

The Corporation Tax Treatment of UK Universities Guidance Note

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Chapter 1 Introduction

1.1 Using these guidelines

1.1.1 The 2007 guidelines were jointly produced by HMRC and were based on UK tax law and practice as at June 2007. The guidelines were substantially updated in 2013/14, and agreed by HMRC in June 2014.

1.1.2 The guidelines apply to all universities which are charities – whether they are constituted under the 1992 Education Act or under Royal Charter or as a company limited by guarantee (see [1.2](#) below). Where an “alternative provider” operates a university, then they will only be able to rely on these guidelines where the university company has charitable status.

1.1.3 BUFDG and HMRC undertake regular reviews to incorporate changes in tax law or published guidance that may impact on the guidelines. This review process is coordinated by the BUFDG Tax Committee and comments from universities and other interested parties are welcomed. Any points raised with regard to the guidelines should be sent to the BUFDG, The FM Building, Loughborough LE11 3TU. Comments should be submitted using the online form on the BUFDG website www.bufdg.ac.uk.

1.1.4 These guidelines do not have force of law and do not override the application of tax legislation and case law. They provide a framework that sets out the tax principles to be followed by universities and which can be applied to the activities of most universities.

1.1.5 For the avoidance of doubt, HMRC have stated that they regard the use of subsidiary companies to carry out non-primary purpose trading activities as acceptable recommended practice and in the spirit of what Parliament intended. However, they would regard transactions or activities which are clearly designed to avoid or reduce the charge to tax as unacceptable to HMRC and this would be reflected in both their risk assessment procedures and consequently the enquiry process which may follow

1.1.6 Universities are not therefore bound by the guidelines and may wish to highlight variations from them arising from their particular circumstances when filing Corporation Tax Self-Assessment Returns. Each university must develop procedures to meet its corporation tax obligations and these will depend on the specific nature and complexity of its activities, internal processes and accounting system.

1.1.7 The authors of this guidance accept no responsibility for any losses arising as a direct or indirect consequence of following this guidance and universities are advised to seek further professional tax and/or legal advice if they feel these guidelines do not cover their circumstances.

1.2 Charitable status of universities

1.2.1 The tax position for universities as set out in these guidelines derives from the charitable status of universities in the UK.

1.2.2 A university's governing document, such as a Royal Charter of Establishment, for example, will set out the nature of the activities which a university is established to carry out within its charitable objects.

1.2.3 Most English Universities are "[Exempt Charities](#)¹". An exempt charity is one that is not regulated by, and cannot register with, the Charity Commission, but is established for charitable purposes and included in Schedule 3 to the Charities Act 2011 (formerly listed in Schedule 2 of the *Charities Act 1993*). Historically, Universities were exempted from direct regulation by the Charity Commission. The 2006 Charities Act aimed to address the lack of formal regulation by creating a new regulatory framework for exempt charities. Under this framework, either a 'principal regulator' was appointed (HEFCE in the case of English Universities) to regulate categories of exempt charities, or they were no longer exempt, and had to register with the Commission as regulator (this includes a number of colleges which provide HE).

1.2.4 HEIs in Wales, having no principal regulator, are no longer "Exempt charities" and are required to register with the [Charity Commission](#)².

1.2.5 Most Scottish Universities are registered charities and [The Scottish Charity Regulator \(OSCR\)](#)³ undertakes the role of principal regulator, under the Charities and Trustee Investment (Scotland) Act 2005. Similarly the [Charity Commission for Northern Ireland](#)⁴ undertakes this role in NI.

1.2.6 HMRC has confirmed that tax law for charities, just as for any other taxpayer will be applied uniformly across the UK. In particular, the new definition of a charity as set out in Sch 6 of FA 2010 will apply to all UK charity tax reliefs and exemptions administered by HMRC from April 2012.

1.2.7 *These guidelines are based on the assumption that charitable status continues to apply to all universities.* The application of the guidelines requires that a university understands fully the range of its charitable objects. Tax law applies in addition to the legal analysis. Readers should be aware that some of the activities a university may undertake may not be exempted from taxation, and in this case would be subject to corporation tax as if they were undertaken by a regular trading company.

¹ <http://www.charity-commission.gov.uk/publications/cc23.aspx>

² <http://www.charitycommission.gov.uk/>

³ <http://www.oscr.org.uk/>

⁴ http://www.charitycommissionni.org.uk/About_us/default.aspx

1.3 General tax exemptions available to charities

1.3.1 The main statutory exemptions from tax, on chargeable gains and income of a corporate charity, are contained in s256 TCGA 1992 and Part 11 of CTA 2010, ss478 et seq (formerly s505 ICTA 1988) respectively. Whereas in the old legislation all the exemptions were listed in just a few sections and one schedule, they are now spread over some 40 sections!

The key tax exemptions (listed in order of importance rather than as they appear in the legislation – which is found in CTA2010 unless otherwise stated) are:

- a) Exemption for **profits of charitable trades** ie primary purpose trading income [formerly known as Sch D Case I] - s478. This is the most familiar exemption and Chapter 2 of this guidance gives extensive advice on identifying this activity.
- b) Exemption for **property income** etc [rent and similar income formerly known as Sch A or Sch D Case I income arising from property] - s485. After the non-primary purpose trading exemption, this is one of the most useful exemptions available to Universities. It covers rents or other receipts from an estate, interest or right in or over land, where the estate, interest or right is vested in any person for charitable purposes. It is however worth noting the exception to the exemption for gains from transactions in land s818 CTA 2010 – this is sometimes known as “overage”, “slice of the action” or “development agreements” (see 1.3.5 below for more detail).
- c) Exemption for **investment income** and non-trading profits from loan relationships [formerly known as Sch D Case III] - s486. Again this is a key exemption for universities, many of which receive significant amounts of investment income. The exemption covers non-trading profits from loan relationships, ie interest and similar income, and certain distributions from unauthorised unit trusts.
- d) A number of significant changes were made to the rules for taxation of **dividend income** in FA 2009 with the replacement of the general exemption for dividends from UK companies, and the credit system for the taxation of foreign dividends, with a broad exemption applying to both UK and Foreign distributions received by companies (part 9 of CTA 2009). The provisions introduced in July 2009 have the effect of removing most dividend income, whether from a UK or overseas source, from the charge to corporation tax on income [for all companies, including charities].
- e) Exemption for **Chargeable gains** s256 TCGA 1992. This covers chargeable gains which arise on capital disposals, the most common of which will be land disposals (but see (b) above and 1.3.5 below).
- f) Exemption for **public revenue dividends** - s487. This covers income from Government bonds and similar instruments.
- g) Exemption for **profits of small-scale trades** - s480. This is sometimes a forgotten exemption – designed for small charities operating a small gift shop or other enterprise, it could be useful for those universities who only have a very small amount of non-primary purpose trading income. For entities whose gross income exceeds £200,000, up to £50,000 of income from small scale trades may be treated as exempt. If the income exceeds £50,000 none of it may be exempted under this provision.
- h) Exemption for **profits from fund-raising events** - s483. This is available for income raised at any event that is VAT-exempt in relation to the company and the funds are either applied to charitable purposes or transferred to a charity.

- i) Exemption for **profits from lotteries** - s484. This applies to exempt lotteries within the meaning of the Gambling Act 2005 by virtue of Part 1 or 4 of Schedule 11 to that Act.
- j) Exemption for certain miscellaneous income associated with non-trading **intangible fixed assets** - s488. This covers income and gains arising from Intellectual property and other such assets including and royalties.

1.3.2 For each tax exemption to apply there is a further condition that the receipts, income or gains arising are applied for charitable purposes only.

1.3.3. So in summary, a large part of a university's income will be exempt from tax. However in many cases, there will be some income which does not attract tax exemption, and so the university must undertake an annual corporation tax calculation, and submit a return to HMRC where any tax is due or where HMRC have issued a notice to deliver a return.

1.3.4 The major item to consider is any non-primary purpose trading activity – this is covered in detail in [Chapter 2](#). Another less common but potentially significant example would be income arising in the university which is taxable as “miscellaneous income” (formerly known as Sch D Case VI).

1.3.5 Universities sometimes receive income from **transactions in land** where the consideration received is linked to the proceeds of development – known as an “overage” payment. This type of income is chargeable under s818 CTA 2010 (see HMRC Manuals [BIM60300](#)⁵), and is not covered by the charitable exemptions listed above so will be subject to tax if it arises in the university itself. In cases where a university is entering into any significant land transactions, specific professional advice should be taken at the earliest possible date and ideally before entering into the transaction.

1.3.6 Universities may also receive income from **renewable energy schemes** including (but not limited to) [Feed in Tariffs](#)⁶ or sale of Carbon Credits on the open market. At the date of publication of the guide, the correct treatment of this type of income was still under consideration by HMRC. Once there is clarity on the treatment, HMRC and BUFDG will issue appropriate supplementary guidance. Given the complexity of this area, as at 1.3.5 above, if the university is entering into any such schemes, they should seek professional advice at the earliest possible date.

1.4 Non-charitable expenditure

1.4.1 The final area to consider is non-charitable expenditure see [Annex II](#)⁷ of HMRC's guides for charities. As noted above, the charitable tax exemptions are only available where the income or gains arising are “applied to the purposes of the charitable company only”. Where they are not, or are deemed to be non-charitable expenditure in accordance with s496 CTA2010, then this will give rise to a tax charge. There are four areas where this arises.

1.4.2 The first type of non-charitable expenditure is where a charity realises a tax loss on its non-charitable or non-primary purpose trading activities – it is assumed that this loss is funded from charitable income which has not therefore been applied to a charitable purpose so is treated as non-charitable expenditure – see [2.9](#) for a more detailed explanation of how this is shown and dealt with in the tax return.

⁵ <http://www.hmrc.gov.uk/manuals/bimmanual/bim60300.htm>

⁶ <http://www.energysavingtrust.org.uk/Generating-energy/Getting-money-back/Feed-In-Tariffs-scheme-FITs>

⁷ http://www.hmrc.gov.uk/charities/guidance-notes/annex2/annex_ii.htm

1.4.3 The second type of non-charitable expenditure is investments which are not approved charitable investments or loans as set out in s511 and s514 CTA2010 (formerly Sch20 of ICTA1988). [This is discussed in more detail at [4.3](#)].

1.4.4 A third type of non-charitable expenditure could have arisen through the “Substantial Donor” rules, but these have now been repealed for transactions taking place after 1 April 2013. New legislation, known as the [Tainted Charitable Donations \(TCD\) rules](#)⁸ came into effect from this date. Unlike the Substantial Donor rules, where these new provisions take effect, HMRC would seek to impose an income tax liability on the donor. However it should be noted that where a charity is considered to be “complicit” in the offending arrangements, the charity will be jointly liable to pay the income tax charge arising.

