



not for profit | academies - fundraising and direct tax

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This fact sheet summarises the principal issues concerning academies' fundraising activities.

Provided that a charity is acting within its powers, charity law allows it to derive income from a wide range of sources, the income from which would generally be exempt from income and corporation taxes. Some of the main exemptions are for investment income, income from land and buildings, lottery income but only some trading income. Capital gains are also usually exempt.

A notable exception to the generally relaxed attitudes towards how a charity should be able to raise funds is trading, and this can prove to be an issue from the point of view of both charity and tax law.

Most schools supplement their income by fundraising and they also generate further funds through other activities. The model memorandum and articles for an academy, however, specifically prevents the undertaking of substantial permanent trading activities. It is therefore important to identify which activities of the academy constitute trading and to consider whether it is appropriate to carry these out.

Where there is a danger that undertaking an activity could cause a charity to breach its powers or incur an unnecessary tax liability, it is common practice to hive it off into a subsidiary company. This is considered in more detail in our academies subsidiary trading companies' factsheet.

the position generally

The trading activities of a charity are only exempt from tax if certain conditions are met. These are:

- the profits from the trade are applied for the purposes of the charity; **and, either**
- the trade is carried out in fulfilment of the primary purposes of the charity or is ancillary to these purposes; **or**
- the "trade" is carried out to raise funds for the charity and falls within the VAT exemption rules for fundraising events, **or**
- the income from the trade is considered "small" in relation to the other income of the charity.

Academies do not charge fees for education and will not generally be trading in the fulfilment of a primary purpose.

The income from VAT-exempt fundraising events would qualify for exemption from direct tax but, any activities that constitute trading would need to be taken into account when considering whether the academy was in breach of its objects by carrying on substantial permanent trading activities. In addition, the Charity Commission strongly advises that events with a significant turnover should be carried out through a subsidiary trading company (and this applies even to charities that do not have a specific restriction on conducting substantial permanent trading). They go on to say that in some cases charity law will require this.

The small trade exemption will only apply if the aggregate turnover from all otherwise non-exempt trades does not exceed the lesser of £50,000 and 25% of the charity's gross income. This is an all or nothing exemption so, if the limits are breached, all of the profits relying on this exemption would become taxable. In exceeding these limits, an academy would be in danger of breaching its powers by carrying out substantial permanent trading activities. The Charity Commission are generally happy that trading within these limits is not substantial but, given the restrictive objects, caution is advised where an academy is also relying on the exemption for fundraising events.

we have briefly commented on eight activities commonly undertaken by schools below:

- Boarding: in the limited cases where academies offer boarding, the income should not be taxable either because the charges are made at or below cost (so that the activity does not have the commercial characteristics of a trade), or, because the activity is ancillary to the primary purpose of the charity. Due to the restriction against permanent substantial trading, advice should be sought if these activities are to be conducted at a profit.
- Lettings: the letting of land and buildings is not taxable unless services such as staffed catering and boarding facilities are included and this should rarely apply to an academy. Similarly, the hiring of well-equipped computer rooms with support staff and all related facilities could also be seen as trading. Whenever services are provided, it is probably best to err on the side of caution and operate such activities through a trading company.
- School shop: the operation of a school shop would be trading and the income would generally only be exempt if the shop was operated by the pupils or the aggregate turnover from all non-exempt trades was below the small trading limits. It is probably best to operate the activity through a trading subsidiary.
- School trips: recharging the costs of a school trip should not be seen as trading provided that there is no intention to make a profit and no profit in fact arises. If profits do arise, the turnover could count towards the small trading limits and the profit could potentially be taxable, subject to the small trading exemption.

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- Sponsorship: sponsorship income is not taxable if it is effectively a donation and the sponsor only receives their name printed in acknowledgement. If the references to a sponsor amount to an advertisement then the payment could be trading income and may be taxable so it is probably best to operate the activity through a trading subsidiary.
 - Commissions: other income, such as insurance commission, may be taxable as 'other profits or gains', subject to the small trading exemption.
 - School Buses: the provision of a regular bus service for a charge is likely to be a trade although, in the case of a necessary or occasional service, the income may be exempt or the activity may fall short of trading. If profits are made, it is probably best to operate the activity through a trading subsidiary.
 - Transactions in land: although charities are usually exempt from tax on their capital gains, anti-avoidance measures mean that problems can arise from certain transactions in land. It is recommended that professional advice is sought when acquiring, developing and selling land.

conclusion

These are complex issues and we recommend that you consult your usual engagement partner or Anne Gregory-Jones for advice on other tax matters.

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