MEMBERS CLUBS & CORPORATION TAX - UPDATE

Prepared by Ian White, former Controller of the Inland Revenue for the North West *(Updated 2006, reviewed October 2011)*

Most secretaries of members golf clubs will by now be aware of Revenue interest in the question of corporation tax liability on income from visitors. Although not all clubs have yet been approached (no doubt due to the potential strain on Revenue resources from a blanket coverage), most of you will be aware of clubs which have been reviewed by their local Inspector of Taxes.

The Revenue's legal authority to assess income from visitors is based on the decision given in the case of Carlisle and Silloth Golf Club v Smith TC Vol VI 48 & 198. In the final decision on that case the court of appeal affirmed the judgement of the court below that “the club for income tax purposes, carries on a concern or business which is capable of being isolated and defined and in respect of which it receives remuneration that is assessable."

In other words, payments made by visitors, although described as temporary members' fees, are not covered by the principle of mutuality. However, the Revenue does accept that payments made by members in respect of their personal guests are not assessable. Such payments are covered by the principle of mutuality because they are made by the members themselves. It could be argued that mutuality should be applied in a wider sense to cover all clubs affiliated to their National Golf Union eg the EGU, and the playing of golf on each others courses by right of that membership. However, such an approach would undoubtedly be resisted by the Revenue and any appeal would go beyond the court of appeal - a costly and expensive business beyond the financial resources of most golf clubs. Overall, therefore, I would recommend that it be accepted, albeit reluctantly, that the Revenue do have the right to assess income from visitors fees to corporation tax. However, it is clear from the Silloth case that expenses must be allowed in computing the quantum of the assessment. It is in this area of allowable expenditure that the problems arise.

In Silloth the Inspector had computed the allowable expenditure by using a fraction based on income from visitors and total income from all sources. The courts rejected the Revenue formula as "illogical" and referred the question of allowable expenses back to the commissioners to give the golf club - "an opportunity of having the figures more exactly gone into for the purpose of ascertaining what is the real apportionment of the total expenses of the club". It was obviously the view of the judge that the parties could accept "the present illogical rule or some other rule more satisfactory if not more logical". The final decision by the Commissioners has apparently been lost in the mists of time but if it was favourable to the Revenue one can only ponder on the subsequent lack of interest shown by the Revenue for nearly 80 years. My own view is that a

more "logical" formula produced little or no liability to tax, a view supported by the fact that some clubs report having received repayments from the Revenue in respect of losses arising.

Despite its age, the Silloth case is still the definitive tax case on accessibility to tax on income from visitors fees. Recently individual Inspectors of Taxes have been settling cases either on the Silloth case formula or on the basis of course usage by rounds and in some cases have sought to restrict expenses to mere marginal costs. Such a diverse approach by the Revenue is conflicting and confusing. A variety of computations have been agreed by individual Inspectors with results ranging from losses to substantial liabilities in those cases where club representatives have accepted the Inspector's views without question. Recent correspondence appears to indicate that the Inland Revenue are proposing a policy based on two basic points:

1. As far as possible allocation of allowable expenditure should be calculated on the basis of course usage by visitors and members.
2. Payments by members in respect of their personal guests are not assessable.

Golf clubs might appreciate guidelines of their own on the above and I would suggest:

Allowable Expenditure

Before considering common items of expenditure, clubs should identify items of direct expenditure incurred solely in respect of visitors eg:

- Collection fees paid to the professional, usually ranging from 5% - 10%.
- Starter or ranger fees.

If an assistant secretary has been engaged wholly or mainly to deal with visitors, then the additional cost of this administrative support should be claimed as a direct cost.

On items common to members and visitors the Revenue have confirmed that "the allowable expenditure may include not only the direct costs of providing for non-members, but also a reasonable proportion of general expenditure on the facilities of the club".

Although the ground rules for determining allowable expenditure are therefore reasonably clear the difficulty lies in deciding the "reasonable proportion" to be allowed.

Depreciation cannot be included as allowable expenditure but capital allowances on plant & machinery fixtures & fittings are deductible.

Course Usage

The formula to identify allowable expenditure is easy to apply. The difficulty is the quantification of rounds played by members. For example a club has a playing membership (male, female, juniors etc) of 600. From its financial records the Secretary computes rounds played by societies, casual visitors at 6,000 and rounds played by members' guests at 1,000. A playing profile of the club taking into account competition play, the number of professional and employed members and the age and number of retired members (remember that not everyone

plays a full round particularly between the clocks going back and forward) helps the secretary to estimate rounds played by members at 15000 rounds (say 25 rounds per annum for every member).

On such figures the percentage for computing allowable expenditure would be:

Visitors	6,000
Guests & members (1,000 + 15,000)	16.000
Total	**22,000**
Visitors, percentage allowable 27.27%	(6.000)
	22,000

My own research to date gives average figures for play by members as follows:

Type of club	**No of full rounds per member per annum**
Rural	10 - 25
Suburban	15 – 30

Unfortunately the Revenue appears to take the view that one can have almost unlimited play on a golf course and will refer to potential course play of 75,000 rounds per annum indicating play by members of between 35,000 and 40,000 rounds. In arriving at these figures it is suggested that it is possible to play 16 hours per day at the height of the summer.