1.4.5 A fourth type of non-charitable expenditure is set out in s500 of CTA 2010. Where a payment is made, or to be made, to a body situated outside the United Kingdom, this can be non-charitable expenditure even if it is incurred for charitable purposes only. This will apply where the charity has not taken such steps as the Commissioners for HMRC consider are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

⁸ http://www.hmrc.gov.uk/charities/guidance-notes/annex8/annex_viii.htm

Chapter 2 Tax treatment of university trading

2.1 The statutory reliefs for trading income

2.1.1 The relief in s478 CTA 2010 (formerly s505 (1) (e) ICTA 1988) provides exemption from corporation tax as follows:

The profits of a charitable trade carried on by a charitable company, are not taken into account when calculating the total profits of the company providing they are applied to the purposes of the charitable company only.

s478 then goes on to define charitable trade as: a trade which is exercised in the course of carrying out a primary purpose of the charitable company, (a "primary purpose trade"), or the work in connection with the trade is mainly carried out by beneficiaries of the charitable company. [HMRC guidance at Annex IV para 7](#)⁹ goes on to extend the exemption to activities which are "ancillary to the primary purpose trade".

2.1.2 As we will explore later in this chapter, universities are regarded as having a single trade of "being a university". This could cause difficulties because it is almost certain that a university's trade will be "tainted" being partly charitable and partly non-charitable. To assist with this, s478 gives clarification that "where a trade is exercised partly in the course of carrying out a primary purpose of the charitable company and partly otherwise, each part is to be treated as a separate trade." In this instance, different parts of a trade are treated as separate trades rather than a single "tainted trade".

2.1.3 Therefore the single trade of a university must be split into two parts or "pots" to avoid tainting:

- The "primary purpose trade" pot; and
- The "non-primary purpose" pot.

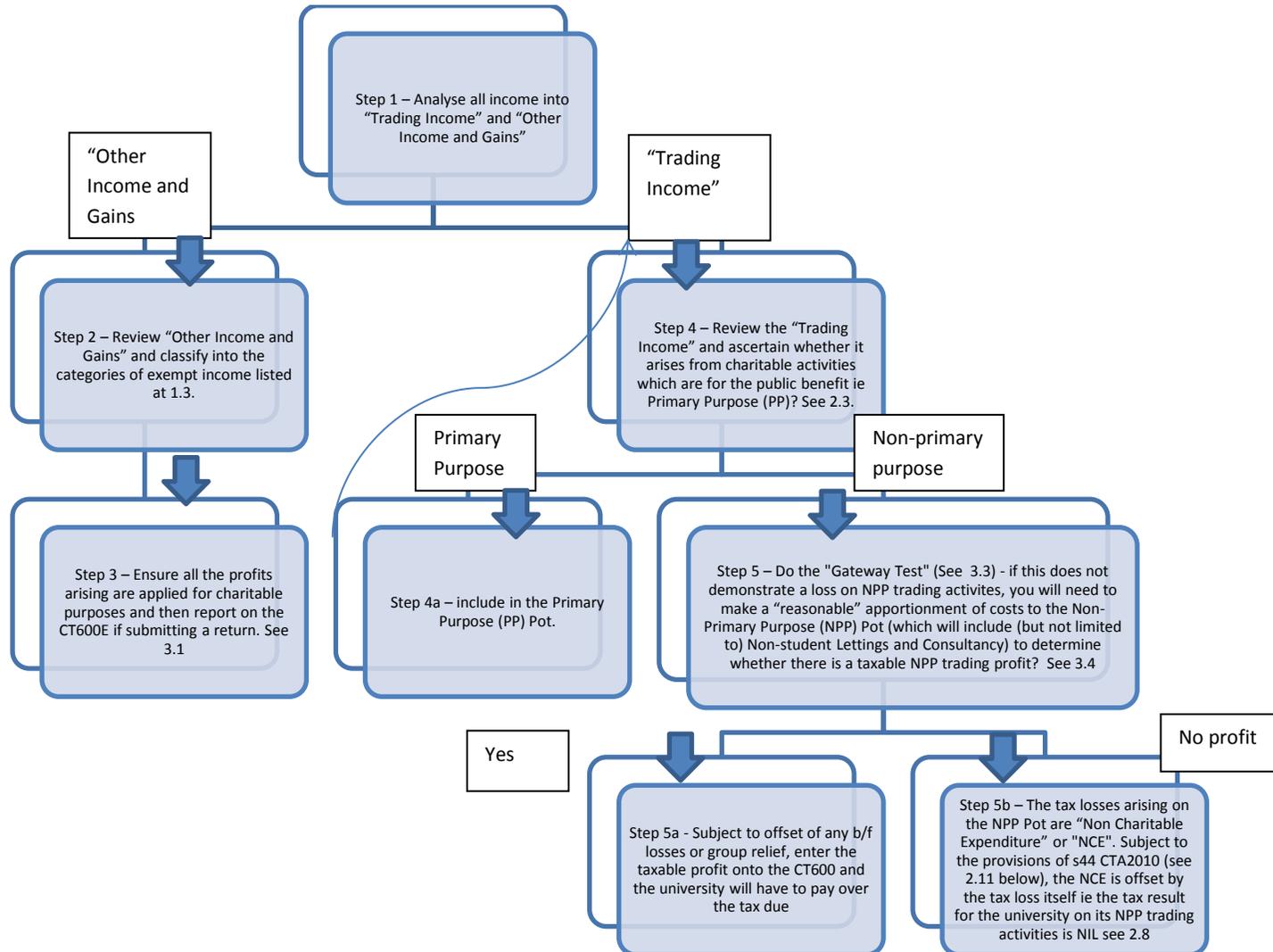
2.1.4. When preparing its tax calculations, a university must analyse the income and receipts and expenses arising from its different trading activities. And then re-aggregate the result to calculate the taxable profit or loss for the non-primary purpose pot.

2.1.5 As noted above, there is an exemption for profits of small-scale trades – in s480. This is sometimes a forgotten exemption – designed for small charities operating a small gift shop or other enterprise, it could be useful for those universities who only have a very small amount of non-primary purpose trading income.

2.1.6 Detailed guidance on the steps to identify a university's primary-purpose trade and hence the non-primary-purpose trades and the tax principles to be applied to the results of this analysis is set out in the subsequent sections of the guidelines. To assist you with this process, the flowchart below illustrates the steps taken when preparing a university's corporation tax computation.

⁹ <http://www.hmrc.gov.uk/charities/guidance-notes/annex4/sectionb.htm>

2.2 Flowchart to illustrate the tax computation process



2.3 What is primary purpose trading?

2.3.1. In many cases the distinction between primary and non-primary purpose trade activities will be obvious. In other situations, however, the primary purpose of an activity may not be clear and the burden of proof then lies with the university to demonstrate as clearly as possible, within existing tax law and the context of these guidelines, that the activity in question is primary purpose in nature to support the treatment of the activity as part of the primary purpose trade pot and hence exempt from corporation tax. It is essential that universities understand and document what they consider to be primary purpose trading activities to support the treatment of activities as primary or non-primary purpose trading.

2.3.2. Primary purpose is not defined in either charity or tax legislation. [The Charity Commission](#)¹⁰ has confirmed that it considers charitable purpose as primary purpose for tax purposes and this principle is adopted in these guidelines. Charitable purpose is defined by [Charities Act 2011](#)¹¹, and then interpreted by case law.

2.3.3. A primary purpose trading activity is therefore one that:

- i. is indicated by the governing documents of a university as falling within its charitable objects;
- ii. has “charitable purpose” as defined by [Charities Act 2011](#); and
- iii. is supported as such by existing case law principles. These activities will be exempt from taxation.

2.4. What is “ancillary” trading?

2.4.1. HMRC guidance ([para 7 of Annex IV](#)¹²) confirms that activities which would be incidental or ancillary to a primary purpose trade are included in the primary purpose pot and exempted as part of that deemed trade. An ancillary activity is one that, though it would not constitute primary purpose trading if considered in isolation, only exists because of a primary purpose trading activity and is ancillary to that activity.

2.4.2 Examples of activities which HMRC have agreed may be regarded as ancillary or incidental to the main university primary purposes include (but are not limited to):

- Conferences by visiting academics on educational topics.
- Income generated by the university as commission from service providers in delivering services to students e.g. use of cash/vending machines.
- Publishing or printing activity where output is substantially educational or academic publications of material to disseminate knowledge to the public arising out of core primary purpose activities.
- Fees from private patients in university teaching hospitals and medical schools.
- Fees from veterinary schools where the public can take animals for treatment in return for fees and such treatment is available to be used in teaching experiences.

¹⁰ <http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/guidance-on-charitable-purposes/>

¹¹ <http://www.legislation.gov.uk/ukpga/2011/25/contents/enacted>

¹² <http://www.hmrc.gov.uk/charities/guidance-notes/annex4/sectionb.htm#6>

- Provision of facilities to third party education providers e.g. The Open University or other charitable purpose organisations.
- Provision of services to students and staff on campus, such as catering, accommodation, vending machines, car parking in support of education activities, photocopying and internet facilities.
- Note that Car parking income from an un-managed car park can be treated as property income (formerly Schedule A) and so necessarily exempt from tax. If the car park is managed, the income is trading income, which will often be ancillary to the main university primary purpose. However it will be non-primary purpose trading income and so subject to taxation where the car parking is made available to the general public, non-students, and non-university staff and where there is no primary purpose reason for the charges made, other than generating additional income for the university.

2.5 What is meant by a charitable purpose?

2.5.1 When analysing its trading activities for tax purposes a UK university should therefore apply the test of charitable purpose, (as defined under [Part I section 2 of the Charities Act 2011](#)¹³, AND the public benefit test (see [2.6](#) below) to each trading activity to determine if it is for a primary purpose. For the avoidance of doubt, this includes Scottish, Welsh and NI universities even though they are regulated separately, except in matters of tax. Further guidance on charitable purpose can be found on the [Charity Commission Website](#)¹⁴.

2.5.2 The full list of [13] charitable purposes can be found in the Charities Act 2011 - the seven most relevant are listed below:

- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of environmental protection or improvement;
- the advancement of animal welfare;

2.5.3 Readers should note that even where activities are within the university's objects, and fall under one of the thirteen headings of charitable purpose but cannot be said to be for the public benefit, they are not charitable. In this case the activities will be allocated to the deemed non-primary purpose trade which is subject to tax.

¹³ http://www.legislation.gov.uk/ukpga/2011/25/pdfs/ukpga_20110025_en.pdf

¹⁴

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/charitable_purposes.aspx

2.6 What does “for the public benefit” mean?

2.6.1. The Charity Commission has set out in its [guidance document](#)¹⁵ PB1 the two principles of public benefit which must be considered by all charities:

- Principle 1 There must be an identifiable benefit or benefits;
- Principle 2 Benefit must be to the public, or a section of the public.

2.6.2 The guidance goes on to say:

“Each of a charity's purposes must be for the public benefit. Many charities have more than one purpose. Where that is the case, we [The Charity Commission] will look at each purpose on its own to decide if it is for the public benefit. The public benefit of one purpose cannot be used to offset any lack of public benefit in another. As the courts would, we will weigh up all the relevant factors and evidence to decide whether each purpose on its own:

- *is beneficial*
- *benefits the public in general, or a sufficient section of it*

In most cases this is likely to be clear. The two aspects of public benefit can overlap. A factor can frequently be regarded as having an impact on both aspects. Sometimes we might need to consider the relationship between what is beneficial and what is harmful, and public and personal benefit. Some cases require fine judgment to consider whether all the factors, taken together, result in a purpose that is for the public benefit. We consider all cases in their own context. In the majority of cases, it will be clear that an organisation's purpose is for the public benefit.”

