



Appeal number: TC/2011/04071

Income tax – whether the Appellant should be approved under section 344 ITEPA (entitling its members to a deduction from employment earnings in respect of annual subscriptions) – whether Appellant’s activities carried on otherwise than for profit – held yes – whether Appellant’s activities wholly or mainly directed to objects within section 344(2) ITEPA – held no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**THE PROFESSIONAL GOLFERS’ ASSOCIATION
LIMITED**

Appellant

-and-

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE KEVIN POOLE
CHRISTOPHER JENKINS**

Sitting in public in 45 Bedford Square, London on 28 - 30 May 2013

**Richard Vallat and Edward Waldegrave of counsel, instructed by BDO LLP for the
Appellant**

**Aparna Nathan of counsel instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

Introduction

1. A body that meets certain statutory requirements may be approved by HMRC under section 344 Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”). The consequence of such approval is that the members of the body will generally be entitled to deduct their annual membership subscriptions paid to the body when computing their taxable earnings from employment.
2. If HMRC refuse to give approval, the body has a right of appeal, ultimately to the Tribunal. This is such an appeal.
3. The appeal is therefore concerned with whether the Appellant meets the statutory criteria for approval. The points at issue are essentially whether the Appellant’s activities are carried on “otherwise than for profit”, and whether its activities are “wholly or mainly directed” to the objects listed in subsection 344(2) ITEPA.
4. The parties are agreed that the Tribunal has a full appellate jurisdiction, i.e. it may substitute its own decision for that of HMRC, rather than being limited to a consideration of whether HMRC’s decision was properly arrived at.
5. The Tribunal is therefore required to make its own assessment of whether the Appellant’s activities satisfy the relevant requirements, which of course requires a reasonably full review of those activities.

The facts

6. We received witness statements and heard oral testimony from John Yapp, the Group Finance Director of the Appellant; from Brian White, a longstanding golf “Pro” and member of the Appellant’s Board; and from Daniel Bateman, a younger member of the Appellant who has already had quite a varied career in the golf business, starting with a traditional “Pro” role and moving on to wider management positions (including some hotel experience) and specialist golf retailing.

7. We find the following facts.

Background and history

8. The Professional Golfers’ Association was founded as an unincorporated association in 1901. The Appellant was incorporated in 1984 as the legal entity to continue the original association. It is essentially a professional association for those who make their living from the business of golf, a \$90 billion global industry. It is based at the Belfry golf course in the Midlands. Historically, it was an association for traditional golf club “Pros”, who are normally based at a golf club or driving range, run its shop, give golf lessons and to a greater or lesser extent manage its affairs. As the business of golf has expanded, so have the range of activities of PGA members.

9. The Appellant has approximately 7,500 members. About 6,000 of them are based in the UK and Ireland, and about half of these perform a fairly traditional “Pro” role at a golf club or driving range. The remainder have a wide range of activities related to golf, from specialist golf retailing to course design, managing entire golf resorts or individual coaching. Players who compete internationally at the highest level may have started life as PGA members (indeed two of the European Ryder Cup team in 2012, Ian Poulter and Paul Lawrie, we were told, went through the Appellant’s training programme), but most are not – PGA members generally make their living from the business of golf, not from playing it competitively.

10. The Appellant’s predecessor association was given a cup by one Samuel Ryder in 1927, to be competed for on a biennial basis by teams of professional golfers from the USA and Great Britain. The biennial Ryder Cup was effectively moribund (it was won by the USA on 17 of the 19 competitions following the Second World War) until it was decided in 1979 to extend it into a USA versus Europe competition and the European team finally won the cup at the Belfry in 1985. Since then, the Ryder Cup has become a very successful international sporting event.

11. At around the same time in the mid 1980’s, the PGA split into two parts. Until then, it had included professional golfers who made their living from playing golf competitively (indeed, in the early days of professional golf, the typical Pro would earn a significant part of his living from competitions). Their interests were looked after within a “tournament division” of the PGA. As the interests of those competition golfers diverged from those of the wider professional golf community, a split became inevitable. The tournament division of the PGA spun off into a separate entity called the PGA European Tour, devoted to the promotion of tournaments for playing professionals and based at Wentworth in Surrey. The original PGA was incorporated as the Appellant and carried on with its wider role as a professional body for golfing professionals, including a general objective of promoting the game of golf.

12. In 1991, the ownership of the Ryder Cup (which effectively means the rights associated with the competitions staged in Europe) was effectively shared 50%:50% with the PGA European Tour. The tournament itself (when staged in Europe) was operated through the medium of a separate limited company from 1994. For various reasons not relevant to this decision, in 2004 the European Ryder Cup operation was transferred again, this time to a limited liability partnership in which the Appellant’s holding was diluted. The PGA European Tour became the owner of a 60% majority share and the Appellant’s interest was diluted down to 20% (with another 20% held by a charity, the Ryder Cup European Development Trust, whose objects are the development of golf across Europe). Part of the Appellant’s reason for initiating this change, following the last minute postponement of the 2001 competition, was to reduce its risk in relying on a three day tournament once every four years for a large part of its income (the US tournaments are run by the PGA of America). It agreed a structure involving a more reliable stream of annual income (currently approximately £1.6 million) and a reduced overall share.

