

BHP CHARITY CONFERENCE 2025

Making Trading Subsidiaries Work For You

12 November 2025



MAKING TRADING SUBSIDIARIES WORK FOR YOU

What we will cover:

Overview of
tax rules for
trading by
charities

Key principals
in operating a
trading
subsidiary

Investment in
trading
subsidiaries

Governance
arrangements

Common
Pitfalls



TAX RULES FOR TRADING BY CHARITIES

CHARITIES AND TRADING

General Position

- Charity law provides that a charity may not trade except where to do so **further its charitable objects**
- Tax law reflects the charity law position:
 - any income generated on trading activities which further a charity's purposes is not subject to tax
 - any income earned by a charity on trading activities which **do not** further its purposes will generally be liable to corporation tax





WHAT IS TRADING?

- The statutory definition of trading is broad (and circular) in that it includes “*every trade, manufacture, adventure or concern in the nature of trade*”
 - Typically – selling goods and providing services for payment.
- Main heads of trading by charities:
 - primary purpose trading
 - ancillary trading
 - non-primary purpose trading (small trading exemption)

PRIMARY PURPOSE TRADING

- Where a trade **directly contributes** to the furthering of one or more of the objects of the charity, this is **primary purpose trading**.

Where a trade is:

- primary purpose: **and**
- any profits are applied for charitable purposes

those profits are **exempt** from corporation tax

- Example – sale of tickets for a performance by a theatre charity



ANCILLARY TRADING



Where a trade **indirectly contributes** to the successful furtherance of the objects, this is treated in the same way as primary purpose trading



Where a trade can properly be said to be ancillary **AND** any profits are applied for charitable purposes, those profits are exempt from corporation tax



Examples – sale of book relating to an exhibition in an art gallery or museum. Sale of food and drink at the theatre



Whether the activity is really “ancillary” to the primary purpose will depend on whether it is **wholly ancillary to the mission** an indication of this may be the level of turnover generated through ancillary trading



Example – Theatre café

OTHER NON-TAXABLE TRADING ACTIVITIES

- Sale of donated goods (goods bought in for sale (eg Christmas cards) is taxable trading)
- Lotteries (subject to compliance with legislation)
- Certain types of one-off fundraisers
- Sale of goods manufactured by beneficiaries (considered primary purpose trading)



NON-PRIMARY PURPOSE TRADING

- Where trading is commercial, revenue generating, not linked to charitable purpose
- Profits from the trading activity of a charity which is neither primary purpose nor ancillary will be chargeable to tax, even if those profits are themselves applied for charitable purposes
- **Small trading exemption**
 - Where annual income from trading (not profit) falls below the statutory thresholds, it will not be chargeable to corporation tax

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

CONSEQUENCES OF CARRYING OUT NON-PRIMARY PURPOSE TRADING IN EXCESS OF THE DE MINIMIS THRESHOLD

Tax liability on whole amount

Non-charitable expenditure

Trustees potentially liable for breach of trust

Regulatory scrutiny

Reputational damage



ESTABLISHING A TRADING SUBSIDIARY



If trading activities carry significant risk then they **must** be run through a subsidiary to ring-fence risk/protect charity assets



