HMRC - CTM15540 - Unincorporated Associations

The term ‘unincorporated association’ is not defined in the Taxes Acts and since an unincorporated association is not a legal person there is no definition elsewhere in statute.

The term company in CTA10/S1000 includes an unincorporated association, such as a club. This is because CTA10/S1121 says that the word ‘company’ means any body corporate or unincorporated association but does not include a partnership, local authority or local authority association. ‘Share’ includes any interest of a member in a company (see CTM15130). It is possible for an unincorporated association to make a distribution ‘in respect of shares’ within CTA10/S1000 (1) B. Similarly, a transfer of assets by an unincorporated association to its members at less than market value could be within CTA10/S1000 (1) G.

However, it is unusual for an unincorporated association to make a distribution.

CTA10/S1030 excludes distributions in respect of share capital in a winding-up from the distributions legislation. However, the dissolution of an unincorporated association is not normally considered to constitute a winding-up, and distributions out of the assets of an unincorporated association are not normally viewed as ‘distributions in respect of share capital’.

An exception to this is the winding-up of an archaic form of unincorporated company established by deed of settlement. This kind of company pre-dates incorporated companies and was used to avoid the rule against incorporated companies, other than those formed by Royal Charter or private Act of Parliament, which stemmed from the Bubble Act of 1720. Such unincorporated companies possess share capital. See CTM00510.

ESCC15 may apply. This provides that if:

substantially the whole of an association’s activities are of a social or recreational nature,

and

it has not carried on an investment business or trade, other than a mutual trade,

and

the amount distributed to each member is not large (that is, not more than £2,000 per member),

the company is given the option of not applying CTA10/S1000.

If the company takes this option, all the amounts distributed will be treated as capital receipts of the members, and will be taken into account in computing any capital gains liability.

The mutual business provisions (CTA10/S1070) may apply - see CTM40975.

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