



5 June 2009

Newsletter for organisations with charitable status

In this issue:

New NI Charity Commissioners announced

Regulatory threshold amendments – England & Wales

Call for Gift Aid reform

Gift Aid deadlines amended

Affordable home ownership – charitable status and tax

Charities and elections

Government funders rated

VAT errors – HMRC's new approach

Forthcoming events

New NI Charity Commissioners announced

The identities of the new Northern Ireland Charity Commissioners were finally announced on 1 June 2009. They are Tom McGrath (Chief Commissioner), Patricia Sloan (Deputy Chief Commissioner), Paul Cavanagh, Angela Chada, Philip McDonagh and Walter Rader. Speaking on his appointment the Chief Commissioner said that while “we must seek to fulfill our role as a regulatory body but we must not hinder the work of charities”.

Meeting this a goal will undoubtedly provide a challenge to the Commission as it seeks to significantly change the regulatory landscape for the charitable sector in Northern Ireland.

Full career details of each of the appointees and the Charity Commission for Northern Ireland's work programme are available at: www.dsdni.gov.uk/ccni

Regulatory threshold amendments – England and Wales

In advance of the Charity Commission for Northern Ireland's own consultation on the subject, Northern Ireland charities may be interested to note a widely welcomed change to the accounting and audit thresholds in England and Wales. In particular, following last year's public consultation on the government's proposed regulatory threshold increases, for financial years ending after March 2009, the following accounts-related thresholds have been increased by S.I. 2009/508:

- the accruals accounting threshold for non-company charities: increases from £100,000 to £250,000 gross income
- Charities Act audit for charities below the normal audit threshold of £500,000 gross income - gross assets threshold raised from £2.8m to £3.26m and gross income threshold raised from £100,000 to £250,000
- independent examination of all audit-exempt charities: threshold increased from £10,000 to £25,000 gross income
- Annual Report & Accounts filing with the Charity Commission by all registered charities: threshold increased from £10,000 to £25,000 gross income.

Call for Gift Aid reform

A coalition of ACEVO, the Charities Aid Foundation, NCVO, the Charity Tax Group, the Institute of Fundraisers and the CFDG has called for a reform to the current Gift Aid regime. The key change proposed is that an opt-out system be introduced, whereby Gift Aid will automatically apply unless the donor actively indicates that they do not wish it to. The aim of the change would be to increase uptake, whilst also reducing the administrative burden on charities.

An online survey has been launched (link below) to gather opinions on some of the detailed aspects of the proposal. The survey is open until 12 June.

<http://www.zoomerang.com/Survey/survey-intro.zgi?p=WEB22947ZZU5DA>

Gift Aid deadlines amended

As from 1 April 2010 the deadline to make Gift Aid reclaims will reduce to 4 years (from the current 5 years for trusts and 6 years for corporate charities and Community Amateur Sports Clubs (CASCs)). The 4 year window commences from the end of the tax year to which the claim relates for trusts, or from the end of the accounting period to which the claim relates for corporate charities and CASCs. An updated “Gift Aid Toolkit” has been issued by HMRC that takes account of these changes.

Full details of the new deadlines can be found at:
http://www.hmrc.gov.uk/charities/gift_aid/reclaim.htm

Details of how to obtain the updated toolkit are available at:
http://www.hmrc.gov.uk/charities/gift_aid/toolkit.htm



5 June 2009

Newsletter for organisations with charitable status

Affordable home ownership – charitable status and tax

Updated guidance jointly authored by the Charity Commission, HMRC and the Homes and Communities Agency was published in May to assist Registered Social Landlords (RSLs) and charities that provide shared ownership housing. The publication is in response to widespread concerns regarding the difficulties the economic downturn poses for such organisations and includes practical guidance on the options available when the economic environment enforces a change in strategy, along with the related legal and tax issues.

The guidance is available from:

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

Charities and elections

Following on from the Charity Commission’s publication in April on donations to political parties, guidance has been issued for charities regarding the period between the announcement of an election and the date on which it is held. The guidance covers issues relating to a charity’s campaigning and publicity during these periods, as well as some practical issues regarding political use of a charity’s premises during an election campaign.

The guidance is available from:

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

Government funders rated

Governmentfunding.org.uk has recently launched a new “funder ratings” database, designed to give an independent insight into numerous government funders. The knowledge and insight gained since the website was launched around 6 years ago has informed the database. It is hoped it will provide charities with more insight into the best way to approach funding and what to expect from the application and funding process.

VAT errors – HMRC’s new approach

As all charities are aware, there are now new limits for adjusting errors on VAT returns without the need for a separate voluntary disclosure which are:

- £10,000 , or
- 1% of turnover with an upper limit of £50,000, whichever is higher.

For this purpose, ‘turnover’ is the Box 6 figure on the relevant VAT return.

