



Charity Commission Update

The Charity Commission has upgraded its online services, enabling new charities to file supporting documents online during the registration process.

The Charity Commission has published new guidance notes which can be accessed on the Charity Commission website as follows:

- CC45 - Regulatory Compliance Casework: Guidance for Charities and Advisers
- CC46 - Statutory Enquiries into Charities: Guidance for Charities and their Advisers

Welcome to the autumn edition of our Charities Insight

A few months have passed since the general election and charities have been on tenterhooks to see the changes to be implemented by the new coalition government and how these will affect them. In this edition we look at the opportunities and threats to charities under the new coalition government and how the VAT rate increase will impact the sector.

The charity commission has stated that public benefit is an area that too many charities are getting wrong, our article "still a misunderstood arena" gives further guidance to charities on the topic. Other articles include the introduction by HMRC of a fit and proper management test for charities and an update from the charity commission.

We welcome the opportunity to discuss any of the points raised in this issue with you.

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HM Revenue & Customs fit and proper management test for charities

HM Revenue & Customs (HMRC) has introduced a new definition for charities and other organisations (including Community Amateur Sports Clubs [CASCs]) who are entitled to UK charity tax relief in the 2010 Finance Act. There is a requirement that organisations must satisfy certain "management conditions" in order to be recognised as a charity by HMRC. One condition is that the organisation must be deemed by HMRC to be managed by "fit and proper persons". Guidance can be obtained at: www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm.

In practice, the charity trustees will be expected to demonstrate that they have considered whether managers appointed are

fit and proper persons. It is recommended that trustees, directors and managers appointed after 5 April 2010 complete a Fit and Proper Declaration Form. Trustees may also consider whether such a form should be completed by existing trustees, directors and managers.

It is evident that HMRC is reviewing the charitable status of entities which are claiming UK charity tax reliefs. We have recently had an application for charity status by a CASC refused on the grounds that membership of the CASC was not available to all, as the club rules required a proposer and seconder. If you do require a charitable status review, then please contact charities@menzies.co.uk.



Public Benefit – Still a misunderstood arena?

From March 2009 charities need to confirm in their Trustees Report that they are in fact providing a public benefit. There is an expectation that the report will illustrate how in practice such a benefit has been achieved.

Much information is available both from the Charity Commission and our website www.menzies.co.uk where we have two helpsheets available. However when assisting our clients we are still encountering a considerable level of misunderstanding. It is not sufficient that the trustees have properly 'protected' the assets of the charity and continued to do what has been done in the past. The benefits do not need to be measurable (but it helps) but must be identifiable and capable of being explained. The benefit must also be for some or a section of the public.

On too many occasions the trustees want to report on the actions they have taken in the year or the results of fundraising activities, not on the actual public benefit delivered. There is no doubt the Charity Commission is delighted to see details of the public benefit delivered and identification of which parts of the public receive the benefit.

The preservation of a charity and its reserves does not, in itself, provide any benefit to anyone.

In June 2010, the Charity Commission published new guidance to charities on the level of reserves that it holds. Where the trustees have a reserve policy or where no policy has been decided upon, then this should be stated in the Trustees Annual Report.

The guidance looks at how a reserve policy should be developed. Although no definite amount is outlined, any level decided on should reflect the circumstances

of a particular charity and its needs, which should be specifically identified and costed. Levels of reserves should be maintained in accordance with the policy.

When a charity's reserves exceed the determined level, steps should be taken to reduce these reserves. This might include increasing the scope of activities, and amending the purpose to facilitate a wider distribution.

There is little doubt that the trustees of many charities should be looking to reconsider what they do and the public benefit they deliver, the level of reserves they hold and their justification and need.

If you would like further guidance on public benefit then please contact charities@menzies.co.uk and a member of our charities team will get back to you.



Menzies staff pull together to raise funds for charity

Menzies staff cannot be faulted for their zeal and enthusiasm to raise money for charity. Over the past few months members of staff at Menzies have taken part in a series of charity events.

The challenge of a 100km endurance bike ride through central London was taken on by a team of Menzies' cycling enthusiasts who raised £600 in aid of African Revival. A few days later the team also took part in a 4km speed race around Woking town centre.

A group of ladies from the payroll team in Woking raised funds for Woking hospice by taking part in the Midnight Walk which took them 10 miles around Weybridge, Addlestone New Haw and Byfleet. They raised £900.

