



## Keep up with the fast pace of change

### Welcome to the latest edition of our Charities Insight.

As ever, there is so much currently affecting the sector it is hard to know where to begin. In this edition we take a look at the latest developments and issues surrounding the Gift Aid regime and discuss the recent report by the Charity Commission following its first reviews on public benefit reporting, hopefully providing you with some meaningful advice following the outcomes.

We also take a look at the current issues that you may be interested in with regards to both VAT and payroll, in order to provide you with as complete a picture as possible.

We have included a brief summary of the regulatory changes for financial reporting.

As ever, we would be more than happy to discuss any of these articles with you in detail or any other issue that may be affecting your organisation.

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“We understand the complexities and pressures faced by charities. We provide our clients with straightforward advice and regular news updates that demystify new legislation and the latest proposals for the sector.”

## Payroll changes – are you ready?

The recession has already had a large effect on the sector and there are some important changes being made to the way that lower paid employees are to be paid from 1 October 2009. This may have a big impact on your payroll costs and budgets for the upcoming period.

### National Minimum Wage

With effect from 1 October 2009 there are changes to the National Minimum Wage (NMW) with rates increasing. The new rates are:

Employees aged 22 and over \_\_\_\_\_£5.80  
Employees aged 18 to 21 \_\_\_\_\_£4.85  
Employees aged 16 to 17 \_\_\_\_\_£3.57

- Employees who are owed arrears of the NMW for periods starting on or after April 2009 will be entitled to have their arrears paid at the new rates where these are higher than the rate or rates that applied when the arrears arose.
- Penalties for the employer on any arrears currently accrue at 50% of the total underpayment with a minimum penalty of £100 and a maximum of £5000.

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# Changes to VAT treatment of properties for charities and how they affect you

## Charities and property – changes to zero-rating

Many will be aware of the recent announcement made by HMRC of the withdrawal of the 'charitable building' concession from 1 July 2010. This withdrawal has come about as a result of litigation concerning HMRC's use of extra-statutory concessions.

The construction of a building intended to be used solely for a relevant charitable purpose (non-business use) can be zero-rated if the charity provides its developer with an appropriate certificate before the

first supply is made. Under the withdrawn Extra Statutory Concession (ESC) 3.29, HMRC had permitted zero-rating where a building was used 90% or more for a relevant charitable use.

HMRC now recognises that the term 'solely' can incorporate an appropriate de minimis margin and they will accept that the statutory condition is satisfied if the relevant use of the building by the charity is 95% or more. Unsurprisingly, the sector is up in arms over the change in policy which is seen as potentially increasing costs at a time when many are seeing incomes fall.

### Practical implications

There is a transitional period in place until 1 July 2010 and charities will have a choice of using either the ESC or the new interpretation of 'solely' to determine whether the zero-rate is available. In relation to the concession, a certificate can only continue as issued where, in the case of construction services, there has been a meaningful start to the construction of the building prior to 1 July 2010 and the works are expected to proceed to completion without interruption. HMRC has stated that the concession will not be available in a situation where demolition and site clearance has taken place but construction work is not

intended to start immediately afterwards. If a building is being purchased, a deposit must have been paid, such as on exchange of contracts, before 1 July 2010. HMRC will not accept that options to purchase come within this.

It will be important therefore for any charity, contemplating a building purchase or construction work in the next few years, to consider whether the process should be accelerated to come within the concession terms, if the impending change in policy will mean zero-rating is no longer available.

In the past, if a charity obtained zero-rating only as a result of utilising the concession, there was no requirement to account for VAT if the business use of the building changed within 10 years of the building's completion. This will no longer be the case.

### Is there any positive news?

In relation to the ESC, the 90% charitable use was calculated using one of three specific measures - time, floor space or headcount. Under the revised policy the charity will not be tied to these methods of calculating qualifying use of 95% or more and can use any method as long as it is fair and reasonable. Certificates can be issued without first having to go to HMRC for approval and as this measure now falls under statute rather than an ESC, there will be a right to appeal. Any charities which have previously failed to obtain zero-rating should revisit their claim and see if they would qualify under the new approach using an alternative method of calculation.

