

February 2010

ASM Horwath newsletter for organisations with charitable status

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Northern Ireland

Charities Act NI implementation - latest news

We understand that the Charity Commission for Northern Ireland still intends for its Charities Register to come into operation in April of this year. As previously discussed, it is anticipated that the first stage in this process will be the migration of HMRC's registered charities information. The subsequent stages will involve the confirmation of this data and providing non-HMRC registered charities with an opportunity to be added to the register. There is recognition that there will be a requirement for further communication with the sector to educate all charitable organisations of their responsibilities in relation to registration and reporting.

The Fourth Commencement Order which will deal with the relevant accounting reporting requirements is scheduled for the Autumn term in the Assembly, assuming there is still an Assembly at that stage! It appears that the timeframe for the implementation of the new accounting and auditing requirements has been pushed back by one year from April 2011 to April 2012 which should give the sector sufficient time to comply with the new requirements - although formal confirmation is awaited from the Charity Commission on this point.

NICVA has updated its Charities Act Implementation Guide (www.nicva.org) and this is a 'must read' for any charity trustee trying to come to terms with the implications of the Northern Ireland Charities Act for their organisation.

Sector news

The Charity Commission announced in December that its next round of public benefit assessments would focus on fee-charging arts charities. The arts charities to be assessed by the Commission are:

- The Royal Opera House Covent Garden Ltd
- The Young Concert Artists Trust
- The Castle Players
- Gwent Ballet Theatre, known as the Independent Ballet Wales.

The Commission also announced that later in 2010 it will be carrying out assessments of charities for the advancement of health and those working in sports and recreation.

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Public benefit awareness

In the latter part of last year the Charity Commission published the results of research into the sector's awareness of the issue of public benefit. A survey of 1,483 trustees revealed that around 40% had at least fair knowledge of the public benefit requirements (with 6% stating they had a great deal of knowledge). Of the respondents who were aware of the requirements, the vast majority (98%) were confident that their charity could demonstrate public benefit.

The results indicated that knowledge of the requirements was much greater amongst larger charities, with awareness stated by 71% of trustee of charities with income greater than £500,000.

The full survey is available at:

<http://www.charitycommission.gov.uk/Library/publications/pdfs/rs22text.pdf>

Charities Statement of Recommended Practice (SORP) widely supported by sector

In December the Charity Commission and the Office of the Scottish Charity Regulator (OSCR) – as the 'joint charities SORP-making body' - held a half day conference to provide feedback on the findings of the Charities SORP research exercise undertaken in conjunction with Queen's University, Belfast. The findings of the research were presented in a report, launched at the conference, entitled *Charity Reporting and Accounting: Taking Stock and Future Reform*.

The report follows extensive consultation with funders, financial supporters, those who prepare charity accounts and charity advisers as well as charities themselves. Key findings from the research suggest that "SORP is a force for good" and is widely supported in the sector. Although there were calls for it to be made more accessible by aiming it primarily at smaller charities, with requirements for larger charities to be included as 'add-ons'. There was general consensus that, despite some misgivings,

the Statement of Financial Activities (SOFA) should remain as a key reporting mechanism although clarity could be improved if extra details were provided in the notes to the accounts rather than on the face of the SOFA. The report and its findings should provide a valuable resource in ensuring that any revised SORP reflects legitimate stakeholder views and is fit for purpose. The report can be downloaded at:

<http://www.charitycommission.gov.uk/news/prs21.asp>

The conference also provided delegates with an opportunity to hear from the Accounting Standards Board about its consultation (closing on 1 February 2010) on the future of UK accounting, and the impact on charity accounting and reporting.

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Charities and Elections

The Charity Commission has just released a revised version of its document 'Charities and Elections'. This guidance is for use by charities during the period between the announcement of an election, and the date on which an election is held. It applies to both national and local elections. This brief document should be read in conjunction with the Commission's more detailed guidance on the wider subject of [Speaking Out: Guidance on campaigning and political activities by charities \(CC9\)](#), as the principles within CC9 continue to apply during an election period.

The Charity Commission emphasises the importance of the independent nature of the charitable sector. The guiding principle of charity law in terms of elections is that charities should be, and be seen to be, independent from party politics. The guidance contains legal and good practice advice to charities to help to ensure that they are able to both retain the essential quality of independence, and use their voice effectively at election times.

