



Charities and Trading

Presentation at *Unlock Your Potential*

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Charities and trading



- General trading issues
- Trading subsidiaries

The Issue



- Charities cannot trade freely
- To do so risks:
 - Taxation
 - Charitable status
 - Reputation

Do's for a Charity

- Primary purpose trading
- Ancillary trading
- Specific tax exempt activities



Don'ts for a Charity

- Non-primary purpose trading
- Unquantified mixed trading
- Unreasonable risk
- Support for non-charities



Myth

- Charities can't trade



General trading issues

- Definitions
- Types of trading
- Warnings





What is trading?

- Selling stuff
- No single definition
- Tax law: taxable and non-taxable activities
- Charity law: charitable and non-charitable activities



The elusive definition

- No single statutory definition
- Badges of trade:
 - Buying and selling on
 - Profit motive
 - A developed mechanism
 - Frequent / repeat activity
 - Goods / services unrelated to objects
- Not conclusive



Primary purpose trading

- Sale of goods / services which directly further objects
- Examples:
 - Sale of educational courses
 - Fees for residential home
 - Sale of tickets for play
- Profits used for charitable purposes exempt from income or corporation tax



Ancillary trading

- Genuinely supportive of primary purpose trading, thus furthering objects indirectly
- Examples:
 - Hire of mobile skate park by youth charity
 - Sale of cream teas to church visitors
- Scale can affect whether truly ancillary
- Exempt from tax

Other permissible trading or activities



- Sale or hire of donated goods
- Small scale or society lotteries
- Fundraising events such as dinners, performances, shows, exhibitions, contests, auctions (certain conditions apply)

Other permissible trading or activities

- Sale of investments
- Letting of land or buildings without services
- Small scale trading



Small scale trading



Total incoming resources	Maximum trading turnover
Below £20,000	£5,000
£20,000 to £200,000	25% of total incoming resources
Over £200,000	£50,000



Warning: VAT

- If registered for VAT, must charge VAT for trading at appropriate rate whatever type of trading
- Certain exemptions or zero ratings
- Example: sale of donated goods is zero rated



Warning: mixed trading

- Mixture of primary purpose / ancillary trading and non-primary purpose trading
- Example: theatre restaurant open to general public
- Apportion expenses and receipts and account as accurately as possible
- For tax purposes, two types of trading

Warning: land transactions



- If land is acquired or developed with sole or main intention of realising gain, the gain is subject to tax

Warning: sponsorship, commercial participation and professional fundraisers



- Sponsorship: acknowledgement or advantage for sponsor?
- Commercial participation: specific requirements and arrangements
- Professional fundraisers: specific requirements and arrangements

Warning: Charity Commission guidance



- CC35: non-primary purpose trading by charities is OK if no significant risk
- Wrong: charities' powers only allow them to further their objects

Trading subsidiaries



- When to use them
- Setting up
- Financial arrangements
- Governance arrangements
- Warnings

When to use a subsidiary

- Activities a charity cannot do
- Strategic reasons
- Risk management
- (Charitable subsidiaries)





Setting up a subsidiary

- Share or guarantee company?
- Membership:
 - Charity alone
 - Charity and others
- Board:
 - Charity must appoint majority
 - Charity might appoint all
 - Need at least a quorum of non-charity trustees

Setting up a subsidiary



- Share capital investment by charity:
 - Nominal: fine
 - Substantial: with care
- Loan capital investment by charity:
 - Commercial terms

Subsidiary finance arrangements



- Charity must only apply assets for charitable or investment purposes
- Investment in subsidiary *may* not be sound commercial investment
- Loans, facilities, staff, management arrangements must be on commercial terms

Subsidiary finance arrangements



- Fundamental deceit: often not truly commercial, especially at first
- Gift Aid, transfer to charity to eliminate or reduce tax liability
 - Within nine months of year-end if wholly owned
 - Need for subsidiary's operating finance

Subsidiary governance arrangements



- Board of both charity and subsidiary:
 - Independence
 - Non-conflicted quorum
 - Each must look to *own* interests

Subsidiary governance arrangements



- Resource sharing between charity and subsidiary:
 - Practical and commercial good sense
 - Must be commercial for each, especially the charity

Subsidiary governance arrangements



- Control by charity:
 - Budgets, plans, risks, etc of subsidiary must be overseen by charity
 - Governance Agreement

Warning: charity's support



- Charity's commercial and obligation support of subsidiary:
 - In general cannot be given
 - Can be given if furthers charity's objects and risks are reasonable



Warning: subsidiary's failure

- Charity's decisions must be for the charity's benefit not the subsidiary's
- 'Non-qualifying investment' likely to have tax consequences for the charity
- Examples:
 - Loans with generous terms
 - Support of obvious failure
 - Unreasonable risk
 - No security

Summary



- Charities cannot trade freely
- Primary purpose, ancillary, tax-exempt and non-primary purpose trading
- Subsidiary: for non-primary purpose trading, strategy or risk management
- Charity / subsidiary arrangements require care



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