MEMBERS' CLUBS & MUTUAL TRADING

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There is no doubt that mutual trading is a very difficult subject. It is so difficult that there is no definition of it in any Inland Revenue document. The only thing there is in print is a maxim that "no man can make a profit out of himself.

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Case Law

Mutual trading (or lack of it) was the main cause of pleading in The Carlisle and Silloth Golf Club v Smith (inspector of Taxes) 1912 [6TC 48].

The facts of the case were that the club was unincorporated but a bona fide members' club. The club leased the land on which the course was situated. Under one clause in the lease the club was bound to admit non-members on payment of green fees fixed by the lessor. The fees were paid by the non-members themselves and entered into the general accounts of the club. The annual accounts showed a surplus of income over expenditure.

The Inland Revenue contended that the club was in receipt of profits from the green fees which were subject to tax. The visitors were not members; they had no vote nor could they play in club competitions.

The Commissioners of Taxes decided that the club was liable to tax in respect of the green fees less such proportion of the annual outlay in maintaining and keeping up the links and clubhouse as the same contributions bear to the entire annual income of the club.

In the Court of Appeal the judges agreed that there had been no proper comparison of the cost of earning the green fees with the green fees themselves. It appeared that a "rule of thumb" had been adopted expressed on the following words "less such, proportion of the annual outlay in maintaining and keeping up the course and club-house as the same contributions bear to the entire annual income of the club or fund available for the maintenance and upkeep."

The Appeal Court considered that the Inland Revenue had used this rule in default of anything better and that this rule was an arbitrary one which had no necessary application to the facts and should not have been used.

The Court upheld the decision that the club was liable to tax on the green fees but the amount of liability had to be agreed.

Mutual Trading

Mutual Trading is a concept whereby a group of people form a "trading" association (whether by incorporation or not) for some common purpose. For the purposes of this article I shall limit it to those persons who form a group for social or leisure purposes. Incorporated clubs are included, because the members of the company and the club are the same people. They form a group, because, collectively, they can enjoy better facilities and opportunities to follow their aims. They share in the costs by payment of subscriptions annually. If there is a surplus at the end of the year, they are all entitled to a share of what is left and if there is a deficit they share the extra expenditure. There is no profit or loss, because "no man can make a profit out of himself'. There is "trading" in the sense that there is a bar and drinks are "bought". The legal view of this is that the member, who passes money over the bar is paying to replenish the stock which belongs to him in any case. The essential ingredient of mutual trading is that members "trade" only among themselves to the exclusion of all persons outside that membership.

Golf Clubs (proprietary and municipal clubs excepted) are members' clubs and are covered by this mutual trading concept. These members' clubs, however, are hybrid creatures, since they transgress the bounds of mutual trading by allowing non-members the use of the course and other facilities.

There are areas of club income, most or part of which is derived from non-members:

1. Green fees
2. Bar receipts from non-members, who have usually paid green fees
3. Functions - such as weddings, parties and conferences
4. Catering - where the club has not franchised out the catering. (A charge for the franchise of the catering would be taxable.)

There is a myth, which says that by granting "temporary membership" to people who use the facilities the club can obviate any liability to tax. This, I am afraid, is an old wives' tale. Temporary membership does not exist. If it did, there is a rule that prospective members must wait for 48 hours to use club facilities after acceptance as members, so they would have to wait two days before having their round of golf. More importantly these people are not members, because they have not been elected according to the rules and they cannot take part in any club competitions or functions.

There is another myth that where a member has a function at the club and signs the contract, this function is a members function and not liable to tax for the profit on catering (if applicable) and the bar receipts. This, again, is not true, because the court would look at the intent. A member would normally be allowed to sign in three guests. It would take an awful lot of members to sign in the number who attend weddings. Does any member have that number of friends in a golf club?! The only way in which the Inland Revenue would allow such a function to be classified as a members' function would be where there was a free bar and the member organising the function paid for all of the drinks.

The main areas of commercial trading by a golf club are, obviously, green fees and the bar receipts as a result of these green fees. The basic rule is that where the club provides services on a commercial basis for non-members, such transactions are trading and taxable.

The first thing that should be pointed out is that the Inland Revenue does not include the payment of green fees by non-members playing with members in its calculations of income liable for tax.

Once this principle is accepted, the next thing to consider is what allowances can be claimed against the profit from the green fees and the bar. The judge in the appeal court in the Carlisle and Silloth case was not happy with the rule of thumb used then.

