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Trading and trading subsidiaries: Preservation and Strategy

For cultural charities

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What we will cover today?

1. **Business as usual** – what does commercial trading *usually* look like?
2. A **tried and tested legal model** for cultural charities and their trading
3. Commercial trading **during the crisis**
4. Common legal issues **during the crisis**
5. Q&A

Cultural charities and trading

- Do cultural charities trade?
- Is this primary purpose trading?
- The profits of primary purpose trading are exempt from tax if they are applied solely for the purposes of the charity
- Ancillary trading
- What about non-charitable taxable trading?
- Small-scale trading exemption <https://www.gov.uk/guidance/charities-and-trading#small-trading-tax-exemption> (next slide)
- Should we be using a trading subsidiary? Subsidiary gifts profits up to the charity before tax is due

POLL!

HMRC small-scale trading exemption

Charity's gross annual income	Maximum permitted small trading turnover
Under £32,000	£8,000
£32,001 to £320,000	25% of your charity's total annual turnover
Over £320,000	£80,000

Cultural charities and trading subsidiaries

- Why?
 - Reduces tax bill/protects charitable assets
 - Tax efficient (gift up the profit)
 - Ring-fences risk (contractual, liability, reputation)
 - Separate board with commercial focus
 - Creates unrestricted funding – jewel in the crown of mixed economy model
 - Greater freedom
- What?
 - Merchandise, ticket sales(?), shop, digital sales, catering, corporate sponsorship, corporate events, etc.

Parent and subsidiary

- <https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity> (Charity Commission guidance)
- Framework agreement: ownership and proper cross-charging
- Conflicts of interest process
- Deed of covenant often in place (so profits can be accounted for in year made)
- Mutually beneficial but ultimately benefits the parent charity – but should be arm's length

Reminder of some concerns of the Charity Commission

Separation of the charity and non-charity in the public's mind

Independence – conflicts of interest and loyalty

Risk of furthering non-charitable purposes

Reputation of the charity

Trading and subsidiaries during the crisis: common issues

- Seriously diminished trading income.. for now. Pivoting and creating new business
- No profit – leaving profit in the subsidiary?
- The role reversal: funding down from parent to subsidiary
 - Waiving payments
 - Loan/social investment
 - (Grant for charitable purposes)
- Conflicts of interest?
- The duties of the subsidiary board in a crisis
- Preserving the subsidiary business model?
- Easier to shed part of the subsidiary business? (Funders, stakeholders, public presentation)
- [Note: position different for non subsidiary trading companies]



Thank you



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