Two members of staff from the Heathrow office walked the Playtex Moon Walk in London's Hyde Park and raised £600 for Breast Cancer Care.



Over £350 was raised for African Palliative Care Association by a member of staff from the London office who walked 60km on the South Downs.

A great achievement was made by a staff member from our Leatherhead office who raised over £1,000 for Breakthrough Breast Cancer and the Caron Keating Foundation by taking part in the 16 mile PinkPower Walk from Richmond Park to Hammersmith.

New coalition government – opportunities and threats to charities

The newly formed coalition government of Conservatives and Liberal Democrats provides an opportunity for the Charity and Not for Profit Sector to revisit the policies set out in the individual parties' manifestos. The huge financial burden which the coalition government urgently needs to address will inevitably have negative consequences for the third sector. Now is the time for trustees and chief executives to undertake a detailed review of the operation of Charities and Not for Profit entities.

In recent times, charities have suffered a reduction in donations, legacy and investment income and there is now a very real threat that state and local government assistance will also be reduced. Added to this, is the increasing cost of regulatory burden, the threat of inflation and increased competition for both time and resources.

However, all is not doom and gloom as David Cameron and Nick Clegg have recently unveiled the coalition government's plans for implementing a Big Society Programme, including setting up a Big Society Bank and introducing a National Citizen Service. Whilst the motives for such an agenda are well meaning, all too often government initiatives of this kind are found to be wanting, and ultimately fail to achieve their objectives. Furthermore, it is unclear from the initial plans quite how this will benefit the Charity Sector.

So what should chief executives and trustees be considering? Firstly, it will be necessary for each entity to identify the help needed. In what appears to be a more enlightened government, there is scope to lobby for change. Reviews of Gift Aid policy

and the way VAT is applied to charities are promised. There is an opportunity to shape future policy, and lobbying both MPs and local councillors can be an effective way of influencing possible reforms.

Undoubtedly successive governments and chancellors have failed to understand the impact that the complicated and time-consuming tax system has had on charities. Both the Conservatives and Liberal Democrats have promised a review and there appears to be recognition of the huge cost incurred in complying with the current rules. Hopefully, there will be a simplification in the process of claiming Gift Aid and the recovery of VAT incurred by charities. If you do require advice in relation to the impact of tax on Charities and Not for Profit entities, then we shall be pleased to hear from you.

Looking forward, whilst there is no doubt that difficult times lie ahead, hopefully the future will be brighter as the country emerges from recession and the benefits of changes in government policy affecting charities are felt.



VAT rate increase – impact on the charity sector

Without a doubt, the biggest talking point following the emergency budget in June, is the increase in the VAT rate. To the lay person this may not seem like a problem in the charity sector but those involved with charities know better. There have been various reports in the national press estimating that, as a result of the VAT rate rise, the increase in cost to UK charities will be in the region of £140million a year.

It is not uncommon for a VAT registered entity to be unable to recover all the VAT it incurs. In certain sectors organisations are hit by “partial exemption” which enables them to recover a percentage of the VAT they

have incurred. Charities, however, effectively take a double hit as they have to restrict VAT recovery at 2 stages.

Firstly, a charity must review its business and non-business income and in many cases restrict the recovery of VAT relating to its non-business income. Secondly, the business income must then be split between taxable and exempt activity and once again VAT is restricted under the partial exemption rules.

It is all very well to focus on the doom and gloom but the harsh reality is that the VAT rate will increase so we need to focus on what we can do to help charities manage this.

This may be the time to analyse your VAT position and perhaps re-visit any agreements you have in place with the tax authorities. For example:

- You are not VAT registered as your business activities are below the VAT threshold but perhaps a voluntary registration would now be beneficial; or

- You are VAT registered but perhaps no longer need to be;
- You have a business/non-business split agreed with HMRC which is potentially out of date;
- The operations within the charity have changed considerably since you agreed a partial exemption method;
- You are using a standard partial exemption method when perhaps a special method would be more appropriate.

Arguably there is no better time to review all or some of the above areas.

Many small charities may find the increase in their cost base hard to absorb. Therefore, it is important to review the VAT position over the next couple of months to ascertain whether there is scope to manage or mitigate this cost.

If you would like any help with regards to VAT issues please contact Katie McGavigan at kmcgavigan@menzies.co.uk.

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For general enquiries on Charity and Not-For-Profit matters please email Peter Earle at pearle@menzies.co.uk, or contact your local Menzies office

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