2.7 Non-primary purpose trading

2.7.1 It is accepted that a substantial majority of universities’ trading activities will fall within the primary purpose trade but care must be taken to identify and include all non-primary purpose activities in the non-primary purpose pot for tax purposes and to document the decision process in arriving at the two parts of a university’s single trade. [Chapter 3](#) sets out in more detail the process of putting together the corporation tax calculations and returns. Obvious examples of a primary purpose trading activity which would be exempt from taxation would include publicly funded research and the charging of fees to students (including charges to overseas students for courses carried out on both UK and overseas campuses).

2.7.2 A non-primary purpose trading activity that would be potentially chargeable to tax could include for example the provision of catering services to the general public or the provision of hotel type accommodation as a source of additional income for the university.

2.7.3. Charity law may permit trading by a university where the activity falls within its charitable objects and it has followed The Charity Commission guidance on risk assessment. This is included in their publication [CC35](#) and this is discussed further in [Chapter 4](#).

¹⁵ <http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/public-benefit-the-public-benefit-requirement-pb1/part-2-what-for-the-public-benefit-means/>

2.7.4 However the fact that activities are permitted under charity law does not mean they are automatically treated as primary purpose activities under tax law such that they would be exempt from taxation. Such activities may still be subject to tax as non-primary purpose trading and so should be included in the non-primary purpose trade and subject to the taxation principles outlined below. It is vital that universities document and retain evidence of decisions made.

2.8. The tax result of the non-primary purpose pot

2.8.1 As noted above tax legislation and case law means that universities must treat their various non-primary purpose trading activities as a single “mixed” trade or “pot”.

2.8.2 Calculating the tax result of this single deemed non-primary purpose trade, ie the accounting profit or loss with adjustments made for costs that may be disallowable for tax purposes such as entertaining or capital items, is the first step, to determine the taxation liability of the university on its trading activities.

2.8.3. To calculate the tax result of the non-primary purpose trade:

- Identify and amalgamate the income arising from all non-primary purpose activities; and
- Allocate against that income, as a requirement under the tax legislation, a “reasonable apportionment” of costs.

2.8.4. [Chapter 3](#) deals in detail with cost allocation and considers the meaning of “reasonable apportionment” of costs. There is no definition of “reasonable apportionment” under tax law but this should be taken to be those costs, direct and indirect, that have been utilised in generating the income arising from the non-primary purpose activities.

2.8.5 Illustrative calculation of non-primary purpose profit or loss

	Consultancy	Non Student Letting	Total
Income generated	200,000	2,000,000	2,200,000
Apportionment of directly attributable costs	(150,000)	(1,750,000)	(1,900,000)
Result after direct costs	50,000	250,000	300,000
Attributable indirect costs and overheads	(35,000)	(500,000)	(535,000)
Net profit or (loss)	15,000	(250,000)	(235,000)

2.8.6 The tax result of the non-primary purpose pot is a loss of £235,000 in the example above. In practice, this loss should be adjusted for costs that are disallowable for tax purposes and this is the result to which the tax principles set out below are applied.

2.9 The total profit for corporation tax purposes

2.9.1 So what is next? If the tax result of the deemed non-primary purpose trade or “pot” were a profit, a corporation tax liability arises in the university subject to any available group relief or loss relief (this could be group relief from a group company or losses carried forward from periods prior to 2006.).

2.9.2 If the tax result of the non-primary purpose trade is a loss, this loss is treated as Non-charitable Expenditure (NCE). As noted at [1.4](#) where a university incurs NCE, this has the following implications:

- 1 Charitable tax exemptions otherwise available against the university's primary purpose profit and other income and gains are restricted;
- 2 The restriction is applied such that for every pound of NCE, one pound of tax exempted income and gains is excluded from tax exemption;

2.9.3 HMRC has confirmed that the tax adjusted loss arising on the non-primary purpose pot will be the university's NCE – which could give rise to a taxable profit.

2.9.4 However, the trading loss on non-primary purpose trading, will usually be available to offset against the taxable profit arising from the NCE. This should reduce the total profits and taxation liability thereon to nil.

2.10 Illustrative calculation of the total profit

	Consultancy	Non Student Letting	Total profit or loss from the single trade
Net profit or (loss) (as above)	15,000	(250,000)	(235,000)
Deemed Non-Charitable Expenditure – NCE (i)			235,000
S37 current year loss offset subject to s44 (ii) (See below for more detail on this)			(235,000)
Total Profit (i) + (ii)			NIL
Loss available to carry forward			NIL

2.11 Potential restriction on availability of trading losses

2.11.1 Tax legislation gives relief for losses arising on trading activities under the provisions of part 4 of CTA2010. Under s37 the university can deduct trading losses from total profits (including the taxable profit arising from the NCE) arising in the same accounting period. However s44 requires that in order for a loss to be available, the trade which gives rise to the loss must be carried-on on a commercial basis, **and** with a view to the making of a profit in the trade or so as to afford a reasonable expectation of making such a profit. This can be either as a standalone activity or as part of a *larger-undertaking* of which the trade forms part.

2.11.2 HMRC's manuals explain that taxpayers must apply this two part test to evaluate whether a loss is restricted under s44 – and guidance can be found on how to do this at [CTM 04600](#)¹⁶ and [CTM04620](#). It is expected that most universities should be able to satisfy the requirements, and there should be no restriction under s44.

2.11.3 s37 CTA2010 requires the taxpayer to make a claim to offset trading losses against other profits arising (NCE in this case). The claim would normally (but not necessarily) be made in the corporation tax return, and the time limit for making the claim is within the period of two years after

¹⁶ <http://www.hmrc.gov.uk/manuals/ctmanual/CTM04600.htm>

the end of the loss-making period, or within such further period *as an officer of Revenue and Customs may allow*.

2.11.4 As noted at 3.1.1 Universities are not required to file a corporation tax return unless they receive a notice to deliver a return, or if they have a liability to tax. HMRC have confirmed that, in the event that they were to request that a university submit a corporation tax return for a prior period, and so the date of submission is more than two years after the end of the accounting period, they would not unreasonably restrict a university's ability to make a claim under s37 as part of the return.

Chapter 3 Preparing and filing the tax computation and return

3.1 Requirement to file a tax return and iXBRL requirements

3.1.1 Universities are required to file annual corporation tax returns under the Corporation Tax Self-Assessment regulations (“CTSA”) if they receive a notice to deliver a return, or if they have a liability to tax. If they do not receive a notice to deliver a return and have prepared calculations to demonstrate that there is no liability to tax, then they are not required to file a return.

3.1.2 A university’s completed return form - CT600 - and relevant supplementary pages [CT600E] must be accompanied by:

- A copy of the accounts of the company for the period covered by the return.
- Computations showing how entries on the return have been calculated from the relevant figures in the accounts.

The accounts and computations form an integral part of the Tax Return

3.1.3 Since 1 April 2011 all companies and organisations liable to Corporation Tax are required to file their Company Tax Return and accounts and computations online for any accounting period ending after 31 March 2010. This includes any charities required to file a Company Tax Return. Most company accounts and all computations must be filed in a set format: Inline eXtensible Business Reporting Language (iXBRL).

3.1.4 If your university has to prepare accounts under the Companies Act the rules require you to file your accounts and computations in iXBRL format.

3.1.5 However unincorporated associations and unincorporated charities are not required to prepare accounts under the Companies Act or Friendly and Industrial and Provident Societies Act 1968. So charities incorporated under the Charities Act and charities established under Royal Charter or by Act of Parliament must submit computations in iXBRL format, but can continue to submit accounts as a PDF or iXBRL file. See [HMRC’s website](#)¹⁷ for more details.

3.1.6 Subsidiary companies of charities are required to submit returns online with accounts and computations in iXBRL format.

3.1.7 A university or agent must register with CT Online Services before they can file a return electronically. Universities will generally use either specialist corporation tax software to prepare the return, or outsource the “tagging” of the computations, and where appropriate the accounts, and submit using HMRC’s Corporation Tax online filing software.

3.2 Analysis of Income

3.2.1 The first step of the calculation is to identify whether each income source is trading income, or whether it falls into “other income and gains”.

¹⁷ <http://www.hmrc.gov.uk/charities/guidance-notes/chapter6/partb.htm#69>

3.2.2 The second step is to analyse the “other income and gains” and consider whether it falls into any of the exempt income categories set out in at 1.3 (b)-(j), not forgetting that the income or gains must also be applied for charitable purposes. For completeness these categories are:

- Property income ie rent and similar income formerly known as Sch A
- Investment income and non-trading profits from loan relationships (interest) formerly known as Sch D Case III
- Dividend income, whether from a UK or overseas source which falls to be exempt (see 5.3)
- Chargeable gains
- Public revenue dividends
- Profits of small-scale trades
- Profits from fund-raising events
- Profits from lotteries
- Income associated with non-trading intangible fixed assets- income and gains arising from Intellectual property and other such assets including and royalties.

3.2.3 The third step is to review the “Trading Income” by source and ascertain whether it arises from charitable activities which are for the public benefit ie Primary Purpose (PP) or whether it is non-charitable or Non Primary Purpose (NPP).

3.2.4 Once you have identified the Non Primary Purpose Income sources, it is necessary to determine the profit or loss associated with this income stream. In order to simplify the process for some universities, HMRC have agreed that universities can use a [Gateway Test](#) (as described at 3.3 below), which can be a quicker way to demonstrate whether the aggregate NPP activities are carried out at a loss.

3.2.5 If the Gateway Test fails to demonstrate that the NPP activities are carried out at a loss, it is necessary to undertake the detailed calculations set out at 3.4 et seq.

3.3 The Gateway Test for NPP Trading Income

3.3.1 This test will be particularly helpful where for example an institution has large amounts of income, such as unfettered donations or investment income, which are used to subsidise other activities.

3.3.2 The Eight Steps of the Test:

- a) Identify any sources of income which are produced with no material cost and deduct from the total income [including but not limited to unfettered donations and investment income]
- b) Deduct this income identified at (a) from the total income
- c) Deduct depreciation from the expenditure

If after this, the net result of the adjusted income less adjusted expenditure is a loss then:

- d) Calculate the relative proportions of income for each source
- e) Review the adjusted income from Step 1, and identify any sources of income identified in the accounts which are wholly PP or wholly NPP
- f) Attribute any sources of income which are mixed to NPP.
- g) Allocate the expenditure/loss at Step 2 proportionately to PP and NPP sources.
- h) Calculate the difference between attributed income and allocated expenditure for PP and NPP Income sources.

The loss allocated to NPP is the amount recorded as a loss on the CT return.

Two examples of this calculation are shown in the Appendix

3.4. Detailed calculations of the taxable profit or loss on NPP trading activities

3.4.1 Where the [Gateway Test](#) fails to demonstrate that the NPP activities are carried out at a loss, it is necessary to undertake a more detailed calculation to quantify the taxable profit or loss on the non-primary purpose pot, not only to fulfil their reporting obligations but also to plan the structure of their activities.

3.4.2. In order to calculate taxable profits or losses of non-primary purpose activities universities need a method for identifying non-primary purpose income and attributing costs, including apportionment of indirect costs. The law requires that this is done on a **reasonable basis**. In most cases, the university will need to allocate costs on an activity by activity basis depending on the income streams included in the non-primary purpose pot. Having reasonably apportioned costs to each income stream and adjusted for tax purposes, the results of each can be totalled to arrive at the result for the non-primary purpose pot.

3.4.3 Whilst there is no prescribed or fixed route for apportioning costs on a reasonable basis, the chosen method must depend on circumstances. Examples may include square footage of premises occupied, relative proportion of income of that part of the activity, or a time basis along the lines of the cost allocation methods suggested for research and non-student lettings described below.

3.4.4 Universities' activities and accounting systems are very diverse. As such it is difficult to prescribe a single universal method.

3.4.5 Most universities are required to produce and report TRAC calculations. TRAC (Transparent Approach to Costing) is the standard method used to answer the all-important question of 'how much does it cost?' for UK universities. It is a way of allocating total costs to a university's specific income-generating activities, so that an institution can determine the full cost of each of these activities. There is an excellent overview guide available on the [BUFDG website](#)¹⁸, or you can visit the [HEFCE website](#)¹⁹ for more detailed guidance. Those with better evolved TRAC methodology should be able to utilise the outputs from the TRAC calculations to assist with their apportionment of costs, especially overheads, for the purpose of their corporation tax calculations.

3.4.6 If adopting a Full Economic Costing (fEC) or TRAC based approach, tax adjustments will be required to exclude any capital expenditure items or other non-deductible expenditure as follows:

- Costs expended in the activity can be deducted [provided these costs are calculated on a reasonable accounting basis in the audited accounts].
- Depreciation should be excluded.
- Capital allowances may be computed where qualifying items can be identified. Where qualifying assets are used for primary purpose and non-primary purpose trading, the claim for capital allowances claim is apportioned on a just and reasonable basis between the activities. [Note HMRC manuals [CA23060](#)²⁰ for revised interpretation on halls of residences as dwelling houses. Contrary to previous practice, HMRC consider that only communal areas

¹⁸ <http://www.bufdg.ac.uk/Resources/Document?g=11cf2bc6-f1a4-41b4-a989-7cae72d885ea>

¹⁹ <http://www.hefce.ac.uk/whatwedo/lgm/trac/>

²⁰ <http://www.hmrc.gov.uk/manuals/camannual/ca23060.htm>

and parts to which tenants do not have access are not dwelling-houses, and so are not excluded by s35 CAA2001].

3.5 Common areas of specific interest or difficulty for universities

This section considers some areas which are of specific interest or difficulty in determining in which of the deemed trading pots, primary or non-primary purpose, the activity should be included and how best to calculate the trading result for the non-primary purpose pot. The areas covered are:

- [Research](#)
- [Consultancy](#)
- [Non-student lettings and use of other premises and facilities](#)
- [Closed courses](#)
- [Knowledge Transfer Partnerships \(KTPs\)](#)
- [Knowledge Transfer – Spin out companies and Transfer of IPR](#)
- [Employer Engagement](#)

3.6 Research

3.6.1 At the time of the first edition of these guidelines, the charity commission had not yet published their June 2009 guidance “[Research by Higher Education Institutions](#)²¹”. This publication renders much of the content of the original guidance on Research obsolete and so readers should consult this publication in the first instance. For completeness, the following extract, which confirms that there is a rebuttable presumption that research will be primary purpose, was taken from the summary section of the publication:

HEIs must only carry out activities that are in furtherance of the charitable objects indicated in their governing documents and consistent with their constitutional and legal powers. Such activities, as noted above, include research. In this connection, HEI research can be something which advances education, or which advances knowledge across a range of academic subjects.

The leading court decisions on charitable research [Re Hopkins’ Will Trusts [1965] Ch 669 and Re Besterman’s Will Trusts (see [1982] Ch 327, 352-3)] establish that research will normally qualify as charitable only if:

- *the subject matter of the proposed research is a useful subject of study;*
- *it is intended that knowledge acquired as a result will be disseminated to others; and*
- *the research is conducted for the benefit of the public or a section of the public (as explained in [Charities and Public Benefit](#)).*

Any private (non-charitable) benefit must be legitimately incidental to the achievement of a HEI’s charitable aims for the public benefit. (This is explained in section D of this guidance.)

²¹ http://www.charity-commission.gov.uk/Charity_requirements_guidance/Specialist_guidance/Education/higherres.aspx

²² <http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/public-benefit-the-public-benefit-requirement-pb1/part-2-what-for-the-public-benefit-means/>

There cannot be an automatic presumption either of public benefit or that private benefit is incidental.

Any non-charitable research (or non-charitable exploitation of research, for example spin-outs) must be carried out in accordance with the rules and guidelines on non-charitable trading (as explained in sections C6 and E of this guidance). Whether research carried out by arrangement with a commercial partner is charitable will depend on the particular arrangements in place (as explained in section C.)

3.6.2 In the unlikely event that research activity is deemed to be non-primary purpose, the allowable expenditure will include Direct Costs, Indirect Costs, and allowable Overheads.

3.6.3 Direct costs incurred in connection with any non-primary purpose trading activity should include,

- the cost of research staff
- consumables and materials
- travel and subsistence
- equipment and use of buildings (see below)

3.6.4. Items of capital equipment will often be purchased for use in a particular project. Such expenditure will normally qualify for capital allowances on the cost incurred by the university acquiring the equipment. If assets are used for more than one project at a time, or partly for primary purpose and partly non-primary purpose trading, it will be necessary to apportion the allowances available on a just and reasonable basis. The Finance Act 2008 contains substantial changes relating to capital allowances, in particular a reduction in the rates for capital allowances on plant and machinery, and the phasing out of industrial buildings allowances. If a university is considering claiming capital allowances, specific reference should be made to this new legislation or specific professional advice sought.

3.6.5. The full cost of a non-primary purpose trading activity will also need to include any indirect staff costs and overheads incurred. For the purpose of this guidance note that indirect staff costs would include time on supervision of research by academic staff and use of secretarial and other support staff.

3.6.6 The term “overheads” has a wide meaning and for the purpose of the guidance it will include central and departmental costs that underpin the research activities but which cannot readily be uniquely assigned to particular research projects. These include:

- financial services (finance, accountancy, procurement and marketing)
- personnel services
- recruitment costs
- staff facilities and staff development costs (including training)
- public relations
- central institutional libraries
- central computing services
- other departmental services not included above
- general premises costs

3.6.7 Most HEIs will calculate general overhead rates as part of their TRAC calculations or for other management reporting purposes. In most cases these rates can be applied, based on FTE or some other apportionment.

3.7 Consultancy

3.7.1 For the purposes of these guidelines “consultancy” includes the provision of advisory services by students, researchers, administration or academic staff; technical analysis; sample testing; data processing services; and general “services rendered” agreements provided by a university and not work carried out in the name of individual academics as private consultants. Consultancy and Services Rendered activities will have some of the following features:

- The application of existing knowledge rather than the creation of new knowledge.
- Focus on the customer’s specific business or products.
- Similar services provided by the private sector.
- Financial structure that recovers in excess of the salary and direct costs and a reasonable proportion of overheads.
- Client confidentiality is a key factor.

3.7.2 Consultancy and the provision of similar services for consideration are more likely to be a non-primary purpose trade activity than a primary purpose activity by the nature of the contracts entered into and the common features noted above. Consultancy contracts that are treated as non-primary purpose under the principles set out in earlier sections must be included in the non-primary purpose pot and a reasonable apportionment of costs and overheads made against the income generated.

3.7.3 In some limited circumstances it may be possible to demonstrate that the main purpose of the university in carrying out the consultancy is to obtain access to results for academic research or teaching purposes. In this situation it may be possible to treat the activity as a primary purpose. One such example is described below:

3.7.4 Example of research as consultancy

- University archaeology departments undertake contracts with property developers to meet the legal requirement for archaeological surveys on construction sites. This would appear to be a commercial arrangement with a commercial entity. However, where the university enters into the arrangements to carry out research on artefacts and collect data to which it would not otherwise have access, its purpose in entering into the consultancy contract may be to carry out research.
- Where the results of the research would be published within a reasonable time frame the test in the Besterman’s case is met by providing public benefit by dissemination of knowledge into the public domain.
- The analysis may be helped because in the case of archaeological surveys of construction sites the developer is not a customer in the conventional sense. The research may not be of significance to him, rather the survey is a nuisance and legal obligation to be met so the development can progress.
- In these atypical circumstances, the consulting contract may be treated as part of the deemed primary purpose trade, with the commercial purpose merely incidental to the

research purpose. However, it should be noted that each case depends on its own facts and if there is a commercial purpose alongside the research purpose which is not “legitimately incidental” (see above at 4.3.7) then the activity should be included in the non-primary purpose trade.

3.7.5 This particular example is not a typical consultancy relationship between a commercial company and a university where a service is provided by the university for the private benefit of its customer. It is anticipated that the majority of consultancy contracts will be straight forward provision of services and be included in the non-primary purpose trade.

3.7.6 The allowable expenditure for consultancy income will include Direct Costs, Indirect Costs, and allowable Overheads as set out for research activities at 3.4.2-3.4.7 above.

3.8 Non-student lettings and use of other premises and facilities

3.8.1 The use of student residential accommodation and other university owned premises to third parties as a means of generating additional income for the university (eg by maximising the use of its facilities such as the provision of bars, external catering, and conferences), will usually be non-primary purpose trading activity. This activity should be included in the non-primary purpose pot and a reasonable apportionment of costs made against the income.

3.8.2 However, providing accommodation, catering, and other facilities to conferences run by the university where the focus is on education and research topics and the sharing of knowledge or best practice in teaching or research, should be accepted as having a charitable purpose, the advancement of education and research, and providing an obvious public benefit. These activities should therefore be included in the primary purpose trade of the university and be exempt from tax.

3.8.3 The letting of sports facilities to third parties as a means of generating additional income for the university could be considered to be non-primary purpose trading activity. However, “the advancement of amateur sport” is one of the charitable purposes set out in the Charities Act 2011, and as such some university lettings may be treated as charitable activity and so included in the primary purpose trade.

3.8.4 Most universities have procedures for identifying the income generated from non-student lettings, conferences, external catering, and room hire and have historically used a set of principles which were originally agreed by the Committee of Vice Chancellors and Principals (CVCP) – which is now known as [Universities UK](http://www.universitiesuk.ac.uk/)²³ These principles set out how a university could make a reasonable apportionment of costs against its income for disclosure of profits or losses on its activities. The principles of cost apportionment set out in the “CVCP Guidelines” continue to be applicable to the calculation of profits or losses arising from non-student lettings and associated trading activities. The methodology is set out at 3.8.5 et seq below, and the calculation is further demonstrated in the template computation which is set out at Appendix A.