<http://www.charitycommission.gov.uk/supportingcharities/elect.asp>

Haiti disaster 'scams'

It seems that sadly these days the appeals associated with large humanitarian disasters are seen by organised criminals as an opportunity to steal the funds meant to provide aid and assistance. The Charity Commission and OSCR have recently released alerts aimed at avoiding funds donated in response to the Haiti earthquake disaster from being diverted. The alerts are available for download at:

http://www.charitycommission.gov.uk/investigations/alerts_and_warnings.asp <http://www.oscr.org.uk/NewsItem.aspx?ID=c53e4889-0088-48e8-8c024d7c1e1f3836>

Social Investment Wholesale Bank

In December 2009 Alistair Darling announced in his Pre Budget Report a commitment to part fund the Social Investment Wholesale Bank reported in the September issue of Charities Alert.

Up to £75 million will be available (drawn from unclaimed funds in dormant bank accounts) for initial capital for the Bank, which will provide funds for 'retail' lenders operating in the sector such as Triodos and Charity Bank, and Community Development Financial Institutions.

Are you ready for 2012?

Research published this month by the Association of Chief Executives of Voluntary Organisations (ACEVO) suggests that many in the sector have not properly considered how the changes in pension legislation that will come into force in 2012 will affect them. According to the research, 73% of charities had

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made no assessment of the impact of the changes, which will bring a number of administrative burdens to employers, as well as requiring compulsory employer pension contributions in many cases and so increasing employment costs. Perhaps unsurprisingly, larger charities were more likely to have made an assessment.

Recovery – on its way but not imminent

Despite news in the last few days that the UK seemed to have struggled – marginally – out of recession, the results of three recently released surveys suggest that difficult times are likely to continue in the sector for some time.

The first of these, the National Council for Voluntary Organisation's (NCVO's) quarterly Charity Forecast Survey, showed that the sector expects that its recovery is likely to lag behind that of the economy in general and the commercial sector. The vast majority of respondents (77%) expected that the economic conditions in the sector would worsen over the next year.

This assessment was shortly followed by a report from Investec Private Bank which suggested that charity giving in the UK had fallen by 10% (£574 million) in 2009 compared to 2008. This trend seems set to continue according to a survey by nfpSynergy, whose 'Charity Awareness Monitor' showed an increase in the number of individuals with a propensity to cut back charitable giving from 34% in November 2008 to 42% in September 2009.

The combination of this fall in donations with reduced interest and dividend returns and likely funding cuts suggests that times are likely to get harder for charities before they improve. It will also be interesting to see what impact the Haiti appeals will have on overall charitable giving.

'What do you believe in?'

The new year heralded the launch of 'What do you believe in?', a campaign by the NCVO to encourage the public to get involved in the sector. The campaign, backed by the Prime Minister, aims to get people thinking about the issues and causes that they care about and then asks the question: "what are you going to do about it?".

The campaign's website is a gateway to other sites that provide information about charities and the work they are doing. With the hope that this sparks the individual into action, the site then provides details of how donations can be made and where to find volunteering opportunities.

To increase your opportunity of benefiting from the campaign, you may want to ensure that you are registered with the sites to which donations and volunteering are directed.

<http://www.ncvo-vol.org.uk/believe>

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'Question Time'

The Charity Finance Directors' Group (CFDG) is to hold a 'Question Time' style pre-election debate on 24 February featuring representatives from the three main parties. These will be:

- Angela Smith MP - Minister for the Third Sector
- Nick Hurd MP - Shadow Minister for Charities, Social Enterprise and Volunteering
- Jenny Willott MP - Shadow Chancellor of the Duchy of Lancaster.

The debate will allow an opportunity for those in the sector to put their concerns to the main parties and the CFDG is encouraging submission of questions (through the link below). Tickets for the event are limited to members of the CFDG and can also be booked through the link below.

In the run up to the election the CFDG is also publishing, via its website, analysis of each of the three main parties' policies on the third sector.

http://www.cfdg.org.uk/cfdg/influencing_election_watch.asp?dm_i=5X9,33RS,NB NP8 ,9PU8,1

Guidance on lotteries and competitions

The Gambling Commission published two sets of guidance during the latter part of 2009 that may be of interest to charities. These both relate to competitions and lotteries.

The first document, *Running prize competitions and free draws*, aims to advise on where a prize competition becomes a lottery and therefore may require licensing. The second piece of guidance, *Running a Lottery*, explains the rules for lotteries, which in fact also includes raffles, tombolas and sweepstakes.

Although most small lotteries (prizes no more than £500) run by a local charity branch or similar are likely to be exempt for the requirement to obtain a license, it is still advisable to read the guidance to ensure that your charity is not inadvertently breaching the requirements.

http://www.gamblingcommission.gov.uk/publications_guidance_advic.aspx

Charity Awards

The application period for the 2010 Charity Awards opened recently. The closing date for entries is 12 March 2010.

Further information and application forms are available at:

<http://www.charityawards.co.uk/home/page.php?pg=14&yr=14>

Companies House filing deadlines – a reminder

As you may well be aware, for accounting periods commencing on or after 6 April 2008, the filing deadline for Companies House has reduced to 9 months (from 10 months). The results of this change (assuming that your financial period ends at the end of the month, and that you do not have a short accounting period) will begin to affect accounts for periods ending on or after 30 April 2009, which will need to be

filed by 31 January 2010. Failure to file accounts on time will in most cases result in a fine. The level of fine has also recently increased. Full details of the level of fines are available on the Companies House Website.

It is worth remembering that the filing deadline for the Charity Commission remains at 10 months, although the filing deadline for OSCR is 9 months.

Tax news**New anti-avoidance rules**

With immediate effect, the Government has announced new rules to block tax avoidance schemes that exploit the rules for tax relief on gifts of qualifying investments (certain shares, securities and land) to charities. The avoidance targeted depends on the donor receiving tax relief at his or her highest marginal rate of tax on the full market value of the qualifying investments at the date of the gift where:

- the donor acquired the investments at below market value as part of a scheme or arrangement
- the market value of the investment is artificially inflated at the date of the gift to charity.

. The new rules adjust the amount of relief to the donor to the economic cost of acquisition of the gift to the donor where:

- the qualifying investment gifted to the charity (or anything from which the investment derives) was acquired within 4 years of the date of disposal
- where the main purpose, or one of the main purposes, of acquiring the qualifying investment was to dispose of it to a charity and claim the tax relief.

Draft legislation has been prepared for inclusion in the forthcoming finance bill. Full details are available on the HMRC website below:

<http://www.hmrc.gov.uk/news/fb-2010.htm>

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Gift aid – 31 March 2010 deadline

At the moment, charities have around six years to reclaim income tax on gift aid donations. With effect from 1 April 2010 this time limit will be reduced to four years.

Charities will therefore need to make claims for a number of different years by 31 March 2010.

The rules are different for charities that are trusts and charities that are companies.

Charitable trusts

The current deadline is five years after 31 January following the end of the relevant tax year.

After 31 March 2010 this will change to four years after the end of the relevant tax year. The following table shows how this will work for the tax years from 2003/04 to 2005/06:

Therefore, claims for 2003/04 are already out of time, and claims for 2004/05 and 2005/06 must be made within a few days of each other.

Charitable companies

The current deadline is six years after the company's year end.

After 31 March 2010, the deadline will be four years after the company's year end. The following table shows how this will work for a charity with a December year end, over the four years from 31 December 2003 to 2006:

The deadline for making claims for 2003 has already passed, and claims for the two years to 31 December 2004 and 2005 must both be made by 31 March 2010.

Gift Aid transitional relief

The time limit for claiming transitional relief does not change and remains two years. Therefore, charities must submit their claims within two years of their tax year end in order to obtain the supplement. Claims made after that (but within the gift aid deadlines above) will get the basic rate relief, but not the transitional supplement. The transitional relief provisions are due to end after April 2011.
VAT news

For a tax still in its infancy (less than 40 years old), the amount of changes

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that take place from year to year never ceases to amaze us.

2009 has been no exception and summarised below are some of the important changes that have taken place or will be taking place in the next few months that have or will affect charities. Many of these have already been highlighted in previous Charities Alerts.

The points of interest are listed in no particular order of importance, however we are sure you will be affected by at least one of them.

Change of VAT rate

With effect from 1 January 2010 the standard rate of VAT returned to 17.5%. Where supplies were received in 2009 but invoiced in 2010 you will be entitled to have any such elements charged at 15% VAT.