As most members clubs allow play to start at 8am one can only wonder where one can find such clubs in the UK (apart from the far north of Scotland) where golf can be played from 8am to midnight. The Revenue also overlook the fact that all golfers want to play during the best part of the day. Clubs accept fees from visitors but the price to be paid by members is that visitors will want to play during the best hours of the day. However, to produce an assessable profit the Revenue must establish a high number of rounds played by members and have recommended to local district Inspectors that 50 rounds per annum should be adopted for every playing member.

In the example given earlier this would reduce the percentage of allowable expenditure from 27.27% to 16.21 %.

6,000
37,000 (members 30,000, guests 1000, visitors 6000)

It is clearly important that club committees take considerable care and time in calculating members' rounds and should not rush to accept the figures proposed by the Revenue which in my view cannot be sustained. The Inspector will cite in support of the 50 rounds per member a report by the Sports Council issued in 1991.

However, on 30 October 1995 representatives of the GCMA (including the author of this article) had a meeting with a senior representative of the Sports Council, who expressed surprise and alarm at the use which the Revenue was seeking to make of the statistical information given in

their report, which had never been field tested and in which the response rate by golf club Secretaries to the question on total rounds played in a year was so low that the "estimates of rounds played must be treated with extreme caution in terms of their representativeness for all clubs".

In their written reply the Sports Council also made the following additional comments:

> "So for example whereas over 20% of clubs provided estimates of less than 20,000 rounds, at the other extreme 22% provided estimates of over 50,000 annually. With such a wide distribution the use of average figures is potentially misleading and inaccurate when applied to the vast majority of individual clubs. It should also be made clear that the estimates are based on a combined figure which potentially includes both visitors and members."

It is interesting to note that if the 34,343 rounds stated in the Sports Council report were to be accepted as representing the average number of rounds which could be played, then a high course usage rate of 60% would produce an average actual usage of 20,605 rounds. Obviously this figure would be adjusted up or down according to topography, climate, number of members and whether rural or suburban etc but it does give a reasonable basis for most members clubs. In other words, a reasonable figure for the average club would be in the region of 15,000 to 25,000 rounds per annum.

On the other hand, the formula recommended by the Revenue would suggest members rounds of, eg:

Members	600 x 50 = 30,000
	700 x 50 = 35,000
	800 x 50 = 40,000

As 80% of all golf is played in the 30 week period 1st April to 30th October this would mean that play by members, and disregarding visitors, would be for every week of that period as follows:

No of Members	**Full rounds per week**
600	800
700	933
800	1,066

In my opinion, even without the addition of visitors and guests rounds, these figures are not sustainable for the majority of members clubs.

In this respect a close scrutiny of club records on competition play should prove most enlightening. The following statistical information has been provided by clubs with computer support:

Average of actual club competitions	
(including all medals)	25 – 50
Members eligible to play	350 – 680
Percentage of members who never entered a competition	35% - 44%
Percentage of members who entered but played less than 5 rounds	30% - 42%
Percentage of members who played more than:	
a) 5 but less than 20 rounds	15% - 18%
b) 20 rounds	6% - 8%

Such statistics are extremely useful and should be produced to the Inspector as evidence of the level of active players within the club.

It should be noted that, although the above statistics relate to play by the male membership, there is no indication that play by lady members would give widely different figures.

OTHER POINTS WORTHY OF MENTION

Reopening of Earlier Years

There are instances of Inspectors of Taxes trying to go back six years where liability has been established. Clubs should resist such an approach by the Inspector if they have submitted each year, with their tax return, annual accounts which have clearly identified receipts from temporary members. In such cases the courts have placed severe restrictions on the Inspector's rights to reopen earlier years.

The two main tax cases in this respect are:

Cenlon Finance Co Ltd v Ellwood TC 40 176

Scorer v Olin Energy Systems Ltd TC 58 592

Bar and Catering Receipts

If material, the Inspector will seek to assess such receipts usually on the same percentage basis as course usage. For most clubs this should not be a problem because not many make a large profit from the bar or catering. However, clubs must realise that if they maximise their claim on House expenditure by claiming costs of bar and catering staff then the Inspector will usually seek to do the same as regards income from both these sources.

This article is the result of nearly 3 years of work on behalf of the GCMA and individual clubs. The information given has been obtained not only from clubs with which I have been personally involved but from conversations with a large number of secretaries of members clubs whom I have met at conferences or who have contacted me by telephone. Obviously it is not possible to

deal with every problem which arises in the taxation of members clubs but I hope that in this article I have managed to deal with the main problem areas and to highlight the strengths and weaknesses in the Revenue's case.

At the end of the day the Inspector may suggest that, if agreement cannot be reached, it may be necessary to refer the matter to the commissioners. Clubs should not be afraid of this proposal. However, if such action is proposed, the club representatives should make it clear that they are not questioning the Revenue's authority to assess income from visitors (as established by the Silloth case) but only the quantum of the assessment.

Finally, this is an area in which the secretary and the club committee come into their own. Very few clubs can state with any certainty the total number of rounds played annually by their members neither can the Revenue. At the end of the day a members' playing profile completed by the secretary with assistance from the club committee and professional will be hard to displace by the Revenue, particularly if the only support for their figures is the Sports Council Report.

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