3.8.5 The first step in calculating taxable profits or losses is to identify when, during an accounting period, the non-primary purpose activity is being carried on. HMRC will insist that the time the activity is being carried on is clearly identified, ordinarily on a building by building basis, although

²³ <http://www.universitiesuk.ac.uk/>

this will depend on the accounting systems. Income and expenditure must then be attributed to the non-primary purpose periods, to non-student occupation.

3.8.6 A TRAC based approach could be used as the basis for this calculation provided the result is reasonable. Whether TRAC is appropriate as a basis will depend on circumstances, as universities have adopted TRAC to varying levels and degrees.

3.8.7 In considering a time apportionment there may well be some part of an accounting period during which no primary or non-primary purpose trading activity is undertaken. However it is accepted that any expenses occurring in such a period must be allocated to primary or non-primary purpose trading activities proportionately. In order to do this:

- The denominator of the fraction should include the total time over which the primary or non-primary purpose trading is carried out in an accounting period which in some cases, will be less than 52 weeks a year.
- Any periods where accommodation is not available for letting or a period of preparing accommodation for lettings (such as for instance the first week of a vacation) should not be included in the denominator.
- The numerator of the fraction should include only that period for which the accommodation is available for non-primary purpose trading activities, even if it is not so occupied. In summary, most items of expenditure which cannot be allocated to non-primary purpose trading activities on an actual basis will be apportioned using the formula:
- $\text{Cost} \times A/B$
- Where A is the part of the accounting period accommodation is available for non-primary purpose trading activities
- Where B is the part of the accounting period accommodation is occupied or available to be occupied for primary and non-primary purpose trading activities
- It may be appropriate to calculate costs attributable to non-primary purpose trading activities on a building by building basis. However, where buildings are available for external lettings on a similar basis these may be grouped together.

3.8.8 Calculation of allowable expenditure in detail - The main cost headings relate to:

- Staff
- Premises
- Repairs and maintenance
- Catering
- Central overheads
- Advertising and conference office
- Consumables
- Interest and rent charges
- Capital expenditure

3.8.9 Staff Costs

Typically, letting activity will involve a number of university staff, at the halls of residence and other accommodation available for letting, including administration, catering, cleaning and caretaking

staff. Additional staff will sometimes be employed to deal solely with non-primary purpose trading activities, and the full cost should be attributed to the non-student lettings accordingly. Similarly overtime may well be worked solely in connection with non-primary purpose trading activities which again should be attributed to the non-primary purpose pot. Often it may be possible to ascertain actual staff costs on a monthly basis in which case these figures should be apportioned according to the relative proportion of primary and non-primary purpose trading activity. Where this is not possible staff costs will normally need to be time apportioned and the A/B formula will usually be the most appropriate way of doing this. The same principles will apply if these services are contracted out to a third party.

3.8.10 Premises Costs

Premises costs will include heat and light, insurance, water charges, telephone and business rates. Some of these costs may be attributable to non-primary purpose trading activities on an actual basis. Where this is not possible an apportionment should again be used. Costs relating to individual buildings like insurance, unmetered water charges and telephone charges which tend to accrue evenly over time can normally be apportioned using the A/B formula. Heat and light costs tend to be higher during the winter months when accommodation is not often available for non-primary purpose trading activities. Consequently apportionment of these costs using the A/B formula will be an inaccurate measure. Each university should therefore consider some other basis of apportioning these accounts. Some universities may be able to use actual meter readings or will be able to derive information from bills received to apportion costs but for those than cannot a relatively simple acceptable weighted formula for determining allowable costs is as follows:

$$\text{Heat \& Light Costs} \times \frac{C+(2 \times D)}{E + (2 \times F)}$$

- Where C is the number of summer days available for non-primary purpose trading activities
- D is the number of winter days available for non-primary purpose trading activities
- E is the total summer days building is available for primary purpose and non-primary purpose trading activities
- F is the total winter days building is available for primary purpose and non-primary purpose trading activities

In the above formula, “summer days” refers to the period from 1 May to 31 October and similarly “winter days” refers to the period from 1 November to 30 April. Weighting the winter days by a factor of 2 attempts to recognise that on average heat and light bills are in winter approximately twice what they are in summer. HMRC have agreed to accept this formula as a reasonable basis where no actual or metered basis is possible.

Business rates may be incurred on buildings which are used for non-primary purpose trading activities. Strictly for halls of residence the rates charge applies only to the value of any non-primary purpose trading activities and not to any primary purpose occupation of the accommodation. [Universities UK](#) have previously reached agreement with the rating authorities on the calculation of rate charges – the so called ‘bed-night’ agreement. Consequently business rates incurred on halls of residence should be attributable in full to non- student lettings. Rates incurred on any other

university buildings without any domestic occupation may need to be apportioned using the A/B formula.

3.8.11 Repairs and Maintenance Costs

Repairs and maintenance costs relating to those buildings where non-primary purpose trading activity is undertaken, or to buildings where the non-primary purpose trading activities have access under the terms of the lettings, should typically be apportioned using the A/B formula as this apportionment reflects the fact that such expenditure usually accrues evenly on a day to day basis. Such an approach should also apply to grounds maintenance costs. Where grounds maintenance costs are significant, these costs may need to be apportioned on some other basis to reflect the fact that these costs are usually higher in summer months.

Commonly a university may make provisions for certain expenditure in its accounts for repairs and renewals. Such provisions are not allowable for tax purposes until incurred and therefore only amounts actually expended should be brought into account for tax purposes.

3.8.12 Catering Costs

Catering costs should be apportioned to non-primary purpose trading activities on an actual basis wherever possible. If this cannot be done an apportionment should be made.

Normally the catering manager will have been given a weekly budget of costs for each student. A way of establishing the cost relating to non-primary purpose trading activities is therefore to deduct from total catering costs the budgeted (or actual) primary purpose catering costs and the balance is then attributable to non-primary purpose trading activities.

3.8.13 Central Overheads

HMRC have confirmed that the costs of any central departments such as the finance department, leisure centres or any other administrative function that spends time or incurs costs on the non-primary purpose trading activities can also be apportioned and allocated to non-primary purpose trading activities. It is believed that a TRAC based approach should produce a reasonable basis for preparation of the tax computation.

Often universities may already include a central overhead charge in their letting account, and provided this has been calculated on a reasonable basis it will be accepted by HMRC. Where a central charge is not made through TRAC, HMRC will accept a reasonable calculation. This will involve identifying individuals who work on non-primary purpose trading activities, the time they incur on such activities as well as any additional on-costs of employing such people including accommodation, computer and other costs. It will be necessary for the personnel involved to keep a log of their time on the non-primary purpose trading activities, perhaps by using a time sheet system. The calculation will also involve establishing any other cost centres that incur costs on non-primary purpose trading activities, such as a leisure centre, or indeed central administration or finance departments.

3.8.14 Advertising and Conference Office Costs

Advertising costs relating to the costs of producing brochures, in placing advertisements and similar expenditure in relation to non-primary purpose trading activities should be allowable in full against the non-primary purpose trading activities income. Conference office costs, if these activities relate solely to non-primary purpose trading activities should be allowable in full against that income. Some universities will have a student accommodation office that encompasses both primary purpose and non-primary purpose trading activities, and will accordingly need to be apportioned.

3.8.15 Consumables

Consumables, being small items of expenditure relating to the accommodation, which are not included in any of the above headings, should be apportioned on an actual basis and failing this could be apportioned using the A/B formula. The resulting profit or loss calculated on non-student lettings must be included in the deemed non-primary purpose trade.

3.8.16 Interest and rent charges

Interest charges wholly and exclusively incurred to fund non-primary purpose trading is an allowable deduction. Rent charges incurred wholly and exclusively for the purposes of non-primary purpose trading are also allowable deductions. It may be necessary to apportion such interest or rent charges if the borrowing or renting also covers primary purpose activity. For example, a proportion of interest charges incurred in purchasing or improving University accommodation which is used for non-student lettings will be allowable, providing the loan specifically relates to the property in question. Similarly if a building is rented, a proportion of the rent charge will be allowable.

A time apportionment A/B formula is again appropriate in calculating the proportion of any external interest charges relating to non-student lettings. If the University has general loans not designated to fund any particular project for which it may or may not make internal recharges to the student and non-student lettings account, then any interest arising may be allowable depending on the particular financial circumstances of the University in question. If the University is in a net borrowing position then a proportion of interest on general undesignated loans will be allowable. The proportion will usually be best calculated by establishing the interest charge per pound of asset employed and applying this to the book value of the buildings in question having due regard to the period of non-student occupation.

This 'reasonable apportionment' approach can be employed in respect of all borrowing or renting for the purposes of non-primary purpose trading.

3.8.17 Capital expenditure

Universities will, from time to time, incur capital expenditure on plant and machinery, furniture, fittings and other assets of a capital nature used for the non-primary purpose trading. Some of this expenditure will qualify for capital allowances. Note, FA2008 made significant changes to the capital allowances regime, and the rates are subject to change annually and can be found on [HMRC's website](#)²⁴.

The availability of capital allowances for halls of residences depends on whether HMRC consider them to be "dwelling-houses" (see HMRC manuals [CA23060](#)²⁵). HMRC now consider that only communal areas and parts to which tenants do not have access are not dwelling-houses, and so are not excluded by s35 CAA2001. Where an asset serves both communal areas, and individual study bedrooms, eg a central heating system, a just and reasonable apportionment of the expenditure is required. If a University is considering whether a claim is possible it should seek professional advice.

²⁴ <http://www.hmrc.gov.uk/capital-allowances/plant.htm#3>

²⁵ <http://www.hmrc.gov.uk/manuals/camanual/ca23060.htm>

When a University is regarded as commencing its trading activity the assets already acquired will be taken into trading use and capital allowances will be claimable on the market value of the assets on the day they are first taken into trading use.

If assets are only used for part of the year for non-primary purpose trading, it will of course be necessary to restrict the capital allowances available to reflect this. A reasonable basis of apportioning the allowances will be to again use the A/B apportionment.

Note that Hotel Allowances, which were only available in limited circumstances, were phased out over a four year transitional period and ceased to be available after April 2011.

3.9. Closed courses

3.9.1 There is a rebuttable presumption that all university delivered education is primary purpose. University education is clearly within the charitable purpose heading of “advancement of education”. However, there is a second hurdle of public benefit. The two key principles of public benefit are that there must be an identifiable benefit or benefits, and the benefit must be to the public, or a section of the public. Within each principle there are some important factors that must be considered in all cases. For any university education program the university will need to consider whether the course program does satisfy the principles of public benefit in order to determine whether the course program is a primary or non-primary purpose activity. These are:

Principle 1: there must be an identifiable benefit or benefits, and

- it must be clear what the benefits are
- the benefits must be related to the aims
- benefits must be balanced against any detriment or harm

Principle 2: benefit must be to the public or a section or the public

- the beneficiaries must be appropriate to the aims
- where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
 - by geographical or other restrictions; or
 - by ability to pay fees charged
- people in poverty must not be excluded from the opportunity to benefit
- any private benefits must be incidental

3.9.2 A university education program would fall to be a ***non-primary purpose*** activity if either of the following two tests were satisfied:

Test 1: “A course is developed and delivered solely for the benefit of a narrow range of the public”.