Previously the ESC only applied to buildings used for a relevant charitable purpose – this new approach should also now apply to buildings intended for a relevant residential purpose, which is welcome.

Property transactions are always an area where it is wise to seek specialist advice and this is a further example of the need to consider VAT in detail before embarking on any new projects.

**If you would like any help with regards to VAT and planning issues please contact Jackie Richmond at [jrichmond@menzies.co.uk](mailto:jrichmond@menzies.co.uk)**

## Heritage assets – the new standard

June saw the culmination of the Accounting Standards Board's project regarding the accounting treatment of heritage assets with the release of a new Accounting Standard FRS30.

This is an attempt to increase transparency for museums and galleries of the large collections that they exist to safeguard and preserve and is driven by the perception that large amounts of these assets are held off balance sheet with no attempt at disclosure or valuation. This is understandable when one considers, as an illustration, that the British Museum has about seven million artifacts, with some collections taking up to ten years simply to catalogue.

That aside, the standard has been received as a more acceptable compromise

to the draft standards released over the previous two years which had wanted to introduce the compulsion to value and account for all such assets on balance sheets.

The standard deals with the expected disclosures for all heritage assets whether or not they are accounted on balance sheet, including policies for accounting, adoption, acquisition, preservation and management of such assets. It requests that where valuations are available, all heritage assets should be recognised in accounts.

We will be posting a full review of the standard and our interpretation on our website at [www.menzies.co.uk](http://www.menzies.co.uk) shortly.



## Regulatory thresholds – a summary of the changes

**It has come to our attention over recent weeks that there still appears to be some confusion over the changes to the regulatory thresholds relating to financial statements that came into force for financial years ended on or after 1 April 2009. We thought therefore that it may be beneficial if we briefly summarised the new regime in this edition.**

- All charities must prepare accounts and make them available on request. All registered charities whose gross income exceeds £25,000 have a duty to file their accounts with the Charity Commission each year.
- These must be sent to the Charity Commission within 10 months of the end of the financial period.
- Receipts and Payments accounts can only be prepared by those non-company charities whose gross income is £250,000 or less during the year.
- Accruals accounts must be prepared by all non-company charities whose gross income exceeds £250,000 and all charitable companies.
- Charities with gross income over £25,000 in a year are required to have their accounts independently examined or audited. Below that, the requirement exists only if it is laid down in the charity's governing document.
- Independent examinations are required by those charities with a gross income between £25,000 and £500,000.
- Audits are required if the gross income is over £500,000 or if the total assets (excluding liabilities), is over £3.26 million and the gross income is over £250,000.
- Again an audit rather than an independent examination is required if specified in the charity's governing document or if the trustees request an audit.
- Charities with either charitable or non-charitable subsidiaries must prepare group accounts where the income of the group, after eliminating intra-group transactions and consolidation adjustments, exceeds £500,000.

The audit requirements above are for audits under the Charities Act 2006. Charitable companies are not required to have audits under the Companies Act 2006 until the Companies Act audit threshold has been reached. Where an audit is not required under the Companies Act the directors must provide a specific statement that says the company is exempt from the requirements for a Companies Act audit.

**All of these limits are subject to review in 2011. Further details of this and requirements regarding the filing of annual returns with the Commission can be found on its website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk). If you have any queries on the above, please contact your local Menzies office or Alan Jordan at [ajordan@menzies.co.uk](mailto:ajordan@menzies.co.uk)**

# Public benefit – the latest

**In the spring issue of Charities Insight we commented on the public benefit reporting requirements. Since then, the Charity Commission has reported its findings on its first round of assessments as to whether specific charities are fulfilling the requirements and operating for the benefit of the public. A summary of the general findings has been published on the Charity Commission web site, together with more detailed reports on the charities selected.**

In its first round of assessments the Commission looked at the charities set up for the advancement of religion and the advancement of education, because under the Charities Act 2006 such charities are no longer presumed to be automatically for public benefit. Included in the assessment was a sample of fee-charging schools and care home charities charging high levels of fees. These were of interest to the Commission due to the potential for the number of beneficiaries to be restricted by the fee structures.