Constitutional matters

13. The Appellant is a company limited by guarantee. It has no share capital. Its objects are set out in its Memorandum of Association as follows:

5 “a to take over the whole or any part of the real and personal property belonging to, and to undertake all or any of the liabilities of, an unincorporated society, known as the Professional Golfers’ Association whose principal office is situate at Centenary House, The De Vere Belfry, Sutton Coldfield, West Midlands;

10 b to establish and or promote or concur in the establishment or promotion of any company or companies for the purpose of advancing the mutual and or trade interests of The Professional Golfers’ Association and to place or guarantee the placing of, underwrite, subscribe for or otherwise acquire all or any part of the shares, debentures or other securities of any such other company;

15 c to promote interest in the game of golf;

 d to protect and advance the mutual and trade interests of its Members;

 e to seek and agree sponsorship of and for the Association and its Members;

20 f to arrange and hold meetings and tournaments periodically for the Members;

 g to operate funds for the benefit of the Members; and

 h to assist the Members, including those in registration as potential Members, to obtain employment.”

25 14. It also has various powers in its Memorandum of Association, expressed to be “exercisable in furtherance of its said objects but not otherwise (except upon the direction of the Board of Directors of the Association)”, which include the power to “sell, let, mortgage, dispose of (whether or not for money or money’s worth) or turn to account all or any of the property or assets of the Association”.

30 15. Its Articles of Association are in a largely non-standard form, very heavily tailored to meet its particular constitutional requirements. Article 76 provides as follows:

35 “If the Association shall be wound-up and after satisfaction of all its debts and liabilities there shall remain any assets of the Association, the same shall not be paid or distributed amongst the Members but, subject to the following provisions of this Article, shall be given or transferred to such institution or institutions having objects wholly or partially similar to the objects of the Association as shall be determined by the Members at or before the time of dissolution or, if no such

determination is made by the Members at or before dissolution, then after dissolution by those persons who were members of the Board immediately prior to dissolution or, in default of any such determination being made within six months of dissolution, by such Judge of the High Court of Justice as may have or acquire jurisdiction in the matter and, if and so far as effect cannot be given to such provisions, then to some charitable objects.”

16. Apart from this provision, the Memorandum and Articles are silent on the matter of the distribution of assets of the Appellant. In particular, there is no prohibition on the distribution of assets by way of dividend or otherwise prior to a winding up. When we questioned this point at the hearing, it appeared to come as something of a surprise to the Appellant that it would therefore have the power to pay dividends to its members, and it was confirmed that it had never done so and had no intention of doing so in the future. The existence of this power might have been a significant factor in our decision, but Ms Nathan did not seek to rely on it at all. She said it had formed no part of HMRC’s decision to refuse approval. Effectively HMRC are content to treat the Appellant for the purposes of this appeal in the same way as if it had no power to distribute any profits to its members. This point having been effectively conceded, we consider it no further, and decide the appeal on the basis effectively agreed between the parties – i.e. effectively as if the Appellant had no such power.

17. In addition to its Memorandum and Articles of Association, the Appellant has detailed Regulations (running to some 75 pages), covering such matters as classes of membership and associated eligibility conditions, geographical organisation and structure, professional standards and continuing professional development, training and examination, ethics and tournament procedures and regulations. The Regulations are adopted by the Board pursuant to a specific provision of the Articles of Association.

18. There are extensive powers in the Regulations to discipline members, including the power to fine, suspend or expel them.

Activities of the Appellant

19. The Appellant employs approximately 125 people and its accounts for the year ended 31 December 2010 showed total turnover (for the company alone) of £11,874,403 and a total cost of sales of £11,599,832. In addition, it had some investment activities which generated further profits of £155,000. It also showed a profit share from an associated undertaking (Ryder Cup Europe LLP) of £275,000 for the year. In its consolidated profit and loss account, the turnover and cost of sales figures were both approximately £170,000 more (reflecting the consolidation of a small subsidiary company PGA Golf Management Limited) but the “share of results of associates” was shown in the much greater sum of £1,668,000, all of which was attributable to the Ryder Cup (made up of £1,393,000 of “operating profit” and £275,000 of “distributions”). The accounting treatment of the Ryder Cup income in the accounts was not explored in any detail before us, and whilst there are some

unanswered questions about that treatment, the view we have taken on the wider issues means it is not essential to our decision to have those questions answered.

20. Because 2010 was a year in which the Ryder Cup was held in the UK, the bulk of the income associated with the Ryder Cup was generated in that year and this four year cycle distorts the Appellant's annual accounts somewhat. In the calendar year 2011, for example, it showed a loss of £1,067,000 in respect of its share in the Ryder Cup, though the remainder of its figures were quite closely comparable to 2010. The detailed evidence put before us in relation to the Appellant's finances related to the 2010 year because that was the year that had formed the basis of the detailed discussions with HMRC. We are satisfied that our conclusions would not have been different if we had considered the later figures.

21. In order to understand the scale of the different activities carried out by the Appellant, we were invited to consider a table in which an attempt had been made by Mr Yapp to allocate the income and expenditure of the Appellant to the four headings mentioned below. Whilst the income figures could generally be allocated fairly clearly, there was a degree of subjectivity in the apportionment of large parts of the expense figures.