Online returns

For all VAT returns commencing 1 April 2010 onwards, VAT registered entities will be required to complete their VAT returns online unless their total turnover is less than £100,000 p.a.

We would recommend that entities register online sooner rather than later to avoid the inevitable meltdown of the HMRC website in late March 2010 and the penalties that HMRC will issue for non-registration.

EC sales list for services

With effect from 1 January 2010 all entities have had a responsibility to complete a quarterly EC sales list where they make supplies of services to other businesses in other EC countries. This will mean collecting your customers' EC VAT numbers as well as the administrative burden of another form that will be required to be completed by the 14th of the month following the quarter end.

Reverse charges

The new place of supply rules were introduced with effect from 1 January 2010 and the changes introduced mean that the onus of accounting for VAT moves to the customer when dealing with overseas countries. These changes will be phased in over the next five years to be completed by 2015.

By 2015, for most services received from abroad, with the exception of land related ones, it will be the responsibility of the customer to account for the VAT.

In practical terms this means that if you receive charges from abroad that would

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have been 'VATable' had the supply been made by a UK entity, then you must account for UK VAT (having first converted the charge into sterling). This interpretation by HMRC will have a major impact in the charity sector.

The VAT generated by these reverse charges will be added to both the input and output VAT on your return. This is a particular issue for charities who have partial VAT recovery.

Any entity that receives services from abroad should now check to see whether the reverse charge applies and should bear this additional cost to the charity in mind when comparing costs of UK and overseas suppliers. .

Investment management fees

After a long running battle with HMRC, retrospective claims can now be made in relation to recovering VAT on investment management fees.

A claim can now be made subject to the present capping arrangements. These claims are based on the same principle as that of The Children's Society VAT Case. The input tax incurred on investment management fees is deductible based upon the nature of the activities the charity undertakes with that income.

Therefore, if any funds generated from investments are used to fund taxable business activities, the input tax incurred on the fees is recoverable in full. If the funds are used to cover a number of costs, the fees can be treated as a residual item.

E-Journals

This is presently a topic high on the agenda of visiting VAT officers. If you provide a printed journal for a consideration, it is a zero-rated supply of a good. However, if you decide (normally to save costs) to provide this journal electronically, the supply changes to that of a standard-rated service. HMRC is spending time, particularly with not for profit membership organisations, determining whether there has been any change in the basis of communicating with members and supporters alike. As an additional revenue raiser HMRC is also looking at where there is a 'member only' access on any website. Again, if this is provided for a fee (or as part of a membership fee paid) the supply is standard-rated.

Compound interest

Any taxpayer who has been repaid tax owing to them, especially under a Condé Nast/Fleming claim, will be interested to know that a VAT Tribunal case on compound interest has been referred to the High Court for judgement. The High Court has just deferred any decision until the results of a corporation tax case on

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compound interest are settled.

Revoking the option to tax

Since it was introduced in August 1989, once the option to tax has been exercised on a property it cannot, subject to certain conditions, be revoked for 20 years and VAT is due on any rent received, or on the disposal of that property.

Any entity which opted to tax on commercial properties when it was introduced in 1989 will now have the opportunity to revoke that option. This will be of particular interest to anyone who was involved in a 'lease and leaseback' type arrangement whereby VAT is possibly being charged on rent where it is no longer necessary. The opportunity therefore now exists for these rents and the VAT status of the property itself to go back to being exempt as they were prior to the option being exercised.

In-house and overseas entertainment

Following two European cases, it has been ruled that taxpayers are entitled to recover VAT, subject to any restrictions on:

- entertaining overseas clients visiting the UK
- any VAT incurred on providing 'in house' catering at business meetings.

Subject, as above, to the capping time limits, claims can be made for under recovered input tax.

Conclusion

With all the Condé Nast/Fleming VAT claims coming in to HMRC in 2009, HMRC has been concentrating on cutting down the claims that were rumoured to exceed £10 billion. It is expected that HMRC will not have cleared this backlog until the middle of 2011. However, it is very likely that once this is complete, there will be a resurgence of visits from VAT officers with the intention to start clawing back some of the financial deficit at the Treasury. This will be coupled with the new VAT penalties, which were introduced on 1 April 2009, where the most innocent of errors could result in a 30% penalty being levied unless the taxpayer can show that a reasonable element of care was taken when completing the VAT return.



Charities Alert

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