be so excluded under the general principle that mutual trading is not taxable, but incidental transactions with such members that fall short of trading would not necessarily qualify for mutual trading relief.
10. Draft s 661CA(4) provides a limited expansion of the definition of trading profits to include profits of "an activity other than a trade" to the extent that such profits would be chargeable under Chapter 2 of Part 3 of CTA 2009. In practice the activities that would be so chargeable appear to be limited to those that are described in ss 36 to 45 CTA 2009. However, this would be inconsistent with section 3.9 of the consultation paper which states that any non-trading financial activity that produces a financial return to the club will also be considered to be trading activity.
11. These inconsistencies make it difficult to discern whether the Government has changed its intentions as to the scope of the income condition or whether the current drafting of regulation 4 needs to be amended.
12. The consequences of a club failing to meet the income condition are that it ceases to be entitled to be registered as a CASC and HMRC can cancel its registration with effect from a date specified by HMRC which may predate the date of the cancellation decision. Given that it is proposed that, when introduced, Regulations 2 to 4 will be treated as having effect on or after 1 April 2010 some clubs may already be in this situation without knowing exactly what the final rules will be. The need for some form of transitional relief in some situations seems to be partially accepted by HMRC in section 4.13 of the consultation paper, but it is unclear whether HMRC intends that it should be available where the income condition is breached. As it would be impossible to remedy the breach retrospectively, and a club can only ensure that it complies with the income condition in future years by transferring the relevant income generating activity to a trading subsidiary (a change that cannot be implemented at short notice), there is a strong case for clubs in this situation to be granted a transitional period to comply with the new income condition.

#### *Regulation 12 (paid players)*

13. Draft regulation 12(3)(b) states that the individual player must not be "connected" with a manager or officer of the club. In the absence of a specific definition for this purpose it appears that the definition of a connected person in ss 1122-1123 CTA 2010 will apply. Given that the individual can only be paid either on arm's length terms or on terms that are more beneficial to the club than to the player and that the definitions of connected persons are sufficiently broad to catch remote relationships, is it really necessary to exclude every individual who could conceivably be connected to a single club manager or officer from being paid to play?

#### *Regulation 13 (calculating amounts paid to a player)*

14. Draft regulation 13(2) provides that the calculation of the amounts paid to a player for the purposes of checking whether the annual limit of £10,000 prescribed by regulation 11 has been exceeded is based on the amounts that are, or are treated as, earnings under Part 3 of ITEPA 2003. The underlying assumption appears to be that a paid player will necessarily

be an employee of the club. While this will be true in the case of some eligible sports, it is doubtful whether it will be true for all eligible sports. If a level playing field is to apply between different CASCs it would appear to be necessary to take into account payments to a player that are treated as self employed income.

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## APPENDIX 1

### 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 [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](http://icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )