

HM Treasury consultation on legislation in draft: Corporation tax relief for expenditure on grassroots sports

Response from the Sport and Recreation Alliance

The Sport and Recreation Alliance

The Sport and Recreation Alliance is the independent voice of the governing and representative bodies of sport and recreation in the UK. Our 320 members represent approximately 150,000 clubs across the country and some 8 million regular participants. The Alliance exists to promote the role of sport and recreation in healthy and active lifestyles and in particular to encourage a policy and regulatory environment in which grassroots sport can flourish.

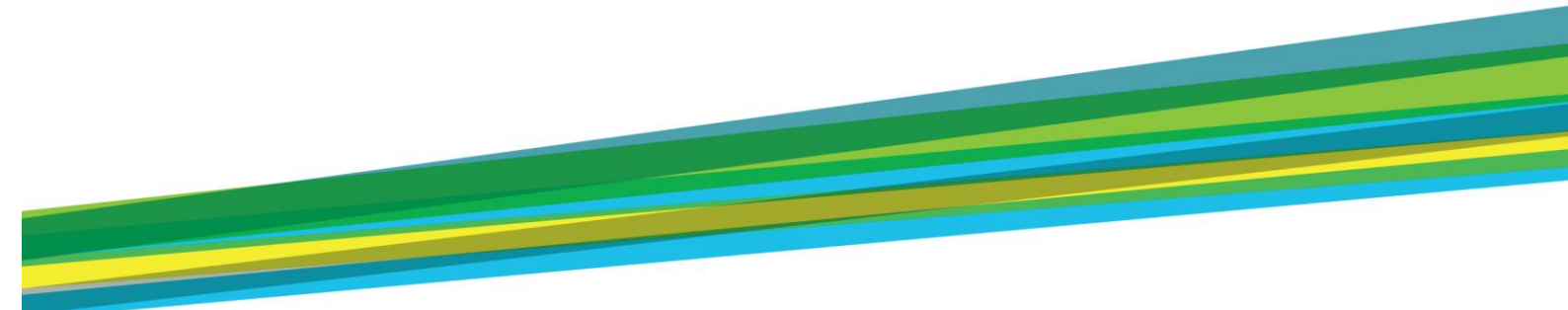
General comments

We very much welcome the consultation on the legislation in draft and the opportunity to comment on the specific clauses relating to corporation tax relief for grassroots sport expenditure. We believe it is essential that the tax regime is supportive of grassroots sport so as to facilitate the most effective use of existing financial resources for the biggest benefit and to lever in new, additional investment where possible.

While the Alliance response represents the broad views across our membership, we recognise that individual members may provide additional, specific feedback on the draft legislation as it affects their organisations. As such, the Alliance response should be read alongside those of our individual members.

We have provided more detailed feedback on specific elements of the draft legislation further below. However, before turning to our detailed comments, we would make the following key points:

- The legislation should give effect to the key objective identified in the Government's sports strategy *Sporting Future* to maximise the support provided to grassroots sport through the tax system. This means ensuring that the legislation is simple, clear and easy to apply and, importantly, that it is flexible enough to address the following:
 - The wide range of organisational structures in place across the sport and recreation sector. For example, we believe that the definition of a sports governing body must be drawn widely enough so as to capture grassroots expenditure made by subsidiary entities within a governing body's corporate structure including subsidiary companies as well as counties and regional bodies.

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- The way in which sports governing bodies generate income and spend it on grassroots sport. In particular, governing bodies often have 'lumpy' income profiles whereby income in certain years can be much higher than others, for example as a result of hosting a major event. This income profile makes it difficult and indeed undesirable to exhaust all the income generated on grassroots spending within the same year. In this context, the legislation should support the smoothing of grassroots expenditure by extending the relief to grassroots expenditure incurred in future years using surplus income carried over i.e. not simply to expenditure incurred within the year in which the income is generated. This could be done by enabling both the ability to carry back losses (for example where grassroots expenditure in future years exceeds income) and to surrender losses to other group entities to offset against their corporation tax liabilities. In our view, if this sort of mechanism is not included, the legislation would fail to maximise the potential for the tax system to support grassroots sport by limiting the extent to which governing bodies are able to take advantage of the relief.
 - The nature of grassroots spending which often includes national programmes incorporating revenue and capital expenditure and which can benefit both amateur and professional sport. In this context, the legislation must allow relief for the grassroots element of such expenditure based on a sensible and proportionate means of apportioning central spend between grassroots and professional sport.
 - In addition to the legislation, we would welcome some clear and simple guidance to assist sports governing bodies and other organisations in understanding and applying the legislation in practice. We would be happy to be involved in further discussions on the development of any such guidance.

Comments on specific clauses

Where appropriate, we have made suggested changes to the relevant clauses in red text in the annex which we believe would give effect to the key points raised in this response. These suggested changes should nonetheless be read in conjunction with our detailed comments below and we would be keen to discuss specific amendments further with officials.

217A Relief for expenditure on grassroots sport

Extent of the relief

We believe that the relief should be available for expenditure made in future years using surplus income carried over, not simply for expenditure incurred in the year in which the income is generated. This is crucial in order for sports governing bodies to maximise the relief and to enable a sensible smoothing of grassroots expenditure over time.

As an example, a sports governing body like the England and Wales Cricket Board (ECB) will generate significant 'one-off' income in certain years, for example as a result of hosting a World Cup or a home Ashes Test series. In this case, the income is used to support grassroots provision over a number of years as it is not possible or desirable to exhaust all the income generated on grassroots spending within the same year. However, as currently drafted, the legislation would not provide relief for grassroots expenditure incurred in future years using income carried over even though this is precisely the sort of investment the proposal is seeking to support.

We have provided a hypothetical worked example below to illustrate this point more clearly. Note this is a highly-simplified example and is intended only to highlight the importance of being able to smooth expenditure over several years.

Applying the relief to a sports governing body's expenditure over time

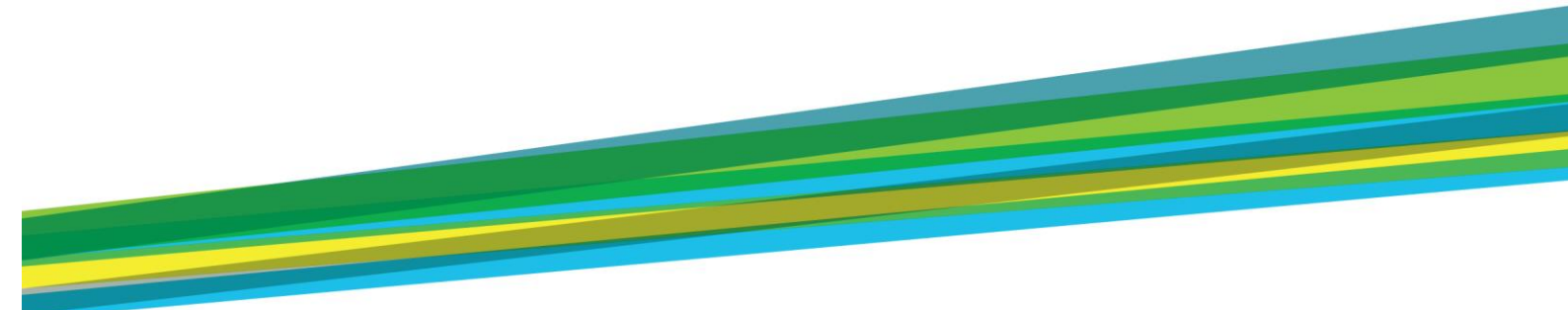
In this example it is assumed the hypothetical sports governing body hosts a major series of international matches on a 4-year cycle which generates the bulk of its income. In the intervening years it generates some income but significantly less than in Years 1 and 4. It is further assumed that the governing body spends all of its income on grassroots sport and does not have a charitable arm.

	Year 1	Year 2	Year 3	Year 4
Income (£m)	100	10	10	100
Grassroots expenditure (£m)	50	30 (includes £20m carried from Yr 1)	30 (includes £20m carried from Yr 1)	50
Taxable profit/loss (£m)	50	-20	-20	50
Tax paid at 20% (£m)	10	0	0	10
Residual for reinvestment in future years (£m)	40	20	0	40

In this worked example the sports governing body would get relief for £50m of grassroots expenditure incurred in Year 1 leaving a taxable profit of £50m. After tax, this would leave a sum of £40m for reinvestment in Years 2 and 3. However, without the ability to carry back losses incurred in Years 2 and 3 to set against income in Year 1 (or to surrender them to another entity in the group), this £40m is not eligible for relief even though it has been spent on grassroots sport. The lack of available relief in this scenario therefore negates one of the key aims of the proposal which is to reduce the burden associated with administering grassroots expenditure and provide sports governing bodies with greater flexibility to decide how best to use funds for the benefit of grassroots sport.

In view of the above, we believe clauses 217A (1), (3) and (6) should be amended to create a mechanism to enable sports governing bodies get relief for grassroots expenditure for up to three years after the relevant income is brought into account. This mechanism should enable a sports governing body to carry back losses incurred in future years by up to three years or, depending upon its circumstances, to surrender them to another entity in the group to obtain group relief.

In order to achieve this we believe it is critical that clause 217A (6) is amended to exclude sports governing bodies from the limit on deductions which reduces taxable profits to zero. Without this specific exclusion, it is not possible to utilise losses in future years against liabilities in previous years or to surrender losses



under group relief to reduce liabilities within a governing body's group structure, for example to offset profits made by joint ventures or subsidiaries.

Direct payments

We believe that the maximum deduction for direct payments is too low. Whilst we recognise the need to ensure the integrity of the tax system, £2,500 is a very small sum and we believe substantially increasing this figure would help incentivise companies to contribute more to grassroots sport. This would be particularly valuable for local community grassroots clubs and organisations for whom a relatively modest investment could be transformative. In our view the maximum deduction for direct payments should be raised to £50,000.

217B Meaning of qualifying expenditure on grassroots sport

Purpose, nature and benefit of grassroots expenditure

We welcome the purposive approach taken to defining what is eligible grassroots expenditure. However, we believe it is important that the legislation reflects the nature of grassroots expenditure and in particular the fact that sports governing bodies often incur expenditure on central programmes that benefit both amateur and professional sport, for example spending on training for coaches and officials, capital expenditure on facilities or centralised spend on administration and support (including IT). In this context, we would suggest making a simple change to the wording of clause 217B (1) (a) to remove the word 'exclusively'. This would clarify that expenditure by a sports governing body which encompasses both amateur and professional sport is not – in and of itself – ineligible and that the grassroots element of any such expenditure is eligible for relief provided it is apportioned clearly. In terms of apportioning expenditure, the precise method should be for the sports governing body to decide providing it can demonstrate clearly that the relevant expenditure meets the test for relief.

We are also of the view that the definition of eligible expenditure in clause 217B (1) (a) should be amended to align with the definition contained in the Charities Act 2011 i.e. expenditure is eligible if it is for 'the advancement of amateur sport.'¹ Given the explicit link to the Charities Act 2011, we see no reason why the definitions should not be the same. This would ensure consistency between the two pieces of legislation and make it clear that any grassroots expenditure – including relevant central expenditure apportioned appropriately – is eligible for relief providing it can be demonstrated it is for the advancement of amateur sport.

Payment of reasonable expenses

We believe that the payment of reasonable expenses for players should not be considered as paying someone to take part in sport. There are instances in a sporting context in which participants are reimbursed for their out-of-pocket expenses and HMRC accepts that the reimbursement of such expenses does not create an employment relationship for tax purposes. We consider that a similar approach should be adopted for the purpose of clause 217B (2) (a) so that the term 'payment' does not exclude such expenses. This would ensure that grassroots programmes that involve participants receiving only such expenses can be regarded as facilitating the advancement of amateur sport.

¹ Charities Act 2011, Ch 1 Section 3 (1) (g): <http://www.legislation.gov.uk/ukpga/2011/25/section/3>



217C Meaning of sport governing body

Having taken feedback from our members, we are aware that a number of sports governing bodies have trading subsidiaries and affiliated county or regional bodies through which grassroots expenditure is incurred. The latter include county and regional boards or associations, for example County Football Associations and County Cricket Boards. In many cases these trading subsidiaries and affiliated country/regional organisations spend significant sums on grassroots sport.

In this context, we believe that the definition of a 'sports governing body' contained in clause 217C must encompass these subsidiaries and affiliated bodies such that any grassroots expenditure made by these entities is eligible for relief as if it were incurred by the 'peak' governing body itself. While we note that provision has been made to define 'sports governing body' within regulations, for the avoidance of doubt – and in order to have effect from 1 April 2017 – we suggest these subsidiaries and affiliated bodies are included explicitly in the legislation within clause 217C. We have included a suggested amendment to this effect in the annex.

Conclusion

Overall we welcome the draft legislation but believe that the proposed changes outlined in our response would make the relief simpler and more flexible and deliver the maximum benefit for grassroots sport. We would be happy to discuss any of the points raised with officials in order to assist in finalising the legislation.

February 2017

Leigh Thompson, Policy Manager

lthompson@sportandrecreation.org.uk

Annex: Suggested amendments to Finance Bill 2017 – Grassroots sport

23 Grassroots sport

(1) In section 1(2) of CTA 2010 (overview of Act)—

- (a) omit the “and” at the end of paragraph (g), and
- (b) after that paragraph insert—

“(ga) relief for expenditure on grassroots sport (see Part 6A), and”.

(2) In CTA 2010, after Part 6 insert—

“PART 6A

RELIEF FOR EXPENDITURE ON GRASSROOTS SPORT

217A Relief for expenditure on grassroots sport

(1) A payment made by a company which is qualifying expenditure on grassroots sport (and which is not refunded) is allowed as a deduction in accordance with this section from the company’s total profits in calculating the corporation tax chargeable for the accounting period in which the payment is made, **subject to subsection (3)**.

(2) The deduction is from the company’s total profits for the accounting period after any other relief from corporation tax other than—

- (a) relief under Part 6,
- (b) group relief, and
- (c) group relief for carried-forward losses.

(3) If the company is a sport governing body at the time of the payment, a deduction is allowed for the amount of the payment **for the accounting period and a period up to three years after the accounting period in subsection (1)**.

(See section 217C for the meaning of “sport governing body”.)

(4) If the company is not a sport governing body at the time of the payment, a deduction is allowed—

- (a) if the payment is to a sport governing body, for the amount of the payment, and
- (b) if the payment does not fall within paragraph (a) (a “direct payment”), in accordance with subsections (7) and (8).

(5) If at any time on or after 1 April 2017 the company receives income for use for charitable purposes which are exclusively purposes for facilitating participation in amateur eligible sport, the amount of the deduction is reduced by the amount of that income which—

- (a) the company does not have to bring into account for corporation tax purposes, and
- (b) has not previously been taken into account under this subsection to reduce the amount of a deduction allowed to the company under this Part.

See section 217B(2) for the meaning of terms used in this subsection.

(6) But in any case, **with the exception of where the company is a sports governing body**, the amount of the deduction is limited to the amount that reduces the company's taxable total profits for the accounting period to nil.

(7) If the total of all the direct payments made by the company in the accounting period is equal to or less than the maximum deduction for direct payments, a deduction is allowed under subsection (4)(b) in respect of that total.

(8) If the total of all the direct payments made by the company in the accounting period is more than the maximum deduction for direct payments, a deduction is allowed under subsection (4)(b) in respect of so much of that total as does not exceed the maximum deduction for direct payments.

(9) The maximum deduction for direct payments is ~~£2,500~~ **£50,000** or, if the accounting period is shorter than 12 months, a proportionately reduced amount.

(10) The Treasury may by regulations amend subsection (9) by substituting a higher amount for the amount for the time being specified there.

217B Meaning of qualifying expenditure on grassroots sport

(1) For the purposes of this Part, a payment is qualifying expenditure on grassroots sport if—

- (a) it is expenditure incurred for charitable purposes which are **exclusively** purposes **of advancing facilitating participation in** amateur eligible sport, and
- (b) apart from this Part, no deduction from total profits, or in calculating any component of total profits, would be allowed in respect of the payment.

(For the meaning of charitable purposes, see sections 2, 7 and 8 of the Charities Act 2011.)

(2) For the purposes of section 217A(5) and subsection (1)(a)—

- (a) **with the exception of reasonable expenses**, paying a person to play or take part in a sport does not **facilitate participation in advance** amateur sport, but paying coaches or officials for their services may do so, and

(b) “eligible sport” means a sport that for the time being is an eligible sport for the purposes of Chapter 9 of Part 13 (see section 661).

217C Meaning of sport governing body

(1) For the purposes of this Part, a “sport governing body” is a body which is designated for those purposes by regulations made by the Treasury.

(2) Regulations under this section may designate a body by reference to its inclusion from time to time in a list maintained by a body specified in the regulations.

(3) Notwithstanding (1) and (2), the definition of a “sport governing body” includes a subsidiary or affiliated body such that any eligible expenditure made by such entities is treated as if it were made by the sports governing body.

~~(3)~~ (4) Regulations under this section made before 1 April 2018 may include provision having effect in relation to times before the regulations are made (but not times earlier than 1 April 2017).

217D Relationship between this Part and Part 6

If, but for section 217A, an amount—

(a) would be deductible under Part 6, or

(b) would be deductible under Part 6 but for Chapter 2A of Part 6, the amount is not deductible under this Part, and nothing in this Part affects the amount’s deductibility (or non-deductibility) under Part 6.”

(3) The amendments made by this section have effect for the purpose of allowing deductions for payments made on or after 1 April 2017.

(4) Where a company has an accounting period beginning before 1 April 2017 and ending on or after that date, the accounting period for the purposes of the new section 217A(9) is so much of the accounting period as falls on or after 1 April 2017.