

ASM Horwath

Charities Alert

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Newsletter for organisations with charitable status

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NICVA briefing paper on cross-border charities

The Northern Ireland umbrella body NICVA has published a briefing paper on the implementation of the Charities Act (NI) 2008, which also provides details of the main provisions of the new legislation. The Act mirrors the 2005 and 2006 Acts which are now in force in Scotland, and England and Wales respectively, setting out the definitions of charity and charitable purpose, audit and accounting requirements, fundraising regulations and establishing a Charity Commission and Charity Tribunal for Northern Ireland.

The full briefing paper is available from NICVA's website:

<http://www.nicva.org/index.cfm/section/news/key/180109-charity-law-paper>

Government small business help extends to the Third Sector

The Cabinet Office action plan for implementation of the Business Secretary's package of support measures for small businesses, as it applies to third sector organisations, is due to be published later this month. The support measures apply to companies with turnover up to £500 million, although it is not yet clear whether this will apply to unincorporated organisations, or what the term 'third sector businesses' will actually mean.

See the Cabinet Office website for further details:

http://www.cabinetoffice.gov.uk/third_sector/news/news_stories/090114_berr.aspx

Wikipedia governance resource for small charities

A Wikipedia page on small charity governance has been started. At present it gives an overview of the general requirements and definitions of governance roles and is likely to evolve over time as users make additions in different areas. As Wikipedia is a user edited online encyclopaedia it will not be a definitive resource relevant for all charity trustees, but it provides, at present, an accessible starting point for those new to governance roles.

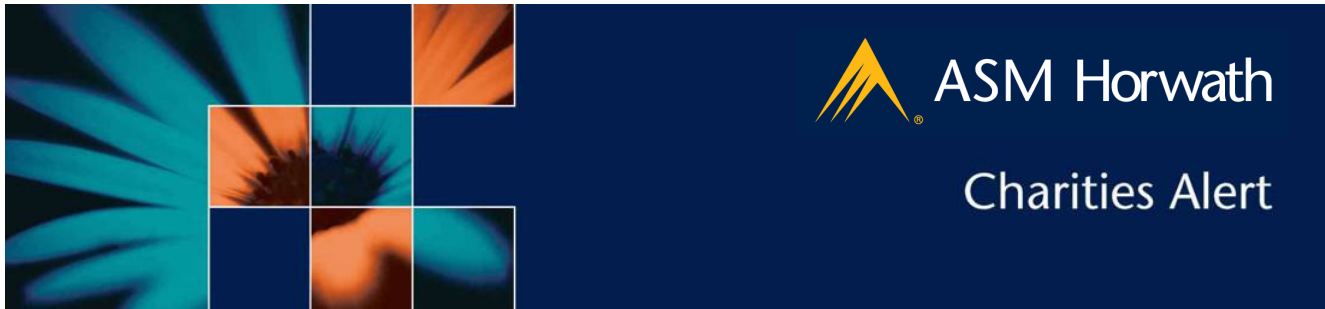
http://en.wikipedia.org/wiki/Small_Charity_Governance

OSCR evaluation report on the monitoring of cross-border charities

This month the Office of the Scottish Charity Regulator (OSCR) has reported on its evaluation of its 12-week consultation in the last quarter of 2008 on its proposals for minimising the regulatory burden of its procedures for monitoring cross-border charities registered with the Charity Commission. There were 133 responses, mostly 'broadly supportive' but with some concerns. OSCR says it has taken these into account for a pilot study it then ran with some 20 cross-border charities to assess how practical the 'Information Returns' are which it proposes to use starting in Spring 2009.

These mainly seek information on the cross-border charity's main objectives and activities in Scotland, where not already given in the trustees' annual report filed with OSCR, plus estimates of the charity's income and expenditure in Scotland and particulars of any 'particular risks' associated with the charity's Scottish activities. It remains to be seen whether this will be perceived as reducing regulatory burdens or just transferring them to the statutory Annual Report & Accounts preparation.