22. On the breakdown provided by Mr Yapp, the Appellant's 2010 turnover and expenses were analysed as follows:

Membership	Tournaments	Education	Ryder Cup & Commercial	Total
Income				
£2,129,368	£3,964,364	£3,188,346	£2,592,325	£11,874,403
18%	33%	27%	22%	100%
Expenditure				
£1,077,617	£6,444,783	£3,138,237	£939,196	£11,599,832
9%	56%	27%	8%	100%

23. The headings require some explanation.

(a) *Membership*

24. The "membership" income was almost entirely made up of members' subscriptions and some fines. We were shown a scale of membership fees which shows that current subscriptions are of the order of £375 per year. This appears to be consistent with an active membership of some 6,000 members.

25. The expenditure notionally allocated to this heading appeared to us to be somewhat impressionistic. Apart from the £20,000 costs of the Appellant's magazine (which is sent to all members, but which is largely financed by the publisher out of advertising revenue) and the £105,000 costs for "member visitations", the bulk of the cost allocated to this heading appeared to be a fairly "broad brush" apportionment of staff and general costs; it also included some items which, on closer examination, appear slightly out of place – for example the allocation of the entire year's "trademark amortisation" charge of £12,800 to this heading.

26. Apart from the magazine, Mr Yapp referred to the provision of the website (which includes an extensive section behind a password wall for members only which includes a great deal of valuable information and resources for the members) and the cost of indemnity insurance for members (which is so small it is not separately itemised on the breakdown provided, forming just one small part of the overall £188,000 insurance charge for the year).

27. We were shown some copies of the magazine "The PGA Professional", which is issued monthly, free to all members. It provides updates on golfing "shows" and new products (and fairly extensive advertising from suppliers), news about golf in general and the golfing professional world in particular, updates on the PGA's tournaments, regional events and other activities generally, articles on topics of use and interest to golf professionals – for example about coaching techniques or business development, and job adverts.

28. We were also shown extensive printouts from the website. This included numerous resources to assist members in their profession. Apart from more articles and advice about coaching and business management, it included extensive e-learning resources (part of the PGA's CPD programme), details of upcoming courses (some of them highly technical) and links to other assistance – e.g. legal advice, and even proforma employment contracts for trainee members.

29. We infer that dealing with disciplinary complaints also forms part of this heading of activity for the Appellant, though apart from disciplinary fines of some £41,000, there did not appear to be any items of income or expenditure clearly and directly referable to this activity.

(b) Tournaments

30. It is obviously important that a golf Pro should be good at golf. Particularly in his or her younger years, it is vital in establishing credibility as a coach. One of the basic entry requirements for PGA membership is to play with a handicap of no more than 4 (or 6 for ladies). The very best golfers who wish to make a living by playing golf will move on to join the PGA European Tour, but the vast bulk of golf Pros do not do so.

31. The Appellant organises regular tournaments for PGA Pros – either "Pro-only" tournaments (for PGA members only) or "Pro-am" tournaments (where a PGA member plays with three amateur players in a team, against other similar teams). It

organises between 500 and 600 such tournaments per year, of which about 80% are “Pro-am”. All these tournaments have entry fees and pay prize money (some provided by the Appellant and some by sponsors). In a “Pro-only” tournament, PGA professionals compete only amongst themselves. In a “Pro-am” tournament, they
5 compete for a team prize with their three amateur team members but also separately for an individual professional prize. Whilst the prize money might form a useful supplement to a player’s earnings, it would not really be possible to make a living by playing tournaments. Some of these tournaments (usually Pro-am ones) find it possible to attract a sponsor to assist with the costs and/or prize money (often some
10 local business).

32. The income figure of some £3.9 million mentioned in the table above is all clearly and directly referable to the tournaments. There are some £3.4 million of prize fund and other tournament expenses which are clearly also directly referable to tournaments. The remaining £3 million of allocated costs are less clear. Mr Yapp
15 explained that the Appellant provides a great deal of support for the tournaments, in the form of employees who actually attend and help in the organisation and running of the events. The salary costs and expenses of those individuals come to nearly £2.2 million. The remaining £800,000 or so is largely made up of a general apportionment of other overheads of the Appellant.

20 33. These tournaments serve two purposes, apart from affording the opportunity to win prize money. The Appellant sought to persuade us that the predominant purpose was to help the PGA members who play to improve their game. It is clear that there is also a business development aspect to tournaments. In Pro-only tournaments, it is clear that success would enhance the participant’s reputation at his club or other base,
25 thus hopefully leading to increased sales opportunities through that route. In the Pro-am tournaments, a Pro might also hope to develop his contacts with potential customers – for equipment sales, coaching or both.

34. Mr White accepted that different individuals had different motivations for taking part in tournaments. But he asserted that by playing in a competitive situation
30 against other good players (better than the average amateur to be found in most clubs) a Pro would hope to improve his game. This was true even if playing in a Pro-am tournament, because the pressure was there even though he was not playing directly against other Pros.

(c) Education

35. The Appellant requires new PGA members to undergo rigorous training. There are two main routes to membership, both involving degrees awarded by Birmingham University. The Appellant offers its own three-year distance learning course, culminating in a Foundation Degree in Professional Golf. Participants must
35 be in appropriate golf-related employment and in addition to the distance learning element, there is an annual one-week residential course at the Appellant’s National Training Academy at the Belfry. At any time, around 900 individuals are enrolled on this course. There is also the option of a three year full time residential degree in Applied Golf Management Studies at Birmingham University (involving roughly 25
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students per year). New members must also demonstrate their playing ability in a number of test rounds.