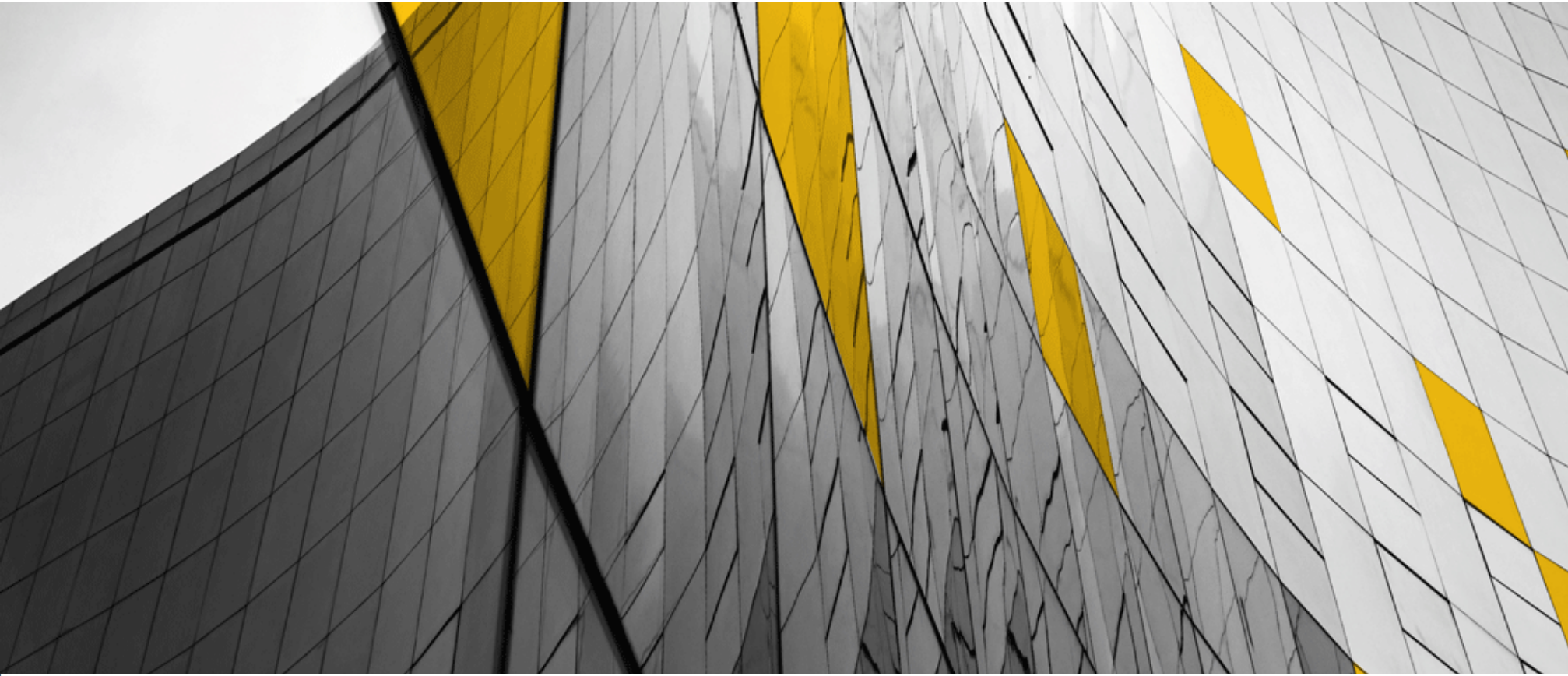
Tax efficient - trading profits of the subsidiary liable to tax BUT profits paid up to the charity under the Gift Aid regime – profits must be applied for charitable purposes



Avoids the problem of non-primary purpose trading over the small trading threshold



Other reasons to establish a subsidiary – service delivery vehicle, VAT efficiencies



TRADING SUBSIDIARIES - INVESTMENT, GOVERNANCE AND AVOIDING THE PITFALLS

KEY PRINCIPALS IN OPERATING A TRADING SUBSIDIARY

- There must be an arms-length relationship with the subsidiary – the subsidiary is a non-charitable company
- Trustees must routinely monitor the performance of the subsidiary to protect the charity's investment
- Directors of the subsidiary owe company law duties as company directors
- Use of charity assets by a subsidiary must be in return for at least at cost payment
- The subsidiary must be financially independent (e.g. keep sufficient reserves to meet its liabilities including repayment of any loan made by parent charity)





INVESTMENT IN A TRADING SUBSIDIARY (1)

Investment considerations

Is it in the best interests of the charity compared with other forms of investment?

Consider the realistic business prospects of the subsidiary

Be satisfied the subsidiary is financially viable based on business plan, cash flow forecasts, profit projects, risk analysis etc

