Community and Governance Meeting

Date: 7 March 2024

Agenda Item: 9CGii

Appendix: CG158

The Town Clerk

Market Drayton Town Council

18 Frogmore Road

Market Drayton

TF9 3AX

16th February 2024

Dear Sue,

**Market Drayton Sports Association Ltd – request to amend the Articles of Association to allow VAT registration. MDSA Ltd Board approval dated 7th February 2024**

MDSA Ltd has now held a series of calls with two different accountancy firms to explore the various issues relating to registering for VAT and applying for Charitable Status

The board recommendation based on the information provided is:

* Register for VAT
* Retain the existing legal status ie not register as a charity

As an interested party to the Articles support of this amendment is now formally requested from the Market Drayton Town Council.

Background

There are two main financial considerations:

* VAT
* Corporation Tax

VAT

MDSA Ltd currently receive c. £55k per annum of income – this is split Grant £30k, Clubs Levy £25k. The majority of costs include VAT – assume £50k for this exercise. Based on these numbers and excluding material capital expenditure there is a £4.5k annual benefit of registering for VAT

Corporation Tax

Given the nature of the organisation there can be years when a surplus is generated and in other years a deficit accrues. The MDSA Ltd does pay Corporation Tax on its profits/surpluses but a profit in one year can be ‘carried forward’ against a deficit in the next 12 month period. It is highly unlikely that the MDSA Ltd will generate successive years of surpluses.

The benefit of Charitable Status would be to negate any Corporation Tax

VAT Registration

Colin Woodward from Dains Accountants makes it clear that based on the current Articles of the Company MDSA Ltd is an eligible body and therefore exempt for VAT purposes. This remains the case even if Charitable Status was obtained.

Were the MDSA Ltd to amend its articles to the extent that it no longer qualified as an eligible body for the purposes of the VAT exemption, then any income from its provision of sporting services would by default become taxable. This would enable MDSA to register for VAT.

Dains have now provided suggested amendments to the Articles (Appendix1)

Charitable Status

The main benefits of seeking charitable status is the avoidance of Corporation Tax and the potential to generate financial support from wider sources.

The Corporation Tax position can be negated by ensuring a balanced budget over a two year trading cycle.

The option to obtain wider funding is untested and may or may not yield benefits.

Balanced against the above is a considerably increased regulatory burden and increased financial costs on the back of this. The status of the board would also change to that of trustees as well as directors.

Summary

There are annual benefits of c. £4.5k per annum to becoming VAT registered and whilst this will require the introduction of a commercial element to the Articles the current board structure provides wider protection to its members.

Charitable Status has been considered but provides no immediate financial benefit, indeed it would result in an additional administrative burden and cost.

**Appendix 1 (email from Colin Woodward dated 15/2/24)**

I have reviewed the MDSA constitution, the attached being, I believe, the latest version.

As matters stand, it is my opinion that MDSA would on balance be viewed as being an eligible body for the purposes of the VAT exemption, rendering its provision of the sports facilities exempt from VAT. On this basis, MDSA could neither register for VAT in respect of its provision of sports facilities, or therefore reclaim any of the VAT that it incurs on its expenditure.

To recap, an eligible body for the purposes of the VAT exemption for sporting services is an entity that meets **all** of the following requirements:

1. it is non-profit making;
2. its constitution includes a non-distribution clause or limits any distribution of profits or surpluses to:
   * another non-profit making club;
   * or its members on winding up or dissolution;
3. it actually uses all profits or surpluses from its playing activities to maintain or improve the related facilities or the purposes of a non-profit making body; and
4. it is not subject to commercial influence nor part of a wider commercial undertaking.

Because the VAT exemption is predicated on the principle that all of the above conditions must be met, we only need to not meet one of them for the exemption to no longer apply. If the VAT exemption does not apply, then the income that MDSA derives from its provision of sporting services would be taxable for VAT purposes, enabling MDSA to register for VAT. We therefore propose to amend MDSA’s constitution such that the above second requirement is no longer met.

Following my review of the constitution, I therefore suggest the following amendments:

Article 4.1 – remove the word ‘solely.’

Article 4.3 – remove this Article and replace it with:

4.3 A member or Director may receive:

(a) a benefit from the Association in the capacity of a beneficiary of the Association;

(b) Remuneration or emoluments for any goods or services supplied to the Association.

Article 4.4 – remove this entire Article.

Article 4.6 – remove this entire Article.

I do not consider that we need to amend Articles 50 – 51 as they state that members or directors ‘may’ rather than ‘must’ distribute the assets of the Association, on dissolution, to other qualifying bodies etc.

Whilst reviewing the constitution, I note that Article 3.2– should presumably read ‘The liabilities referred to in Article 3(k).’ There is also a misspelling of the word ‘The’ at the start of Article 21.1.

When you have considered the above, please contact me with any comments or questions.

Best regards