

1. Introduction

This guidance note has been prepared for member trusts of Supporters Direct Scotland (“SDS”) 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 an 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 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.

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.

Supporters Direct Scotland recommends that CBS is the most appropriate model for supporter groups established for the benefit of the wider community, albeit with many representatives of that community as members. 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. Mutual trading

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”.¹

¹ <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim24015>

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, certain tax experts have suggested HMRC accepts this approach.

HMRC’s “Company Taxation Manual” provide some further guidance on mutual trading.²

“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 society 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 the society. It will then spend its resources on providing benefits to those members. Annual surpluses should be reinvested in the society 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 the society’s constitution (see section 4).

In practice, most supporter trusts’ activities are likely to be a combination of mutual and non-mutual trading and so, in order to minimise their liability to tax, trusts’ accounting records will 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. This is discussed further in section 5.

4. Model Clauses in Trust Rules

HMRC guidance emphasises the importance of the society having a set of rules or constitution which governs the relationship between the society 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 Supporters Direct Scotland has recommended to member trusts contain the following dissolution clause which, although helpful in establishing CBS status, is not consistent with mutual trading status.

“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*

² <https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm40960>

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.

5. Trading Surpluses

Section 2 observed that most member trusts will generate income from a range of sources both mutual and non-mutual.

Examples of exclusively mutual income will include the following.

- Membership fees and subscriptions;
- Donations and gifts from members.

It should be noted that, where donations and gifts from members 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 above income.

Examples of non-mutual income would include the following.

- Bar and catering;
- Fundraising events;
- Retail.

Again, the direct costs of these activities should be offset to arrive at a net surplus which would be subject to tax.

Depending on circumstances, other income such as grants or lottery income may not be taxable but, in all such cases, the tax treatment of any costs directly associated with the income would follow the treatment of the income.

If its systems permit, a trust may be able to identify the element of non-mutual income generated from members, for example if members received a discount on presentation of a card, in which case it might be possible to exclude the net surplus from sales to members in calculating the liability to tax.

There is then likely to be a balance of general overheads (i.e. administrative costs, property costs, etc) a proportion of which would also be tax deductible subject to apportionment on a "reasonable" basis between mutual and non-mutual net activities.

Importantly, in relation to fundraising activities, trusts should be sure to take advantage of the "Peterhead" principle³ 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.

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

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. It is recommended that such trusts should seek professional advice to ensure that any such payments, especially regular ones, are fully tax deductible.

Moreover, trusts investing surpluses generated from trading activities in shares in their club should be aware that the cost of shares would not be tax deductible.

6. Corporation Tax Computations and Returns

Regardless of a trust's own view of its mutual status or whether or not it is generating taxable surpluses it should prepare and file tax returns (HMRC form CT600) in all cases and regardless of whether HMRC has ever requested a return. Failure to do so may result in financial penalties.

For limited companies, CT600s now have to be filed online, supported by accounts and a tax computation which, in most cases, now have to be submitted in iXBRL format which allows HMRC's software to read the submissions. 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.

Other entities (charities, CASCs, CICs, member clubs or unincorporated associations) may, by concession and subject to their turnover being below £632k p.a., continue to submit PDF accounts and CT600s via the Government Gateway.

HMRC does not appear to recognise a CBS as a separate corporate status. Accordingly, CBSs probably have the same obligations as limited companies although it may be possible for them to file via the Government Gateway selecting the option for member club/unincorporated association, thereby avoiding the obligation (and cost) of converting documents to iXBRL format. However, trusts would need to be aware that this approach might be challenged by HMRC.

7. Conclusion

Member trusts' constitutions do not meet the criteria set by HMRC for mutual trading and so trusts will have no automatic exemption from CT.

Nevertheless, elements of trusts' activities, in particular, fees, subscriptions and donations from members, bear all the characteristics of mutual trading. Trusts should therefore argue that net surpluses from such activities are exempt from CT.

All trusts should submit annual accounts and tax returns to HMRC.

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