The report does offer useful guidance on the issues about which the Charity Commission is particularly concerned, and therefore it is worth looking at these:

1. It is important that a charity keeps its aims under review. It is possible that as social and economic conditions change, a charity might find it more difficult to operate within a constitution that was drawn up many years before. In one of the cases reviewed (a care home) the charity had, because of demographics, drifted away from the aims set out in its constitution. Remember, it is possible to seek permission from the Charity

Commission to expand the aims to make sure that the charity is still helping those beneficiaries that it was originally intended to help.

2. If a charity has multiple aims then the Trustees' Annual Report (TAR) should explain how all of the aims and not just some are for the public benefit.
3. The TAR should explain how the charity's activities are actually benefitting the public with recent, relevant and real examples of what the charity has done to fulfil its aims including relevant statistics and outside reports. The trustees should avoid making unsupported general statements and larger charities should be moving towards some form of impact reporting in the TAR (see Spring Insight).
4. It is worth emphasising in the TAR the steps taken to protect vulnerable beneficiaries such as children and young people or the charity's workers (thus avoiding any "disbenefit").
5. The trustees must be aware of who their beneficiaries are and whether there are any unreasonable restrictions on who can benefit. The trustees need to re-visit their constitution to make sure that they have not strayed too far from the original class of beneficiaries. It is also important to make sure that the opportunity to benefit is advertised sufficiently well to make people aware of the services on offer.
6. Charities should avoid any "private benefit", particularly to trustees or persons with whom trustees are connected. Any transactions with trustees or connected persons need to be absolutely transparent and steps should be taken to identify and manage potential conflicts of interest.
7. The opportunity to benefit must not be unreasonably restricted by the ability to pay any fees charged. This has probably been the area that has provoked the most debate, both before and since the report was published.



Fee charging is really only an issue where the fees are sufficiently high to prevent a significantly high proportion of potential beneficiaries from benefitting because they cannot afford to pay. A small subscription to attend a playgroup or crèche, for example, that is easily affordable by all would not be an issue.

The Charity Commission has said that it has considered the question of fee charging for each individual type of charity. It has set out what it believes to be a benchmark of good practice within each type of charitable activity. This includes:

- fundraising campaigns to create funds for fee assistance
- dedicated funds for fee assistance
- budgets or targets for the amount of fee assistance that can be offered, or the numbers to which it can be offered
- a means tested fee assistance scheme
- an advertised strategy clearly indicating the opportunities to benefit from fee assistance schemes

A scheme offering means tested assistance is a better demonstration of offering the service to all than say, a scholarship scheme, which would not take into account ability to pay.

Each fee charging charity needs to consider what is reasonable in the context of its own situation. It is clear that the Charity Commission is looking for some form of fee remission, which should be offered with up to 100% remission where needed. The scheme should be advertised and the application process straightforward. The fee remission should also consider incidental expenses (such as school uniforms etc) as well as basic fees.



## 500 km cycle for African charity

In May, Jon Jagger, partner at Menzies' Woking office took part in a 500 kilometre cycle ride across Zambia to raise funds for African Revival, a charity that aims to empower people by giving them the tools to lift themselves out of poverty.

In total, 32 cyclists set off from Lusaka, the capital city of Zambia, to cycle to Livingstone, home of the Victoria Falls. The route was mainly off-road, which sometimes meant cycling through up to six inches of sand.

All the cyclists completed the journey, but not surprisingly there were a few spills resulting in cuts and bruises – and one fractured wrist.

The final amount raised by the group has yet to be finalised but over £115,000 has already been raised. The money will be used for education and livelihood projects in Zambia to fund school infrastructure, teacher training programs and school resources such as books, chairs, tables and pens.

To give an idea of what the group has achieved, the cyclists raised enough money to build five schools and pay teachers' salaries so that they can be self-sustaining in the future.



Fee assistance need not necessarily be entirely funded by the organisation concerned. Fees could be funded by external organisations.