36. In addition, the Appellant delivers a great deal of continuing professional development courses through various means.

5 37. In very broad terms, approximately £2.1 million of the £3.1 million “education” income in the above table is represented by course fees for the Foundation Degree in Professional Golf and income/funding for the Advanced Golf Management Studies course. The rest is income from its UK Coaching Certificate (over £400,000), various grants and donations (over £300,000) and smaller items
10 which all clearly relate to its activities of education in golf.

38. Of its expenditure on “education”, approximately £1.15 million is clearly attributable directly to relevant matters (tutors fees, residential accommodation costs and so on). The remaining £2 million (approximately) is made up largely of staff and general overheads which are allocated to this activity (again, seemingly on a fairly
15 impressionistic basis).

(d) Ryder Cup and Commercial

39. The Appellant has three main streams of income under this heading, Ryder Cup, licence fees and sponsorship. Approximately £1.45 million of its £2.6 million of income under this head derives from the Ryder Cup (essentially its income from
20 Ryder Cup LLP under the arrangements summarised above), a little over £200,000 comes from sponsorship and the bulk of the remainder comes from licence fees paid for the use of the “PGA” brand and registered trademark. Much of this arises from licensing various golf courses or resorts, both in the UK and overseas, to associate themselves with the “PGA” name.

25 40. One slight anomaly, not touched on in the evidence but which became apparent on a subsequent detailed examination of the documents, was an amount of nearly £400,000, shown as “barter transactions” income under this heading, matched by the same aggregate amount of general costs re-allocated between the three other main activities summarised above. In the absence of any explanation, this represents
30 an unexplained transfer of income from those activities to this activity in the internal allocation carried out by the Appellant.

41. Only around £200,000 of the costs notionally allocated to this activity appear to have a close and unambiguous link to it. The remaining £700,000 or so is largely made up of an allocation of general and staff overhead costs to this activity – once
35 again, apparently on a fairly impressionistic basis.

The law

Statutory provisions

42. Sections 344 and 345 ITEPA are set out in full in the schedule to this decision. In this section, we summarise the matters of dispute between HMRC and the Appellant, and set out only the key parts of the legislation relevant to that dispute.

43. In order for PGA members potentially to obtain a deduction for their PGA subscriptions when calculating their taxable income from employment, the Appellant must be approved by HMRC (see section 344(1) ITEPA). Three conditions must be satisfied for such approval (see section 344(3) ITEPA), and HMRC accept that the first of those three conditions is satisfied. The two which they dispute are that the Appellant's "activities are carried on otherwise than for profit" (section 344(3)(b)) and that "its activities are wholly or mainly directed to objects within subsection (2)" (section 344(3)(c)).

44. The statute says nothing further about the "otherwise than for profit" condition. We were referred to some case law in relation to this (see below).

45. Section 344(2) sets out the list of what might be called "permitted objects":

"(2) The objects are –

(a) the advancement or dissemination of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions),

(b) the maintenance or improvement of standards of conduct and competence among the members of a profession,

(c) the provision of indemnity or protection to members of a profession against claims in respect of liabilities incurred by them in the exercise of their profession."

46. As stated above, the statutory condition requires the Appellant's activities to be "wholly or mainly directed" to these objects.

47. In brief, HMRC argue that the Appellant's activities are carried on for profit. They also contend that, whilst some of the Appellant's activities are admittedly directed to the objects referred to in subsection 344(2), upon a close examination of the true nature of its activities, the scale of the activities so directed is insufficient to satisfy the "wholly or mainly" requirement.

Case law

48. We were not referred to any case law dealing directly with section 344 or its predecessor provisions. The bulk of the case law to which we were referred related to the interpretation of the phrase "carried on otherwise than for profit".

49. The parties both agreed that the most important authority on this point was the Court of Appeal decision in *CEC v Bell Concord Education Trust Limited* [1989] STC 264 – though they invited us to draw rather different conclusions from that case.

50. In *Bell Concord*, the Court of Appeal was considering the meaning of the phrase “otherwise than for profit” in the context of VAT (in particular, the exemption from VAT available to educational charities). However, Sir Nicolas Browne-Wilkinson V-C (delivering the leading judgment) approached the interpretation of the phrase in a helpful two-stage process. First, he considered the meaning of the phrase “apart from any guidance to be gained from the Sixth [VAT] Directive”, and then he went on to consider the effect of that Directive on his initial view.

51. His general comments on the meaning of the phrase are therefore extremely helpful and persuasive in the present context.

52. In *Bell Concord*, a charitable company was making supplies of education, and was budgeting to make a surplus every year so that it could apply that surplus to maintaining and improving the quality of its facilities. Under its constitution, its income and property were to be applied solely for the promotion of its educational objects. Nevertheless, the Commissioners argued that in view of its systematic policy of making a surplus, it must be said to be supplying its services “for profit” because “profit” was simply defined as a gain or surplus over expenditure.