A university will generally adapt existing material, perhaps from degree course modules, for customer sponsored training course programs. Where any new material is developed, this will generally add to the bank of material and will be available for future use. Therefore, other than where a course sponsor takes ownership of material developed, or the material is wholly unique to that customer, customer sponsored training course programs developed by

the university can be considered to be generally available to a wide range of participants; this will be the case even if in the first time the course is delivered the participants are from a single company or organisation.

In interpreting this test, the user should be aware that the beneficiaries of a course are not necessarily limited to the participants. The Charity Commission guidance “Analysis of the law underpinning The Advancement of Education for the Public Benefit” issued in December 2008 notes that in the case of *Re Koepler* it was held that education provided to a restricted number of individuals could nonetheless be considered to represent public benefit education, on the basis that although the persons receiving the education would benefit personally, they would be likely to pass on such benefit to others. This concept of an overarching public benefit has been accepted by HMRC where attendees of an otherwise “closed” course would be expected to pass on the benefit of the education to the wider public. eg where participants are from the NHS or other public sector organisations or a charity, the beneficiaries are the users of the public service or the beneficiaries of that charity.

And finally, the private benefit arising to an employer should be legitimately incidental in most cases. The lasting benefits of education should rest with the participant himself, and the other wider beneficiaries as noted above.

Test 2: “Where the benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by ability to pay any fees charged.”

UK universities offer a range of credit bearing courses with a range of fee structures which could restrict the opportunity to benefit. However, there are also a range of financial assistance programs available from various sources; these programs should ensure that access to credit bearing courses is not unreasonably restricted by ability to pay any fees charged.

3.9.3 In conclusion, the majority of course programs, and certainly the credit bearing course program of a UK university will be a primary purpose activity. In the unlikely event that a university does identify closed courses which are non-primary purpose, the allowable expenditure for closed course income will include Direct Costs, Indirect Costs, and allowable Overheads as set out for research activities at [3.6.3](#)-3.6.7 above.

3.10 Knowledge Transfer Partnerships (KTPs)

3.10.1 A KTP is jointly funded by a government department (eg the Technology Strategy Board (TSB) in England), and a sponsoring [private] company. This funding is given to the university (known as the knowledge base partner), who uses these funds to recruit and employ a recent graduate or post doc (known as the associate). The associate will then be seconded to the sponsoring company, under the supervision of a team of academics from the knowledge base partner. The funding will also cover the time costs of the academics’ input, and other expenses including travel costs etc.

3.10.2 Ordinarily, all three parties, the university, the commercial company, and the associate should benefit from the arrangement. There is a clear benefit to the quality of the university’s teaching and research program; the commercial partner will gain access to a highly qualified individual who can

hopefully deliver results in their field of investigation; and finally the associate will receive valuable training from both the university academics and company managers.

3.10.3 KTPs fall into the category of sponsored collaborations, which are dealt with in the charity commission guidance "[Research by Higher Education Institutions](#)²⁶" at para C5 which states:

"To be justified as a charitable activity, the charity will need to agree on the public dissemination of the results within the approximate academic timeframe, normally within 6 months of the research being complete or the outcomes of value occurring; the longer any delay in publication beyond the normal academic timetable, the greater the burden of proof on the charity to show that the delay is reasonable....Pre-publication access to research findings is a non-charitable private benefit (unless given to another charity). Such private benefit enjoyed by a sponsor would have to be justified alongside the other benefits being given to the sponsor by the charity under the contract. This must be on the grounds that it is legitimately incidental to the action properly taken by the charity trustees in the interests of the charity for the public benefit ie necessary, reasonable and in the interests of the HEI in the circumstances..."

3.10.4 Therefore, the key factor is determining whether a KTP is a primary or non-primary purpose activity is the contractual rights giving access to the IP developed. Where a KTP agreement gives the university publication rights within the normal academic timetable, then the KTP activities will be primary purpose activities. Given the uncertainty at the outset of the project, any private benefit conferred to the commercial partner should be legitimately incidental. Exceptionally where a KTP contract is adapted to deny reasonable publication rights, that contract will fall to be a non-primary purpose activity.

3.10.5 In the event that a university does identify KTPs which are non-primary purpose, the allowable expenditure for KTP income will include Direct Costs, Indirect Costs, and allowable Overheads as set out for research activities at [3.6.3-3.6.7](#) above.

3.11 Knowledge Transfer – Spin out companies and Transfer of IPR

3.11.1 Many universities engage in the setting up of spin out companies, and/or transfer of university developed Intellectual Property Rights (IPR) to third parties. Universities set up spin out companies in order to develop and perhaps exploit discoveries which are thought to have significant potential value in public benefit and/or financial terms.

3.11.2 Spin out companies are dealt with in the charity commission guidance "[Research by Higher Education Institutions](#)²⁷" at para C6 which states:

"...The use of charitable resources in supporting spin-outs can only be justified if there is a reasonable prospect of the venture leading to wider public benefit or if the use of the charity's resources can be viewed as a prudent [qualifying] investment. Sometimes there may be a combination of these factors. Where the company is not wholly owned by the charity, trustees must ensure that, unless the charity's involvement is authorised and justified as an

²⁶ http://www.charity-commission.gov.uk/faqs/public_benefit/959.aspx

²⁷ http://www.charity-commission.gov.uk/faqs/public_benefit/959.aspx

investment, it is justified as furthering its charitable work, and that any private benefit to the participators is incidental to furthering the charity's aims..."

3.11.3 In most cases, it will be very difficult to demonstrate that the venture will "lead to wider public benefit" due to restriction on the publication of any knowledge generated, and so a university's participation in a spin out company should usually be justified as a qualifying investment. The [potential] income arising from a university's investment in a spin out company would generally be in the form of dividend income or chargeable gain on disposal. As set out in [Chapter 1](#), this type of income is ordinarily exempt from corporation tax. The main consideration, as set out in [Chapter 4](#) below is to ensure that the investment made by the university in the spin out company is a "qualifying investment".

3.11.4 Further guidance at C7 deals with sales of IPR:

"...Where IPR is owned by a charity but not currently required to be applied for its aims, IPR of financial value should normally be exploited for the benefit of the charity. This may be done by selling or licensing IPR or under other arrangements. Whether such exploitation constitutes a trading activity will depend on the circumstances;The IPR can normally be made available to the company (either by way of transfer or licence) for a proper market consideration. This would not apply where the trustees are satisfied that the use of IPR by the non-charitable [wholly owned subsidiary] company is an application in the furtherance of the aims of the charity for public benefit and such use is enforceable under an agreement between the two parties.

3.9.5 As for spin out companies, it will ordinarily be very difficult to demonstrate that the use of the IPR by a non-charitable company is charitable. However as set out in chapter 1, income from sales and licences of IPR (non-trading intangible fixed assets) is ordinarily exempt from corporation tax.

3.12 Employer Engagement

From time to time, the government develops new strategies to incentivise universities to engage with [local] employers to develop training programs. Any such programs should be evaluated using the principles set out at [3.9](#) above. Ordinarily, a condition of the government sponsorship is that any course material developed will rest with the university, and so the majority of these programs will fall to be primary purpose activities.

Chapter 4 Use and operation of subsidiary companies

4.1. Why use a subsidiary company?

4.1.1 Whenever a university undertakes new activities they must consider whether they are charitable or non-charitable. If a university identifies that an activity is non-charitable, then they should adhere to the advice set out in the Charity Commission Guidance [CC35](#)²⁸:

“While charities may trade more or less freely in pursuit of their charitable objectives, there are restrictions on engaging in trades the objective of which is to generate funds for the charity. In particular, charities may not engage in such commercially-oriented trades where a significant risk to their assets would be involved.

*Where trading (other than trading in pursuit of its charitable objects) involves significant risk to a charity's assets, it must be undertaken by a trading subsidiary. But even where it is not **essential** for the trading to be undertaken by a trading subsidiary, the use of trading subsidiaries may produce benefits, for example in reducing tax liabilities. In particular, trading subsidiaries may make donations to their parent charity as 'Gift Aid', so reducing or eliminating the profits of the subsidiary which are liable to tax.”*

4.1.2 A Gift Aid donation, to the extent it has been paid, [and subject to the provisions set out in ss189-198 CTA2010] is deductible against a subsidiary's taxable profits. And the donation is not chargeable to tax in the university. This structure can therefore be used to eliminate the potential tax charges that would have arisen on the profits from a non-primary purpose trade had they arisen in the university.

4.1.3 Where a subsidiary company is wholly owned [ie 100% of the share capital is held] by the university, rather than having to estimate and pay over the Gift Aid payment during the accounting period, the Gift Aid payment can be paid within nine months of the end of the accounting period and treated as paid within the accounting period for tax purposes [s199 CTA 2010]. This allows time to make accurate calculations of the taxable profits to optimise the use of Gift Aid.

4.1.4 HMRC has confirmed in its guidance that the use of subsidiary companies and the Gift Aid relief is an acceptable method of mitigating the potential tax liabilities arising on non-primary purpose trading in Universities. In many cases profitable non-primary purpose trading is easily identified and the subsidiary route is a tried and tested method of protecting universities from tax.

4.1.5 Where the deemed non-primary purpose trade is likely to be loss making, the position is more complex. If a trading subsidiary makes a loss on its activities, and so requires support from its parent university, this could give rise to non-charitable expenditure [see [1.4](#)]. It is therefore important that universities maintain the arrangements and monitor the health of their subsidiary companies at regular periods. Typically the subsidiary should prepare monthly or at least quarterly management accounts and any required remedial steps should be taken at the earliest possible opportunity.

²⁸ <http://www.charity-commission.gov.uk/Publications/cc35.aspx#2>

4.2 Preparing the tax computations for a subsidiary company

4.2.1 The special rules for corporation tax which apply to universities as charities do not extend to a university's subsidiary companies. Preparers of the tax computations for subsidiary companies should follow the ordinary rules for corporation tax for trading companies.

4.3. What are "Qualifying Investments"?

4.3.1 As noted at [1.4](#) above, the charitable tax exemptions are only available where the income or gains arising are "applied to the purposes of the charitable company only". Where they are not, or are deemed to be non-charitable expenditure in accordance with s496 CTA2010, then this will give rise to a tax charge.

4.3.2 One key type of non-charitable expenditure is investments which are not approved charitable investments or loans as set out in s511 and s514 CTA2010 (formerly Sch20 of ICTA1988).

