

## 2008 a year of change

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Christmas is over and so too are all the New Year celebrations. Remarkably, few New Year resolutions remain unbroken, but what changes does the New Year herald for those charged with running your club?

If your club is lucky enough to have a supermarket store desperate to get you to sell your prime site to them, your management committee should be making certain that you avoid as much of the potential tax charges as possible. That would be relatively easy for charitable Amateur Sports Clubs or those with a charity in the structure, but others may need more thought.

There are also quite a few financial and governance changes to grapple with. I will look at three of them: New directors' duties, a new tax penalty regime, and the latest on Charitable Amateur sports Clubs (CASC's).

### New Directors' Duties

The Companies Act 2006 makes important changes in relation to directors' duties and responsibilities and has been coming into force piecemeal. The old common law code is being replaced by a statutory framework.

You should make certain that the provisions relating to directors' etc. are known and observed by your company directors. On 1st October 2007 four of the seven new provisions came into force; the rest will come into force on 1st October 2008.

The four duties already in force are:

1. To act within powers – directors must act within the company's constitution and only exercise powers for the purposes for which they were conferred;
2. To promote the success of the company – directors must act in good faith to promote the success of the company for the benefit of its members as a whole, with particular regard to six factors:-
  - a. the long term consequences of decisions
  - b. the interests of the company's employees
  - c. the company's business relationships with suppliers, customers, etc.
  - d. the community and the environment
  - e. maintaining a reputation for high standards of business conduct and
  - f. the need to act fairly as between members of the company.
3. To exercise independent judgement.
4. To exercise reasonable care, skill and diligence – judged both objectively (expected of a director, generally) and subjectively (expected of that director with his particular knowledge of facts, experience etc).

Margaret Hodge, the Minister of State for Industry and the Regions, published a plain English guide on directors' duties under the Act:

1. Act in the company's best interests, taking everything you think relevant into account.
2. Obey the company's constitution and decisions taken under it.
3. Be honest, and remember that the company's property belongs to it and not to you or to its shareholders.
4. Be diligent, careful and well informed about the company's affairs. If you have any special skills or experience, use them.
5. Make sure the company keeps records of your decisions.
6. Remember that you remain responsible for the work you give to others.
7. Avoid situations where your interests conflict with those of the company. When in doubt, disclose potential conflicts quickly.
8. Seek external advice where necessary, particularly if the company is in financial difficulty.

These duties will require clubs to review even the most common of practices. For example many rugby clubs have someone who is responsible for international ticket allocation, and that someone often has fantastic seats for most games! The directors of those clubs with corporate structures will have to ask themselves whether this is consistent with the duty to act in the best long term interests of the company. Those without a company structure should arguably be asking the question in any event as they will be acting in a position of trust.

The three further directors' duties which are due to come into force a year later, on 1st October 2008, are:

1. To avoid conflicting interests
2. Not to accept benefits from third parties which give rise to conflicts
3. To declare any interest in proposed transactions or arrangements with the company.

Again, very common situations will need to be reviewed. How many rugby clubs involve a company that owns the land that have virtually no written evidence of decisions? This will have to change if the directors wish to avoid legal action.

### New Tax Penalty Regime

You will no doubt be aware of the fact that the Inland Revenue and Customs & Excise have merged to form HMRC. One of their major projects was to devise a system of penalties to span all taxes, such as Income Tax, Corporation Tax, VAT, Capital Gains Tax, PAYE and NI etc. The principle for the new penalty regime is based on "failure to take reasonable care". I recently attended a working party meeting with two top HMRC personnel. Their view of the new system is that they should not penalise people who have taken reasonable care, which presumably means they will seek to penalise those who have not.

The new regime covers periods from 1st April 2008 so you would be well-advised to make certain someone is dealing with all your tax returns on a timely basis; the first penalties will be levied on returns submitted after 1st April 2009, but covering periods from 1st April 2008.

The penalties are geared to the "potential lost revenue" (PLR). The table shows how easy it would be to incur a substantial financial penalty.

There is also the concept of a suspended penalty but only for the "careless" category. Interestingly HMRC mentions, as an example, a tennis club that sold

its land to the local authority but omitted to disclose the gain on its tax return. They say that such a penalty cannot be suspended because the club is unlikely to have future gains – I am not comfortable with the logic in that.

Penalised behaviour	Maximum penalty, without disclosure, based on PLR	Minimum penalty, with prompted disclosure, based on PLR	Minimum penalty, with unprompted disclosure, based on PLR
Careless	30%	15%	Nil
Deliberate but not concealed	70%	35%	20%
Deliberate and concealed	100%	50%	30%

#### CASC Status

There has been much recent encouragement from the Government and others to consider Charitable Amateur Sports Club Status. Since Running Rugby's last issue another well known club has registered its amateur section leaving its professional first team operation separate, so the paying of players need not be a factor that precludes adopting CASC status.

CASCs should make certain that they claim all the tax relief that is due. It has been estimated that registered CASCs fail to claim something like £3m per year, which is quite a bit when shared between those that are registered.

The reduction in the basic rate of tax from 22% to 20% will be bad news for those claiming gift aid rebates for tax year 2008/2009. This will mean a drop in gift aid rebated of over 11%. If you were aware of substantial donations in the pipeline you should consider bringing them forward into the current tax year.

A number of organisations have been lobbying for a form of tax relief on sports subscriptions for children. As most rugby clubs have thriving junior sections generating significant subscriptions you should consider lobbying your MP to add weight to the campaign.

So, on these three areas alone there is a fair amount of change to consider. Good luck both on and off the field!

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