For further information, please see the OSCR website: <http://www.oscr.org.uk/>



Charities Act 2006 implementation – the Fifth Commencement Order

The Fifth Commencement Order implementing further provisions of the Charities Act 2006 came into force on 31 January 2009. The main provisions in the new Order are the requirement for excepted charities with gross income in excess of £100,000 to register with the Charity Commission and removal of exempt status from certain educational institutions, although the benefits of exempt status will not be removed until 1 October 2009.

More information on the implementation of the 2006 Act can be found at the Cabinet

Office website:

http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/implementation/commencement_orders.aspx

Company regulation update

With effect from 1 February 2009, following the introduction of the shorter filing deadline for private companies (including charitable companies) in the Companies Act 2006, the Companies House late filing penalty regime has changed.

The sliding scale of fines now increases more quickly and imposes a higher level of penalty than before, up to a maximum charge of £1,500 for accounts delivered more than six months after the deadline. The new regime also takes account of previous non-compliance by doubling the penalty for repeat offenders.

The nine month filing deadline, under the 2006 Act, takes effect for accounting periods beginning on or after 6 April 2008, i.e. years ending on or after 5 April 2009, although short periods of account will be subject to the new deadline sooner.

For information on the penalty regime, please see the Companies House website:

http://www.companieshouse.gov.uk/companiesAct/ca_lateFilingPenalties.shtml

Final deadline for Condé Nast claims

The final deadline for claims for under-recovery of input VAT and over-declaration of output VAT following the Condé Nast ruling is 31 March 2009. As noted in previous Alerts, the effect of the ruling is to enable organisations to reclaim overpaid tax from HM Revenue & Customs (HMRC), potentially dating back to 1973. If you think that you may be able to make a claim but have not yet done so, please contact the Horwath Clark Whitehill VAT team find out more.

Cross-border charitable donations in the EU

The European Court of Justice (ECJ) has recently decided that a German taxpayer could get tax relief on a donation in kind to a Portuguese charity. The decision in the case of Hein Persche v Finanzamt Lüdenscheid states that EU governments can not restrict tax relief on donations to charities established only in their own countries. Currently the UK government only allows tax relief on donations to charities based in the UK. The decision means that if a charity based in another EU country (e.g. France) would qualify as a charity in the UK, then a UK taxpayer would have to be given tax relief on a donation to that French charity.



The UK government now has to consider how to incorporate this decision into UK law. It could, of course, deny any tax relief for donations to charities, whether UK resident or not. This would be equally compatible with the ruling. It seems very unlikely, however, that the government would do this.

The UK government's argument against the ruling was that it would be impossible for it to verify that foreign charities were complying with UK charity legislation. However, the ECJ said that it would not be necessary for the government to do this. It would be possible for the donor to provide documents supporting the claim that the foreign charity was compliant. This would enable the national tax authorities to verify the foreign charity's activities. They would be able to monitor the charity's effective management, for instance, by requiring the submission of annual accounts by the foreign charity, and an activity report. The tax authorities would be able to deny a claim if they were not provided with the documents or could not check the information provided by the donor.

What does this mean for UK charities and taxpayers? Taxpayers should not rush to make donations to EU charities until the UK government has issued clear guidelines on what procedures will be required in order to obtain tax relief. In fact, if UK taxpayers wish to obtain tax relief on payments to foreign charities they are able to do this at the moment, either by making a donation to a UK charity whose objects are compatible with the foreign charity, and which can then pass on the donation, or by using an intermediary charity such as CAF. It is then up to the UK charity to ensure that the money is properly spent by the foreign charity.

The ruling only applies to EU charities. A number of American taxpayers wish to make payments to UK charities, and this will still have to be done via the medium of US 501 (c) (3) organisations, as is the current practice. Similarly if a UK taxpayer wished to make a donation to an American charity, it would have to do this through the medium of a UK charity.

In the longer term, assuming that the UK and other EU governments do extend tax relief to cross-border donations, this means that UK and EU charities will be competing for funds on a more equal footing. Some UK charities may benefit from foreign funds, whereas others may lose out on donations which will now go abroad. It will be interesting to see whether the ruling increases the total flow of funds to EU charities in the future.

Further information

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