4.3.3 s511 and the following sections list out the types of investment that can be made by a charity with a view to generating additional resources. [Appendix III](#)²⁹ of HMRC's detailed guidance for charities summarises the types of investments that are accepted as qualifying investments as follows:

- *any investment in a charity common investment fund, common deposit fund or similar scheme*
- *any interest in land (unless it is held as a security or a guarantee for a debt)*
- *shares or securities of companies listed on a recognised stock exchange*
- *units etc in a Unit Trust Scheme*
- *shares in an Open-Ended Investment Company*
- *bank deposits - other than deposits made as part of an arrangement under which the bank makes a loan to somebody else (eg back to back loans)*
- *certificates of deposit*
- *any loan or other investment made for the benefit of the charity and not for the avoidance of tax (whether by the charity or any other person)*

4.3.4 The guidance goes on to clarify that the last type can include loans that are made by a charity as investments. However, a charity may make other approved charitable loans as follows:

If a loan is not an investment it will be a qualifying loan if it is:

- *a loan made to another charity for charitable purposes only*
- *a loan to a beneficiary of the charity, and made in the course of carrying out the purposes of the charity*
- *money placed in a current account at a bank (other than as part of an arrangement under which a loan is made by a bank to some other person); or*
- *any other loan made for the benefit of the charity, and not for the avoidance of tax (whether by the charity or another person)*

²⁹ http://www.hmrc.gov.uk/charities/guidance-notes/annex3/annex_iii.htm

4.3.5 And finally [HMRC's guidance](#)³⁰ explains the requirements for making investments in share capital or by way of loan to a subsidiary company (and this includes support for a loss making subsidiary):

Many charities have subsidiary companies that pass their taxable profits to the parent charity. Where an investment, including an investment loan, is made in such a subsidiary company, the charity is unlikely to be able to obtain normal security for the investment. In such cases HMRC may ask to see the business plans, cash-flow forecasts and other business projections which informed the charity's decision to make the investment.

4.3.6 HMRC has previously confirmed that in reviewing the application of the Qualifying Investment conditions to universities, it will take a “portfolio” approach to a university managing its loans and investments. The portfolio approach is one that spreads the risk of investments and loans across a range of low and high risk investments, thereby reducing the overall risk level of the investments as a whole. This is the approach recommended by The Charity Commission in its guidance notes. Therefore HMRC will not challenge higher risk investments provided that they are a small part of the overall investment portfolio.

4.3.7 If in doubt, you should refer to the full [HMRC guidance](#) and the legislation at s511 CTA2010. If in doubt you should seek professional advice before entering into any such arrangements.

4.4 What is transfer pricing?

According to HMRC's International manual [INTM410520]:

A transfer price is the price charged in a transaction between two parties. The transfer pricing legislation concerns itself with the prices charged in transactions between connected parties as, in such circumstances, the price charged may not necessarily be that which would have been charged if the parties had not been connected. Note that in this context 'connected' means that the 'participation condition' (see INTM412060) is met.

A transfer pricing risk mainly arises in cross border transactions between two companies who are part of the same group. However, UK transfer pricing legislation also applies to transactions where both parties are within the UK. Transfer pricing risks are not limited to company to company transactions; for example a transaction between a company and a controlling individual would be within the ambit of transfer pricing.

4.5 How does transfer pricing apply to Universities?

4.5.1 HMRC consider that transactions between universities and their [wholly owned or controlled] subsidiaries are subject to the transfer pricing provisions in Schedule 28AA in exactly the same manner as it does to those transactions made between any persons who meet the participation rules unless on the particular facts of the case:

- one of the parties is not an enterprise; or
- there is no person receiving a potential advantage to UK taxation; or
- the exemption for dormant companies or small or medium-sized enterprises applies

³⁰ http://www.hmrc.gov.uk/charities/guidance-notes/annex3/annex_iii.htm#iii2

4.5.1 Universities and their subsidiaries can structure their inter-company arrangements as either cost-sharing arrangements or as a contract for the provision of services. Cost-sharing arrangements, confirmed as such by the auditor of a university, will not normally be looked at more closely by HMRC unless there are grounds to believe that aggressive tax or VAT avoidance or attempts to extract value from a charity or charity group are occurring.

4.5.2 It is recognised by HMRC that subsidiaries will in nearly all cases eliminate their corporation tax liabilities through the Gift Aid payment mechanism approved by HMRC in the context of the policy framework set out above and without a tax avoidance motive.

4.5.3 In circumstances under which Schedule 28AA ICTA 1988 does apply, the profits of the potentially advantaged person are re-computed for tax purposes as if the non-arm's length transactions had been undertaken at an arm's length price.

4.6 How does Transfer Pricing work in practice?

4.5.1. Where use of staff time, premises or equipment is genuinely shared between a university and its subsidiary, a "cost sharing arrangement" is an acceptable means of recharge and will be regarded as meeting the arm's length requirement in both the university and the subsidiary. Costs shared will be direct costs and a reasonable apportionment of overheads. (See [4.7 below](#)).

4.6.2. Where a university provides goods or services to a subsidiary, or a subsidiary to the university under a service agreement, the charge for the services must be demonstrably an arm's length price.

4.6.3 Subject to the requirement for a loan to a subsidiary to be a "qualifying investment", any loans to or from a subsidiary by the university should be documented using a simple loan agreement and the loan must bear interest at a market rate.

4.7 Cost-sharing Agreements

4.7.1 A cost-sharing agreement is a formal agreement that sets out both the nature of the services considered to be shared between the university and its subsidiaries, such as central finance, library services, IT access, payroll etc, and documents that the cost of these services will be apportioned between the parties on the basis of use.

4.7.2 The allocation of costs must be monitored, the use documented, and relevant apportionment made preferably on a monthly basis, such that the costs are recorded in the correct records.

4.7.3 The methodology for apportionment is likely to depend upon the type of service, for example, staff time on payroll processing could be based on time spent; or a charge per individual processed through the payroll based on a full cost analysis for the payroll function; or the use of office space which is generally apportioned based on the simple occupation of floor space.

4.7.4 Universities will be required to document and evidence the provision of shared services and associated costs for apportionment and demonstrate regular monitoring of costs and charges.

Chapter 5 Overseas Activities

5.1 International Taxation

5.1.1 International taxation is a huge topic –and cannot possibly be covered in a couple of pages – however this guide would not be complete if it did not include a section on UK corporation tax implications of overseas activities. The following paragraphs give an overview of the principles.

5.1.2 Unfortunately the generous UK reliefs for charities do not apply to the tax regime in overseas territories – and although a small number of overseas territories do offer charitable reliefs, if HEIs operate overseas their activity may give rise to overseas corporate income tax and/or withholding tax cost and/or filing obligations in the overseas territory.

5.1.3 HEIs should always seek professional advice when entering into any overseas activities to ensure that they budget for, and comply with any overseas tax obligations which could well be very material.

5.2 Foreign branches and non-UK resident subsidiaries

5.2.1 UK HEIs, or their UK subsidiary companies, subject to local law, may choose to undertake their activities directly in an overseas territory. Alternatively, again subject to local law, they may set up a non-UK resident [foreign] subsidiary company through which they will operate. The UK, and overseas, tax implications for the HEI will depend upon both the nature of the activities, and whether the activities are carried out directly by the HEI or through a non-UK resident subsidiary company.

5.2.2 In general, a foreign [non-UK resident] subsidiary will be subject to tax in the foreign territory by virtue of its place of incorporation.

5.2.3 Where UK HEIs, or their UK subsidiary companies, undertake their activities directly in an overseas territory, the nature of the activities and the contractual arrangements entered into will determine whether the HEI or UK subsidiary company has a foreign permanent establishment (PE) or branch, and so is subject to corporate income tax in that territory. This will be determined by local laws and where in existence, the Double Tax Treaty.

5.2.4 Double Taxation Treaties are agreements between two states which are designed to:

- protect against the risk of double taxation where the same income is taxable in two states
- provide certainty of treatment for cross-border trade
- prevent tax discrimination against UK business interests abroad

5.2.5 Double Taxation Treaties are also drawn up to protect the UK Government's taxing rights and protect against attempts to avoid or evade UK liability. You can access all the UK's Double Tax Treaty agreements on the [HMRC website](#).

5.2.6 In some cases, the activities of the HEI or its UK subsidiary will be such that they do not create a foreign PE or branch. In this case the profits arising from the activities should not be subject to corporate income tax in the overseas territory – although the income derived in the territory may well be subject to withholding taxes – which generally means a lower administrative obligation but

could well still be a significant cost as they are generally calculated based on the income rather than profit.

5.3 UK Taxation of Income arising from a foreign PE or branches

5.3.1 The general rule is that a UK-resident company is liable to UK corporation tax on its worldwide income – this includes [subject to 5.3.2 below] trading income earned through a foreign PE or branch. This is the case whether or not the income is remitted to the UK although relief is available where the company is unable to remit the overseas income (CTA 2009, s. 1275).

5.3.2 Finance Bill 2011 introduced provisions whereby a UK resident company can make an irrevocable election for all its foreign branches, located anywhere in the world, to be exempt from UK Corporation Tax on their profits. As a consequence of making this election, no relief will be available for foreign branch losses.

5.3.3 There are certain restrictions in place in order to prevent abuse of these provisions whereby profits that would otherwise remain within the charge to UK Corporation Tax are diverted to an exempt foreign branch. There is also a transitional rule to defer exemption for [certain] branches that have generated more losses than profits in the last six years. More detail can be found in the HMRC Manuals at [INTM281010](#)³¹.

5.3.4 In the absence of the election for exemption, trading income and expenses relating to the foreign branch or PE are included within total trading income – and so the foreign branch or PE trading income arising in the HEI should be analysed in the same way as UK trading income as being primary or non-primary purpose activities, with reasonable apportionment of expenses.

5.3.5 Note that where the trade is carried on ‘wholly outside the UK’, a trading loss relating to the PE can only be offset against future profits from that PE and relief against current or earlier period profits is precluded by CTA2010 s37(5).

5.3.6 Credit relief is available where foreign tax has been suffered on the taxable profits attributable to the PE – this means that any UK corporation tax payable is reduced to the extent that the foreign tax has been suffered those profits.

5.3.7 Where foreign branch or PE primary purpose income arises in the HEI, then there will be no relief for the foreign tax suffered (because there should be no corporation tax payable) – and so any overseas taxes will be an additional cost to operating in the overseas territory.

5.3.8 Arguably foreign tax is an additional cost for foreign branch or PE income arising in a UK subsidiary of a HEI, because ordinarily the subsidiary’s income would be sheltered by way of Gift Aid. A subsidiary company may choose to treat the foreign tax as a business expense, or alternatively to reduce the Gift Aid payment so as to leave sufficient corporation tax liability in the subsidiary, so as to make use of the foreign tax credit relief.

5.3.8 Where the trade is controlled from the UK (i.e. it is not carried on wholly outside the UK), any unrelieved foreign tax can be carried forward and offset against corporation tax payable on the profits of the foreign PE in future periods.

³¹ <http://www.hmrc.gov.uk/manuals/intmanual/intm281010.htm>

5.4 UK Taxation of Income from Foreign Subsidiaries

5.4.1 A number of significant changes were made to the taxation of the foreign profits of companies in FA 2009. The most important of these changes was the replacement of the general exemption for dividends from UK companies, and the credit system for the taxation of foreign dividends, with a broad exemption applying to both UK and foreign distributions received by companies (part 9 of CTA 2009).

5.4.2 The provisions introduced in July 2009 have the effect of removing most dividend income, whether from a UK or overseas source, from the charge to corporation tax on income.

5.4.3 However, you should be aware that the revised legislation is actually structured to bring all dividends are within the charge to tax, and then remove them from charge if they meet the conditions to be exempt.