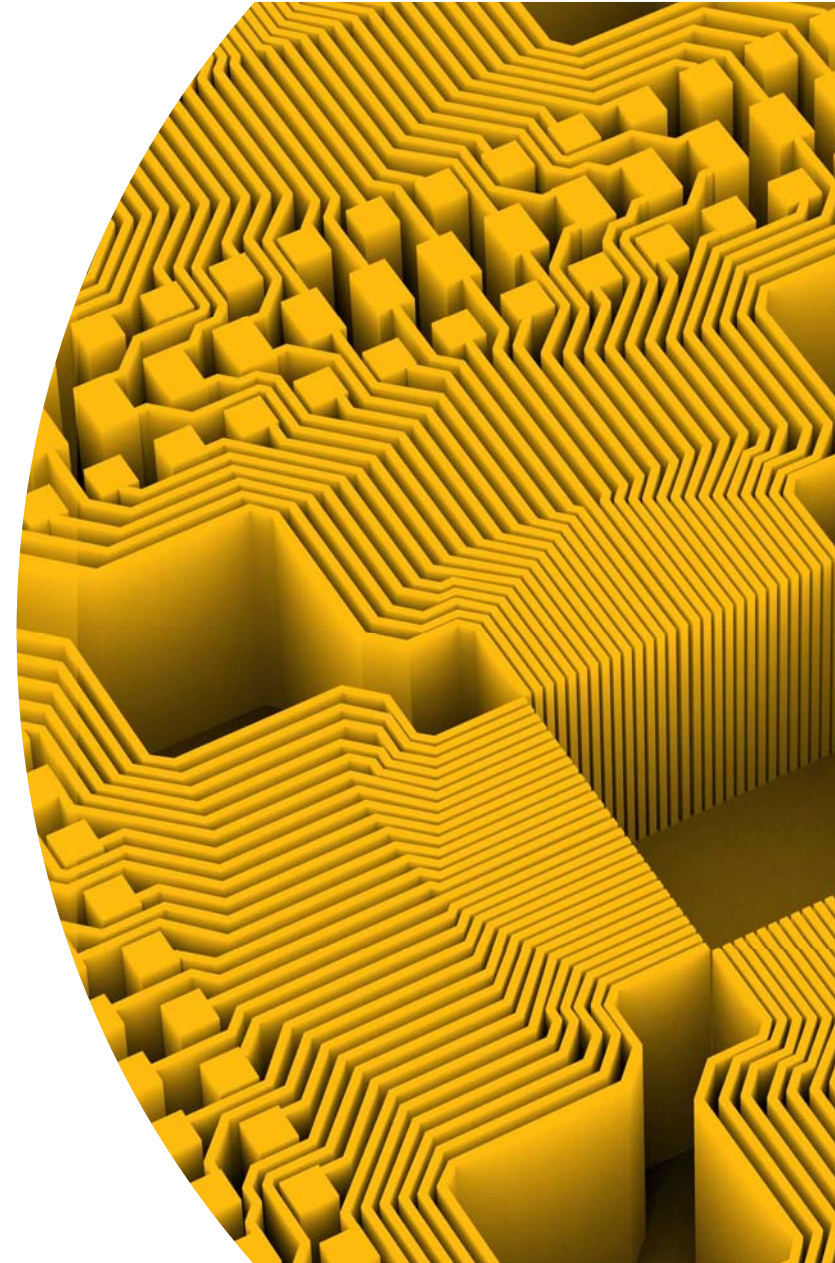
Consider the length of time that charity funds will be tied up in the subsidiary and the needs of the charity in the short to medium term

Consider whether the subsidiary can be funded from other sources

Take advice where appropriate

INVESTMENT IN A TRADING SUBSIDIARY (2)

- Two main types of investment in trading subsidiaries:
 - Equity Investment
 - Loan to the subsidiary
- Generally, loan must be at a rate of interest to be a qualifying investment:
 - can a charge be secured against the assets of the subsidiary?
- The subsidiary must be financially independent and able to meet its liabilities
- Consider if third party funding possible – eg commercial bank loans
- Subsidiaries may retain profits but potentially subject to corporation tax



GOVERNANCE ARRANGEMENTS (1)

- Governance considerations:
 - Legal form of subsidiary – usually a company limited by shares
 - The charity needs to maintain sufficient oversight of its investment:
 - sole member with powers to appoint directors
 - trustee representation on the board
 - build in “reserved” powers for parent – eg on expenditure or entering certain types of arrangement
 - set business plans and KPIs
 - Regularly review the relationship:
 - is the subsidiary make sufficient return for the charity?
 - review ongoing contractual relationship with the parent charity
 - is the subsidiary financially sustainable?

GOVERNANCE ARRANGEMENTS (2)

- We recommend that the relationship between charity and subsidiary is governed by a contractual relationship to maintain the arms-length principal, to protect charity assets and monitor the charity's investment in the subsidiary
- An “Operating Agreement” put in place which might cover:
 - business planning, targets and KPIs
 - reserved matters where parent charity consents are required
 - recharging clauses for use of charity staff, resources, assets
 - licence to occupy Charity buildings
 - use of Charity name, logo and IP
 - sharing of staff secondment agreements
 - arrangements for sharing data (eg donor lists)
 - compliance with regulatory requirements



COMMON PITFALLS

- Investing money in a trading subsidiary when it is losing money/not making sufficient return for the charity – non-qualifying charitable expenditure subject to tax
- Lack of clarity in remit/decision making between trustees of the parent charity and directors of the subsidiary
- Lack of clear separation - not dealing with conflicts of interests between the parent charity and subsidiary
- Letting a subsidiary use charity assets without payment
- Making loans to subsidiaries which have no reasonable prospect of being repaid or which tip a subsidiary into insolvency
- Payments to trustees acting as directors/employees of the subsidiary
- Poor documentation of Board business/Board not meeting regularly