The new penalty regime introduced on 1 April by HMRC uses the concept of ‘reasonable care’ to determine whether an error is liable to a penalty.

HMRC takes the view that ‘reasonable care’:

- varies according to the person and his or her particular circumstances and ability
- depends upon having records and systems which, if followed, can reasonably be expected to produce an accurate tax figure
- would be influenced by whether the organisation took and acted upon advice from a competent adviser who was given the full facts
- would be influenced by whether the organisation took a reasonable view of the law even if that view is not upheld by HMRC or a Tribunal.



5 June 2009

Newsletter for organisations with charitable status

If a charity makes a mistake in declaring its VAT (or other tax) despite taking 'reasonable care' there will be no penalty (or rather the penalty will be mitigated to nil). However, HMRC is unequivocal in stating that the fact that a business has adjusted an error on a subsequent return does not mean it has taken reasonable care. Therefore an adjustment on a VAT return could still be subject to a penalty if HMRC applies this subjective test and finds that such care has not been taken.

For example, if a charity lease hires a number of motor cars, the charity should have identified from the invoices that 50% of the VAT was recoverable (subject to its normal VAT recovery rules) and that 50% was not recoverable. If it is discovered that, in fact, all the VAT was recovered and subsequently an adjustment for the sum over recovered is made on a later VAT return, could the charity argue that it had taken reasonable care in claiming back the correct VAT? There is some doubt as to whether it could, as the non recoverable element was clearly identified by the supplier. Under the new penalty regime, HMRC indicates a penalty would apply in respect of the disclosed sum.

Furthermore, it seems that HMRC will apply the 'reasonable care' test to voluntarily disclosed errors, even when made on a separate disclosure of an error form (VAT 652).

Before the change in regime a voluntary disclosure would usually mean that a penalty would not be applied.

Whether a disclosure is 'prompted' (i.e. discovered by HMRC) or 'unprompted' (declared by the charity without HMRC involvement) is merely a mitigating factor in determining the level of a penalty to be applied by HMRC.

In summary, is the correction of an error on a VAT return liable to a penalty under the new regime? The answer is yes it could be, if HMRC applies the subjective test and decides reasonable care was not taken in respect of the original error. The mere fact that the charity has adjusted the error on its VAT return does not mean it has taken reasonable care.

Can a penalty be avoided by making a separate voluntary disclosure? No, not any more. The reasonable care test will apply to the circumstances that caused the disclosed error to arise.

If the 'reasonable care' test is deemed not to have been met, is the fact that a charity has made an unprompted adjustment on a VAT return a mitigating factor in relation to any penalty? At this stage HMRC believes that this is not the case. The basis for this is that the adjustment is not disclosed on the VAT return and so HMRC is not aware that it has been made. We tend to think that HMRC is probably wrong on this one, but only time (and probably a number of VAT Tribunal cases) will tell.

Interest is only charged in cases of commercial restitution (i.e. the VAT involved cannot be claimed by someone else). As charities know, interest has always applied to voluntary disclosures made separately to VAT returns (when appropriate). This will remain the case. Whether HMRC will seek to apply interest to adjustments on VAT returns is unknown at this stage. However, we will have to wait and see...

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5 June 2009

Newsletter for organisations with charitable status

Forthcoming events

Date	Event
29 June 2009 London	<p>From Back room to Boardroom: maximising the role of internal audit in charities</p> <p>Time: 9.30am – 1.00pm (followed by a buffet lunch)</p> <p>Cost: Free</p> <p>Venue: Horwath Clark Whitehill LLP, St. Bride's House, 10 Salisbury Square, London EC4Y 8EH</p> <p>This is a practical half- day seminar exploring the changing role of charity internal audit as it seeks to achieve a strategically focused approach which adds maximum value to the charity.</p> <p>For more information or to book a place, please contact Rhiannon Cutler on 020 7842 7209 or at rhiannon.cutler@horwath.co.uk. Alternatively you can register online at www.horwathcw.com.</p>
6 July 2009 London	<p>VAT and Charities update seminar</p> <p>Time: 4.00pm – 5.30pm (followed by refreshments)</p> <p>Cost: Free</p> <p>Venue: Horwath Clark Whitehill LLP, St. Bride's House, 10 Salisbury Square, London EC4Y 8EH</p> <p>2009 has been a hectic year in terms of VAT, with some significant changes and more to come in the year ahead, which will have a major effect on all charities.</p> <p>With this in mind, you are invited to our free update seminar where we will cover a number of topics that have arisen over the past 6 months, many of which will impact during 2009 and 2010.</p> <p>The seminar will feature a number of very important changes including Conde Nast claims, VAT change in rate, overseas supplies, penalties and partial exemption.</p>

For further information

To register for these events, please contact Rhiannon Cutler on 020 7842 7209 or rhiannon.cutler@horwath.co.uk.
 Alternatively visit the events section of website www.horwathcw.com