53. The Vice Chancellor pointed out the numerous practical problems that such an approach created, and contrasted them with the simplicity of the alternative approach, which was simply to “look at the constitution of the organisation to discover the purposes for which it is established”. His conclusion was:

“... in my judgment, Parliament is far more likely to have considered that the phrase “otherwise than for profit” meant bodies which were non-profit making bodies in the ordinary sense of the word rather than bodies which, from time to time, aimed to make a surplus on revenue account”

He went on to refer to another of the cases which counsel both directed us to in this appeal, namely *National Deposit Friendly Society v Skegness Urban District Council* [1959] AC 293. That case was concerned with a rates relief available for properties “occupied for the purposes of an organisation..... which is not established or conducted for profit”. The Society operated a convalescent home but it also made a substantial surplus on the funds that were invested with it by its members. It clearly made profits, but (per Lord Denning at 319):

“It has not distributed those profits like a commercial company. Nor has it returned them to members. It has used them to build up large and accumulating reserve funds.... Many charitable bodies, such as colleges and religious foundations, have large funds which they invest at interest in stocks and shares, or purchase land which they let at a profit. Yet they are not established or conducted for profit. The reason is because their objects are to advance education or religion, as the case may be.

5 The investing of funds is not one of their objects properly so called, but only a means of achieving those objects. So here it seems to me that if the making of profit is not one of the main objects of an organisation, but is only a subsidiary object – that is to say, it is only a means whereby its main objects can be furthered or achieved – then it is not established or conducted for profit.... The main object of the society is to provide security for people of small means against the risks which life holds for them – and not to make a profit therefrom. It is therefore not conducted for profit.”

10 **Submissions**

General approach to construction

15 54. As a preliminary matter, Ms Nathan invited us to take a “strict” approach to the interpretation on section 344, effectively by inference from the approach taken to the interpretation of the predecessor of section 336 in *Lomax v Newton* [1953] 34 TC 558.

20 55. We do not feel that the comments made in that case are of any great assistance to us. We do not consider that it can be taken as authority for a general principle that any provision giving relief against tax should have some special strict rule of interpretation applied to it, only that the particular words under consideration in that case were “stringent and exacting”. We are not here in the realm of VAT and the acknowledged general principle that exemptions from that tax are to be construed restrictively. Instead, we adopt the straightforward approach that the words chosen by Parliament should be given their plain meaning, uncoloured by anything which might be interpreted as a presumption against allowing the relevant relief.

25 *Are the Appellant’s activities carried on otherwise than for profit?*

(a) Preliminary points

56. The general approach of both parties was to refer us to the cases referred to above in which the meaning of the phrase “otherwise than for profit” or similar phrases had been considered for various tax purposes.

30 57. The parties agreed that we must consider the activities of the Appellant as a whole, rather than focusing on individual activities.

(b) HMRC’s submissions

35 58. Ms Nathan argued that we should look to the Appellant’s objects as set out in its Memorandum of Association. If its objects were “non-commercial”, then it would not be conducting them for profit even if it generated a surplus; if they were “commercial” or “trading”, then it would be conducting them for profit or, at the very least, there would be a strong inference to that effect.

59. She submitted that what she called the Appellant’s “first substantive object” (paragraph 3(b) of the Memorandum of Association) included “the furtherance of the

trading interests of the Appellant”; and what she called the “third substantive object” (paragraph 3(d)) included the “furtherance of the trading interests” of the Appellant’s members. This, she said, made it difficult for the Appellant to claim that it did not carry on its activities with the aim of realising a profit.

5 60. She referred also to the Appellant’s “well-known brand”; its protection, enhancement and exploitation appeared to be a significant part of the Appellant’s activities. She referred to Article 27(vii) of the Appellant’s Articles of Association, which included a power for the board to control the commercial exploitation of the Appellant’s name. This, she submitted, was another indicator that the Appellant’s
10 activities were carried on for profit. There were various other references in the Appellant’s annual accounts to its “trading” activity and development of its brand. She submitted that these references also pointed clearly to a profit motive in its activities.

15 61. She also invited us to consider the trading activity actually carried on by the Appellant.

62. Its involvement as a member of the Ryder Cup Europe LLP should, she submitted, be regarded as a tax-transparent and direct participation in the trading activity of organising the Ryder Cup for profit. She also pointed to the fact that under the LLP Agreement, the Appellant is entitled to an index-linked annual payment from
20 the LLP of well over £1 million in respect of “Fees/licences, Expenses and Event Support” – which she submitted must be regarded as the proceeds of a commercial exploitation of the Appellant’s assets (principally the PGA brand) and therefore an activity carried on for profit.

25 63. She also submitted that its tournament activity was a trading activity and, where sums were received from non-members, it potentially gave rise to trading profits (and therefore must be regarded as “carried on for profit”). She discounted the supposed purpose of the tournaments as tools to improve and maintain PGA members’ playing standards. Participation in them was not compulsory, and any such purpose could equally be achieved just by holding “members only” tournaments.

30 64. She also submitted that the other activities of the Appellant in seeking to exploit the PGA brand must be considered as trading activities, because seeking to maximise the income generated by an asset is a hallmark of such activity.

35 65. She distinguished this case from the *Skegness* case on the basis that the Appellant had, as part of its “principal aims”, the object of promoting the trade interests of itself and its members, rather than having a charitable object which was the underlying purpose. She also contrasted the Appellant’s other main objects (such as “promoting an interest in the game of golf”) and activities (such as organising tournaments) with charitable or other more generally beneficial objects – in her submission, the promotion of the game of golf and the staging of tournaments were
40 merely methods of promoting the trading interests of the Appellant and its members.

66. She submitted that the underlying purpose of the “otherwise than for profit” requirement was to distinguish between what she called “commercial” and “non-commercial” enterprises. She argued that the relief was intended for “bodies that are established in order to provide services to their members and which raise funds in order to meet the costs of providing those services”, possibly with an allowable surplus “against a rainy day”.

67. She also submitted that it was reasonable to imply into the requirement a general balancing exercise between the members of a relevant body and taxpayers at large, on the basis that relief should only be available where there is some clear benefit to taxpayers generally from the body’s activities. She contrasted the public benefit from the maintenance of golfing standards with the clearer benefits she said could be discerned from the activities of bodies such as the British Medical Association, the Law Society, the Bar Council, the Institute of Chartered Accountants in England and Wales and the Chartered Institute of Taxation.

68. She completed (and to some extent summed up) her submissions on the “otherwise than for profit” point by asserting that the Appellant’s interest in self-promotion and promotion of its members’ business interests were “commercial” purposes which disqualified it from relief. It was the intention of section 344(3)(b), she said, to exclude commercial enterprises such as the Appellant.

(c) *Appellant’s submissions*

69. Mr Vallat also relied on *Bell Concord* and *Skegness*, but invited us to interpret them differently from Ms Nathan. The principles he extracted from those cases could be summarised as follows:

(1) in applying the “otherwise than for profit” test, one should not consider individual activities of the organisation but should view its activities in the round;

(2) if an organisation is precluded from distributing any profits but must use them for its objects, it will pass the “otherwise than for profit” test, even if it aims to make a surplus on some of its activities; and

(3) the objects of an organisation must, for this purpose, be identified by reference to its constitution but the mere mentioning there of making a surplus does not automatically make that a main object of the organisation.

70. He submitted that the principal object of the Appellant was “clearly to support its members and advance their interests”, and that its commercial activities were carried on not as ends in themselves but in order to advance that principal object.

71. In short, he submitted, because the Appellant was constitutionally unable to distribute its profits but used the surplus generated by various activities to support its main objects, it was clearly carrying on its activities “otherwise than for profit”.

72. When the company law point mentioned at [16] above came up at the hearing, he modified his stance somewhat to submit that the same result should follow even though the Appellant might have constitutional power to distribute profits, given that it had never done so, had not been aware that it had any power to do so and had no intention of doing so in the future. Ms Nathan having indicated that the Respondents did not wish to make anything of the point (as mentioned at [16] above), we take this aspect no further, beyond observing that the Appellant might be well advised, now that the point has come to light, to make an appropriate change to its Articles of Association at the earliest opportunity.

10 *Are the Appellant's activities wholly or mainly directed to objects within section 344(2)(b)?*

(a) *Preliminary points*

73. The parties were agreed that “wholly or mainly” for this purpose means “more than 50%”. They did not go so far as to agree precisely how the 50% test should be applied.

(b) *Respondents' submissions*

74. Ms Nathan had shorter submissions on this point.

75. So far as the “advancement or dissemination of knowledge” object was concerned, she accepted that the formal courses offered by the Appellant fell within the provision.

76. She doubted that the Appellant's monthly magazine “The PGA Professional” also fell within it, mainly because the Appellant's Regulations stated that the object of the publication was “to keep Members and those in Registration as potential Members conversant with Association affairs.” Its other specifically stated purpose was to serve as a vehicle for publicising job vacancies.

77. So far as the “maintenance or improvement of standards of conduct and competence” objective was concerned, she dismissed any suggestion that the tournaments could be so regarded. Those tournaments were in her submission simply revenue raising activities, for the benefit of the Appellant and its members.

78. So far as the “provision of indemnity or protection” objective was concerned, she accepted that the Appellant provided insurance cover for its members but the significance of that activity was so small (measured by its total cost as a proportion of the Appellant's total expenditure) that it could effectively be disregarded.

79. In her submission, it followed that “when one considers the totality of the Appellant's activities, including its significant involvement in, and income from, commercial activities such as the Ryder Cup LLP, the fee income from non-members participating in tournaments, the commercial benefits to the Appellant of staging these tournaments, and the promotion of the interests of its members by staging these

tournaments, it cannot be said that the activities of the Appellant are wholly or mainly aimed at the permitted objects”.

5 80. As Ms Nathan was submitting that neither the “tournaments” activity nor the “Ryder Cup and commercial” activity could be regarded as falling within the permitted objects, it is perhaps understandable that she did not make any detailed submissions on how the measurement of activities against the 50%+ requirement should be carried out: whether one measured by reference to income or to expenditure, the Appellant’s activities would, in her submission fail the test. As can be seen from the table at [22] above, the aggregate percentage of total income and
10 expenditure attributable to the “tournaments” and “Ryder Cup and commercial” activities came to 55% and 64% respectively.

Appellant’s submissions

81. Mr Vallat pointed out that section 334(6) gave a clear indication that in measuring the extent to which activities were directed to the permitted objects, it was
15 the amount expended on those activities (rather than the amount of income they generated) that was relevant.

82. He went on to argue that the following activities of the Appellant clearly amounted to “the advancement or dissemination of knowledge”, either to golf Pros or to the wider public:

- 20 (1) the provision of education and training to prospective members of the PGA;
- (2) the continuing education programme for members;
- (3) the provision of guidance and information to members through the website and magazine
- 25 (4) the promotion of the game of golf to the public generally (as it would not be possible to promote the game without disseminating knowledge about it).

83. He submitted that the staging of tournaments was directed to the “maintenance or improvement of standards of competence” amongst golf Pros. The same could be said of its education programmes (both initial and continuing) and the educational part
30 of its website and magazine activities. Finally, its robust code of conduct and disciplinary processes were clearly directed at maintaining standards of conduct.

84. In passing, of course, he also referred to the Appellant’s provision of indemnity insurance for its members as satisfying section 344(2)(c).

85. Thus he submitted that all the Appellant’s activities under the headings
35 “membership”, “tournaments” and “education” in the table at [22] above were directly referable to permitted objects under section 344(2).

86. He went on to submit that the “Ryder Cup and commercial” activities should really be seen as fundraising activities to finance the other permitted objects, and therefore should themselves be “considered as directed to the permitted objects because they allow the PGA to carry on its other activities (which are directed to those permitted objects)”.
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87. Thus in his submission, all of the Appellant’s activities should be regarded as “directed to” the list of permitted objects; but if the Tribunal was minded not to accept his argument on the “Ryder Cup and commercial” activities, those activities only amounted to 8% of expenditure, so the end result should be the same.

10 Discussion and decision

Are the Appellant’s activities carried on “otherwise than for profit”?

88. If (as Ms Nathan effectively agreed we should) we accept the premise that the Appellant should be regarded as having no power to distribute any profit or surplus that it generates, the obvious question arises – what must it do with it? To our mind, there can only be one answer: It must apply it to the objects set out in clause 3 of its Memorandum of Association. Those objects are set out at [13] above. Looking at those objects in the round, it seems to us that their underlying purpose is, as Mr Vallat says, the advancement of the interests of the PGA members.
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89. We recognise that some of the objects are couched in terms of advancing the Appellant’s interests (e.g. paragraphs (b) and (e) – though (e) is directed at the interests of members as well as those of the Appellant) but most are either aimed specifically at benefits for the members (e.g. paragraphs (d), (f), (g) and (h)) or are matters of general benefit to the field in which members operate (paragraph (c)). To the extent that the objects refer to the advancement of the Appellant’s own interests, we see that as being only a step on the way to the wider promotion of its members’ interests.
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90. We see no difficulty with the fact that the Appellant is empowered to do (and does) things which could be regarded as “commercial” in nature for the purpose of generating income. The fact that it generates significant income from its assets (mainly by way of licences to use the PGA brand, but also by way of profit share from Ryder Cup Europe LLP) or from its provision of services to Ryder Cup Europe LLP (again, mainly by way of licence fees, though the LLP Agreement is very vague on the point) does not, to our mind, automatically mean that its activities as a whole should be regarded as being carried on “for profit”. We see no valid conceptual difference between the Appellant’s activities in turning its assets to account in this way and the investment activities of the Trustees in *Skegness*. By way of a parallel example, charities are permitted to trade but, following the reasoning in *Skegness*, the generation of profit from doing so does not mean that their activities as a whole are carried on for profit.
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91. It is clear to us that the income (to use a neutral word) generated from the Appellant’s wider commercial activities is ploughed back into what we consider to be
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its primary activities, namely those which are directly or indirectly for the benefit of its members. We do not think it matters that ultimately that benefit accrues in the form of more income (or profit) for its members generated from their own activities, as we consider that the “profit” which might offend section 344(3)(b) must be the profit of the body in question, and not of any other person.

92. We reject Ms Nathan’s submissions at [66] and [67] as seeking to place some unwarranted gloss on the words of the statute we are being asked to consider by reference to some supposed underlying public policy which is nowhere stated in the statute.

93. We effectively therefore agree with Mr Vallat’s submissions on this point and find that the Appellant’s activities are carried on otherwise than for profit for the purposes of section 344(3)(a).

Are the Appellant’s activities wholly or mainly directed to the permitted objects?

94. The parties are agreed that we should decide this point by reference to a “more than 50%” test, but to what should we apply this test? Ms Nathan effectively sidestepped this point, but Mr Vallat submitted that a fairly clear hint was to be found in subsections 343(5) & (6), in which it is stated that the relief may be scaled back where a body’s activities are directed otherwise than to the permitted objects to a “significant extent”; in subsection (6), it is stated that expenditure (rather than income) should be examined to arrive at a suitable apportionment.

95. This provision merely reinforces the view which we would have taken on the point in any event. When examining how a body’s activities are allocated between various objects, it seems to us that a key indicator is likely to be how much it spends on pursuing those respective objects, rather than how much it receives from them. In saying this, we are well aware that the statute refers to the body’s “activities” and not to its “expenditure”, and therefore a simple mathematical calculation will not necessarily provide a mechanical answer. As was made clear in authorities such as *IRC v George* [2003] EWCA Civ 1763, figures are “an imperfect guide”, and such judgments must ultimately be made “in the round”.

96. The main area of contention on this point was the correct treatment of the “tournaments” activities of the Appellant. In relation to those activities, we accept there would clearly be some element of “maintenance or improvement of standards of competence” that would naturally result from taking part in any competitive tournament. However, there were a number of indicators to the effect that this was not the real purpose of organising the tournaments.

97. It was accepted that “Pro only” tournaments would provide much sharper competition (and therefore enhancement of competence) than “Pro-am” tournaments, yet around 80% of tournaments are “Pro-am”. It was acknowledged that a significant benefit of doing well in tournaments was the spin-off marketing opportunities, both with the amateurs directly involved in the Pro-am tournaments and with the Pro’s “home market” at his own base of operations. There was no requirement to take part

in any tournaments as part of a Pro's continuing professional development. We infer that the main purpose of organising the tournaments is to assist members in developing their own earning potential, and any maintenance or enhancement of professional competence is only ancillary to this main object or purpose.

5 98. Mr Vallat's submission to the effect that "networking" is also a matter of professional competence which is enhanced by involvement in Pro-am tournaments, whilst ingenious, does not persuade us. The fact that opportunities are provided within the tournament framework for a Pro to exercise his networking skills does not
10 in our view mean that the tournaments can be regarded as having a significant purpose of enhancing competence in that respect. No such suggestion was made by any of the witnesses and we discount it.

99. On a simple arithmetical basis, 56% of the Appellant's expenditure is, according to its own analysis, directed to its "tournaments" activity. If we accept the thrust of Mr Vallat's argument that the "Ryder Cup and commercial" activity should
15 not be regarded as an object in its own right, but merely as a means of fundraising for the other activities, that might lead to the conclusion that the expenditure on that activity should be excluded from the calculation altogether when assessing the respective importance of its remaining activities. The result of doing so would be to increase the "tournaments" expenditure to over 60% of the total expenditure incurred
20 on "membership", "tournaments" and "education".

100. We are very conscious that all these figures are, as we have found, to a degree somewhat "impressionistic"; we also consider that our task is not to carry out an abstract arithmetical exercise, but to form a view "in the round" of the objects to which the Appellant's activities are wholly or mainly directed. The figures certainly
25 help to inform our view, but they cannot in our view decide it.

101. Given the view that we have reached on the object or purpose of the Appellant's "tournament" activities, however, it is our view that their nature and scale is such that it cannot fairly be said that the Appellant's activities as a whole are "wholly or mainly directed" to objects within section 344(2).

30 *Summary and conclusion*

102. We find that the Appellant's activities are carried on otherwise than for profit (see [93] above).

103. We find that the Appellant's activities are not wholly or mainly directed to objects within section 344(2) (see [101] above).

35 104. In order for the appeal to succeed, we would have to find in favour of the Appellant on both points. As we do not feel able to do so, the appeal must be dismissed.

105. Whilst this appeal has been allocated to the complex category, the Appellant has opted out of the costs shifting regime and accordingly there is no order for costs.

106. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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KEVIN POOLE
TRIBUNAL JUDGE
RELEASE DATE:

25/1/2013

SCHEDULE

Text of sections 344 & 345 ITEPA

344 Deduction for annual subscriptions

- 5 (1) A deduction from earnings from an employment is allowed for an amount paid in respect of an annual subscription if—
- (a) it is paid to a body of persons approved under this section, and
 - (b) the activities of the body which are directed to one or more of the objects within subsection (2) are of direct benefit to, or concern the profession practised in, the performance of the duties of the employment.
- 10 (2) The objects are—
- (a) the advancement or dissemination of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions),
 - 15 (b) the maintenance or improvement of standards of conduct and competence among the members of a profession,
 - (c) the provision of indemnity or protection to members of a profession against claims in respect of liabilities incurred by them in the exercise of their profession.
- 20 (3) An officer of Revenue and Customs may approve a body of persons under this section if, on an application by the body, the officer is satisfied that—
- (a) the body is not of a mainly local character,
 - (b) its activities are carried on otherwise than for profit, and
 - (c) its activities are wholly or mainly directed to objects within subsection (2).
- 25 (4) The Inland Revenue must give notice to the body of their decision on the application.
- (5) If the activities of the body are to a significant extent directed to objects other than objects within subsection (2), the Inland Revenue may—
- (a) determine the proportion of the activities directed to objects within subsection (2), and
 - 30 (b) determine that only such corresponding part of the subscription as is specified by the Inland Revenue is allowable under this section.

(6) In determining that part, the Inland Revenue must have regard to the proportion of expenditure of the body attributable to objects other than objects within subsection (2) and all other relevant circumstances.

5 (7) If a body applies for approval under this section and is approved, a subscription paid to it—

(a) before it has applied but in the same tax year as the application, or

(b) after it has applied but before it is approved,

is treated for the purposes of this section as having been paid to an approved body.

345 Decisions of an officer of Revenue and Customs under section 344

10 (1) An officer of Revenue and Customs may by notice to the body in question—

(a) withdraw an approval given under section 344, and

(b) withdraw or vary a determination made under that section,

to take account of any change in circumstances.

15 (2) A body aggrieved by a decision of an officer of Revenue and Customs under section 344 or subsection (1) may appeal.

(3) The notice of appeal must be given to an officer of Revenue and Customs within 30 days after the date on which notice of their decision was given to the body.