KEY GUIDANCE

Trustees trading and tax: how charities may lawfully trade - GOV.UK (Charity Commission Guidance CC35)

The essential trustee: what you need to know, what you need to do (CC3) - GOV.UK



LEGAL UPDATE 2025

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12 November 2025



STATUTORY AND REGULATORY UPDATE

The Economic
Crime and
Corporate
Transparency
Act 2023
(ECCTA)

The Digital
Markets,
Competition and
Consumers Act
(DMCC) 2024

The Terrorism
(Protection of
Premises) Act
2025

The
Employment
Rights Bill

RECENT DEVELOPMENTS & ON THE HORIZON

Charity
Commission
updating
guidance e.g.
CC11

New
Charity
Governance
Code

Revised Code of
Fundraising
Practice

New Charities
SORP



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LIKE NO OTHER

FOR WOMEN SCOTLAND LTD V THE SCOTTISH MINISTERS



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BRITISH CAMELIDS LTD V BROOKE HOSPITAL FOR
ANIMALS & OTHERS



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GARY MOND V THE CHARITY COMMISSION FOR ENGLAND AND WALES



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DR NIGEL MACLENNAN V THE BRITISH
PSYCHOLOGICAL SOCIETY

CHARITY COMMISSION INQUIRIES

- Fashion for relief
- Sentebale
- The Sikh Channel Community Broadcasting Company Limited
- Brighton Mosque & Muslim Community Centre
- Island Health Trust
- Four Paws Animal Rescue
- Muffin Pug Rescue



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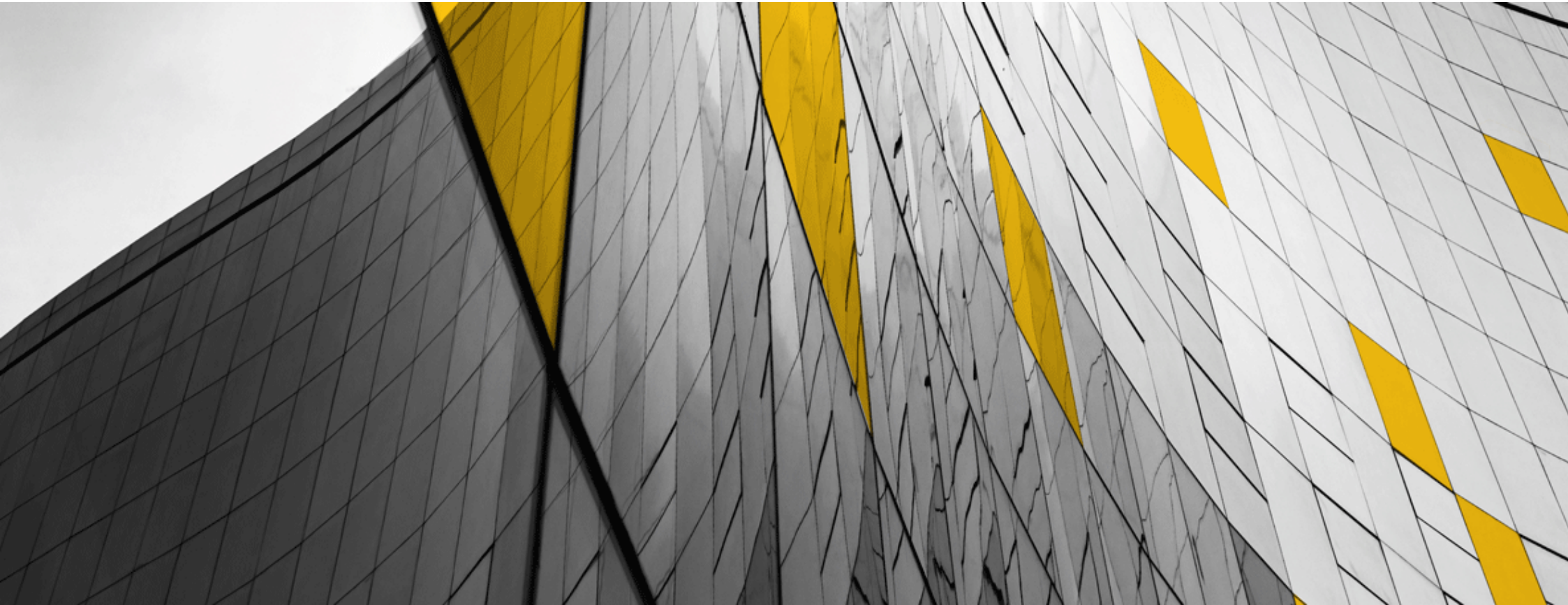


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