5.4.4 There are three conditions for the dividend exemption set out in CTA 2009, s. 931D.

- The distribution falls into an exempt class.
- The distribution must not be an amount, typically of interest deemed by CTA 2010, s. 1000E or S1000F to be a distribution (see [INTM655070](#)).
- A deduction is not allowed to any foreign resident in accordance with any foreign tax law in respect of the distribution (see [INTM652030](#)).

5.4.5 There are five exempt classes. They are

- distributions from companies which are controlled by the recipient.
- distributions in respect of non-redeemable ordinary shares.
- distributions in respect of portfolio holdings.
- distributions derived from transactions not designed to reduce tax.
- dividends in respect of shares accounted for as liabilities.

It is sufficient for a distribution to fall within any one of these classes to be exempt, unless an anti-avoidance rule applies.

5.4.6 Ordinarily a dividend received from a wholly owned foreign subsidiary will be exempt from corporation tax, whether received by the university or a UK subsidiary company.

5.4.7 It should be noted that some payments commonly thought of as distributions are excluded from the definition of distribution by statutory provision – one such example is payments made in respect of share capital on a winding up.

5.4.8 The university or its UK subsidiary may receive other income from a foreign subsidiary including interest or royalty income. This income will be treated in the same way as if it were received from a UK source. As with income from a PE or branch, credit relief is available where foreign tax has been suffered on the taxable profits. This means that any UK corporation tax payable is reduced to the extent that the foreign tax has been suffered on those profits.

Appendix A
Example University
Year to 31 July

2013

Single Trade of a University
Summary of Non-Primary Purpose Activities

	Ref	Income	Expenses	Profit/(Loss)	Notes
Consultancy		1,561	1,538	23	
Non-Student Lettings		3,500	6,717	(3,217)	
Closed Courses		24	27	(3)	
Hire of Sports Facilities		190	216	(26)	
Total		5,275	8,498	(3,223)	

Non-charitable Expenditure 3,223

Offset by trading loss above (3,223)

Net profit/(loss) 0

Appendix A
Example University
Year to 31 July

2013

Non-Student Lettings

Total NPP PP

Income	31,500	3,500	28,000
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Expenses

Actual Basis

Advertising and conference office	150	150	-
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Apportion using A/(B)

Staff (where actual info not available)	9,075	3,267	5,808
Food/Consumables (where actual info not available and catered)	2,723	980	1,743
Repairs and maintenance	908	327	581
Interest and rent charges	1,452	523	929
Capital expenditure	726	261	465

Apportion using (C+2D)/(E+2F)

Utilities (where actual info not available)	3,266	1,059	2,207
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Total Expenses	18,300	6,567	11,733
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Net Profit/(Loss)	13,200	(3,067)	16,267
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Weeks

Halls shut	2	
Vacation availability	18	A
Term time contracts	32	
Total Weeks available	50	B

Note the costs are apportioned on availability not usage

Weeks

summer vacation	12	C	Summer starts	01/05/10
Winter vacation	6	D	Summer ends	31/10/10
Total Summer availability	26	E	Total summer	184
Total Winter availability	24	F		c26 weeks

Appendix A
Example University
Year to 31 July

2013

Income Analysis - From Statutory Accounts

ref	Trading Income	Income from Exempt Activities	Investment Income	UK Land & Buildings	Deed of Covenant	Gift Aid	Total
Funding Council Grants		65,524					65,524
Academic Fees & Support Grants:-							
Tuition Fees Home		34,761					34,761
Tuition Fees Overseas		24,410					24,410
Closed Courses	24						24
Total	24	59,171	0	0	0	0	59,195
Research Grants and Contracts							
Research Councils & Charities		19,524					19,524
Industry & Commerce		4,459					4,459
Governmental		10,635					10,635
Total	0	34,618	0	0	0	0	34,618
Other Income							
Student Residences Income		28,000					28,000
Conference and Other Residences Income	3,500						3,500
Release of Deferred Capital Grants		2,991					2,991
Recreational Facilities Income	190			2,960			3,150
Car Parking				156			156
Rents				632			632
Miscellaneous & Other Income	1,561	6,774					8,335
Total	5,251	37,765	0	3,748	0	0	46,764
Endowment and Investment Income							
FRS17 Adjustment			623				623
Investment Income			883				883
Gift Aid (from subsidiary)						985	985
Total	0	0	1,506	0	0	985	2,491
Total	5,275	197,078	1,506	3,748	0	985	208,592

Appendix A
Example University
Year to 31 July

2013

Expenditure Analysis - From Note 8 to Statutory Accounts

	Expenditure relating to Trading Income	Expenditure relating to Exempt Activities	UK Land & Buildings	General Admin Costs	Grants & Donations made in the UK	Grants & Donations made outside the UK	Other Expenditure	Total
Academic Departments	27	85,665						85,692
Academic Services		11,665						11,665
Research Grants and Contracts	1,538	27,010						28,548
Residences, Catering and Conferences	6,717	11,733						18,450
Premises	216		21,942					22,158
Administration and Central Services				23,722				23,722
Other Expenses							9,724	9,724
Total	8,498	136,073	21,942	23,722	0	0	9,724	199,959

Appendix B

Guidance on when to apply this method

In some cases, where for example an institution has large amounts of income, such as unfettered donations or investment income, which are used to subsidise other activities, it will be clear from a quick examination of the financial statements of an institution that a proportional apportionment of costs will produce a tax loss for the NPP activities, without the need to quantify the NPP income.

In these cases, HMRC do not require institutions to undertake the full analysis of income to quantify income arising in the NPP and PP pots. Instead, using the calculation below institutions should:

- a) Identify any sources of income which are produced with no material cost and deduct from the total income [including but not limited to unfettered donations and investment income]
- b) Deduct this income identified at (a) from the total income
- c) Deduct depreciation from the expenditure to give adjusted expenditure.

If after this, the net result of the adjusted income less adjusted expenditure is a loss then:

- d) Calculate the relative proportions of adjusted income for each source
- e) Review the adjusted income from Step 1, and identify any sources of income identified in the accounts which are wholly PP or wholly NPP
- f) Attribute any sources of income which are mixed to NPP.
- g) Allocate the adjusted expenditure proportionately to PP and NPP sources.
- h) Calculate the difference between attributed income and allocated expenditure for PP and NPP Income sources

If the result after step (c) is not a loss, then the Gateway Test will not demonstrate that the NPP activities are carried out at a loss, it is necessary to undertake the detailed calculations set out at 3.5 et seq of the CT guidelines

Two examples are attached

Appendix B

Example University 1

Calculation Steps

- a) Identify any sources of income which are produced with no material cost and deduct from the total income [including but not limited to unfettered donations and investment income]
- b) Deduct this income identified at (a) from the total income
- c) Deduct depreciation from the expenditure (in the example below there is no depreciation adjustment).

In this example, the net result of the adjusted income less adjusted expenditure is a loss, so we then:

- d) Calculate the relative proportions of adjusted income for each source
- e) Review the adjusted income from Step 1, and identify any sources of income identified in the accounts which are wholly PP or wholly NPP
- f) Attribute any sources of income which are mixed to NPP.
- g) Allocate the expenditure proportionately to PP and NPP sources.
- h) Calculate the difference between attributed income and allocated expenditure for PP and NPP Income sources

Year to 31 July	2013
	£m
Total Income	840.80
Total Expenditure	751.90
Net surplus	88.90
Made up of:	
Income without cost (B)	114.60
Primary Purpose	
Activities loss (H)	(23.53)
Non-primary purpose	
activities loss (I)	(2.17)
	88.90
Total	

	Total income	Step (a) Identify Income without cost	Step (b) deduct income without cost to produce Income for expenditure apportment	Step (d) calculate % of total income (C/ΣC)	Step (e) identify Primary purpose (PP) Income	Step (e) and (f) Identify Income sources which may include non- primary purpose (NPP)	Step (g) Allocated expenditure PP (DxTotal Expenditure)* *	Step (g) Allocated expenditure NPP (DxTotal Expenditure)* *	Step (h) PP profit/loss (E-G)	Step (h) NPP profit/loss (F- H)
	£m	£m	£m		£m	£m	£m	£m	£m	£m
	A	B	C	D	E	F	G	H	I	J
Funding body grants	197.30		197.30	27.2%	197.30	0.00	204.28		(6.98)	
Academic Fees	149.20		149.20	20.5%	149.20	0.00	154.48		(5.28)	
Research grants	293.40		293.40	40.4%	293.40	0.00	303.78		(10.38)	
Other services rendered	34.30		34.30	4.7%		34.30		35.51		(1.21)
Health and hospital authorities	17.00		17.00	2.3%	17.00	0.00	17.60		(0.60)	
Residences	8.80		8.80	1.2%		8.80		9.11		(0.31)
IP	5.40		5.40	0.7%		5.40		5.59		(0.19)
Deferred capital grants	8.80	8.80	0.00	0.0%						
Unrestricted donations	45.80	45.80	0.00	0.0%						
Rental	7.90		7.90	1.1%	7.90	0.00	8.18		(0.28)	
Donations for heritage assets	5.60	5.60	0.00	0.0%						
Sundry	12.90		12.90	1.8%		12.90		13.36		(0.46)
Investment income	54.40	54.40	0.00	0.0%						0.00
Total	840.80	114.60	726.20		664.80	61.40	688.33	63.57	(23.53)	(2.17)

* note - depreciation has been excluded from the expenditure for apportionment. Taxpayers may wish to calculate capital allowances available

** note - in this case we have allocated the expenditure based on a proportion of turnover - alternative apportionments may be appropriate

Appendix B

Example University 2

Calculation Steps

- Identify any sources of income which are produced with no material cost and deduct from the total income [including but not limited to unfettered donations and investment income]
- Deduct this income identified at (a) from the total income
- Deduct depreciation from the expenditure (in the example below there is no depreciation adjustment).

In this example, the net result of the adjusted income less adjusted expenditure is a Profit, so the Gateway Test is not appropriate, and this university must use the undertake the full calculations.

Year to 31 July	2013
	£k
Total Income	135,707.00
Total Expenditure	130,296.00
Net surplus	5,411.00

	Total income	Step (a) Identify Income without cost	Step (b) deduct income without cost to produce Income for expenditure apport'ment (A-B) *	Total Expenditure (as above)	Check whether Income calculated at (b) less total expenditure is a loss (C-D)
	£k A	£k B	£k C	D	E
Funding body grants	38,049.00		38,049.00		
Academic Fees	74,759.00		74,759.00		
Research grants	2,448.00		2,448.00		
Other services rendered	1,099.00		1,099.00		
Gift aid	528.00	528.00	0.00		
Residences	7,374.00		7,374.00		
Staff Secondments	57.00		57.00		
Deferred capital grants	425.00	425.00	0.00		
Grant income	1,978.00		1,978.00		
Intercompany sales	3,769.00		3,769.00		
Sundry	3,095.00		3,095.00		
Investment income	2,126.00	2,126.00	0.00		
Total	135,707.00	3,079.00	132,628.00	130,296.00	2,332.00