As far as green fees are concerned, the green fees book will have a total amount of income. The area in which difficulty may arise is in deciding what expenditure should be set against the income from green fees. The most commonly accepted method is to apportion the expenditure according to course usage applying the formula:-

$$\frac{\text{No of Non-member Rounds}}{\text{Total of Rounds (Members \& Non-members)}} \times \text{Relevant Expenditure}$$

The stress here is on the number of rounds and not the amount of green fee income collected. This is because the allowances are made on course usage and not on income. Most parties will play 27 or 36 holes, but individuals are most likely to play 18 holes.

Therefore, any blanket assumption that all visitors will play two rounds would be looked at carefully, because it would be an obvious way to manipulate the formula and distort the results by giving a higher figure for allowable expenditure.

eg $\frac{50}{100} \times 2000 = 1000$

$\frac{100}{150} \times 2000 = 1333$

Capital allowances on tractors and machinery (but not buildings) would be subject to an agreed formula after being computed in the normal way for the accounting period.

eg

Tractor cost	8000
25% Annual Allowance	2000
Written down value c/fwd	6000

Allowances actually given

$$2000 \times \frac{X}{Y} = Z$$

2000 = the 25% annual allowance
X = the top time of the above formula
Y = the bottom line of the above formula

It is obvious that it is difficult to say with exactitude how many rounds members or non-members have played in a year. What must be remembered is that the non-members who play with members must be included in the number of members' rounds. There must also be some method of agreement between club and Inland Revenue - "a rule of thumb" if you like! In these days the expression is "assumptions are made".

When the numbers have been ascertained for the above formula, a fraction will be provided for the amount of allowable expenditure to be set against the income from green fees. Where the professional receives a commission for collecting green fees, this amount may be also allowed for. Note, however, that the professionals retainer cannot come within the calculation.

Bar receipts from non-members can cause problems, because the allowances to be set against income are difficult to calculate. The amount in bar receipts may be or may not be a considerable amount and it is in this area that it is imperative to negotiate with the local tax office, since all eventual agreements are reached at a local level. The reason for this is that each case has to be dealt with on the individual facts. A "De Minimis" view, which, in essence, means that some bar receipts may be so small that they will be exempted from any tax equation, may be taken. It is difficult to say what each individual tax officer will agree to. There are, however, several ways of dealing with this problem of what constitutes an allowance to be set against income - eg bar wages, cleaning etc. - some officers may not seek to tax bar income provided that there are no claims for bar salaries etc. in the overall allowances. Another possible solution would be a notional bar profit of, say, £1 for each non-member green fee with no allowances claimed for the bar.

It can be seen, therefore, that this is still a grey area because of the uncertainty of the amount of liability to tax. I believe that the main thing is to consult with the local tax office and come to an agreement. It is essential to have a full and frank discussion. There is no point in trying to conceal anything, because this could result in fines and interest payment over a period of years.

This is a fresh burden on Secretaries. They must keep proper records of green fees, the number of visitors to the club and details of any functions. It is advisable to separate the green fees of non-members who play with members and the other green fees. Proper invoices should be sent (and copies kept) to visiting societies.

Proper documentation and co-operation with the Inland Revenue could prevent an inspection.

Appeals

Any appeals against the amount of tax or principle of taxation are normally heard in the first instance by the General Commissioners of the Inland Revenue for the locality in which the club is situated. Each side meets its own costs.

Once again the law becomes a matter of money. It is necessary to estimate the club's chances of winning and how much tax it will reclaim from the Inland Revenue. When this has been assessed, deduct the costs, which could be very high. Taxation is a complicated business and experts will be required and expertise comes pretty high and is not guaranteed to win cases. I would also suspect that the club will only have one bite of the cherry, because appeals are really expensive.

The Carlisle and Silloth Golf Club went to the Appeal Court on the ground that they should not have been taxed at all. They lost the appeal and had to pay the Commissioners' costs. They gained a review of the amount of tax claimed by the Inland Revenue. I suspect that this case cost the club a great deal of money. Committees would do well to think hard before appealing.

Acknowledgement

I owe a great debt of gratitude to Mr Alan Wardhaugh, who is a District Inspector in the Inland Revenue office in Alnwick, Northumberland.

When Alan arrived at my house I was afraid to ask him if there was any tax allowance on the cup of coffee I gave him. By the end of his visit I was happy to waive any tax refund on it!

Alan (whose motto would appear to be "Co-operation not confrontation") was very patient as he explained Mutual Trading to me. He said that the important factor in negotiations on this matter was to establish trust and rapport between the club and the inspector through full discussion. The job of the inspector was to assess a fair and equitable tax and not to bleed the taxable party.

The fact that he was so open and frank with me proves his sincerity. I hope all clubs have such an understanding tax officer.