In summary, the trustees should consider the wording of their Annual Report carefully. This is one of the most important ways in which to demonstrate that the charity is meeting its public benefit obligations. A detailed and well constructed report will address many of the Charity Commission's concerns and remove any doubt as to the charity's status.

For fee charging charities, the publicity given to its assisted schemes in appropriate places is now very important.

The Charity Commission aims to continue its public benefit assessment programme with further reviews later in the year. It will be looking at other types of fee charging charities and small charities where private benefit might be an issue. Watch this space!

**If you would like a consultation on reporting public benefit or to discuss anything in this article please contact Stephanie Wright at [swright@menzies.co.uk](mailto:swright@menzies.co.uk) or Richard Snelling at [rsnelling@menzies.co.uk](mailto:rsnelling@menzies.co.uk)**

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The Government is introducing new regulations, also coming into effect from 1 October 2009, which will prevent the use of mandatory tips, gratuities and service charges from counting towards the employer's obligation to pay the NMW. Prior to these new regulations employers were allowed to use any such payments which were paid through the payroll to count towards payment of the national minimum wage.

Further changes will apply from 1 October 2010, as the Government has accepted the Low Pay Commissions recommendation that the highest rate should be paid to those aged 21 and over from that date.

### Statutory redundancy

With effect from 1 October 2009 there is also an increase in the rate of statutory redundancy to £380 per week.

This rate normally increases on 1 February each year, but the economic downturn has led to the Government bringing the increase forward to October, although it has said that this will be the only increase until 1 February 2011.

**If you should have a query on the above and its effect on your organisation, or any other payroll matter, please contact Denise Love at [dlove@menzies.co.uk](mailto:dlove@menzies.co.uk)**



## Gift aid reform – the debate continues

**There are changes ahead for the Gift Aid regime in the next twelve months, so we thought it was worth discussing some of the issues that exist around Gift Aid and what should be done to simplify the system and increase the sums collected by charities.**

It was announced in research conducted by the Charities Aid Foundation earlier this year that one third of donors did not use tax-effective methods of giving, meaning that charities were missing out on relief from up to five million regular givers.

Clearly this is a massive opportunity being missed out on by charities and all should ensure that when any potential opportunity arises, all donors are contacted regarding the additional cash benefit that their gift could have for the organisation. Surely anyone who has the position explained to them is not going to forego the chance to enable sums to be reclaimed from the government?

Secondly, the amount of time that charities have to reclaim Gift Aid is being reduced from the current six years to only four from 1 April 2010. This gives only a short time span for your charity to ensure that it has not missed out on reclaims between 1 April 2004 and 31 March 2006. This could be a missed opportunity for you and we would suggest a full review is undertaken and systems amended where needed, in time for the change.

The Gift Aid system itself has been the subject of much debate and the government is currently reviewing the system with the aim of simplifying it next year. There had been hopes that last April's budget may have been used as a way of helping the sector and an 'opt-out' rather than 'opt-in' system had been put forward as a way of doing so. But the Budget was silent and with the end of the transitional relief period for Gift Aid fast approaching, the demand to know what is proposed is increasing.

Most of the discussion seems to revolve around the effect on rich donors' goodwill, if they have the right to additional relief

through Gift Aid as higher rate tax payers removed and the relief that would be claimed is passed directly to the charities. The Institute of Fundraising has urged the government to adopt this as the way forward and has proposed, amongst other things, that donors would be able to tick a box saying they were higher rate tax payers and had surrendered the right to reclaim any of the tax on their donation. This seems an eminently sensible approach to the problem and as research tells us, very few of the higher rate tax payers claim the relief in practice anyway we would agree that this seems an ideal way forward.

It would appear that we will not have to wait too much longer to find out what the government is proposing. Once all is clear, we will provide you with a full update on the position.

In the meantime, if there is anything regarding Gift Aid that you are currently uncertain about please do not hesitate to contact your local partner or Alan Jordan at [ajordan@menzies.co.uk](mailto:ajordan@menzies.co.uk)

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For general enquiries on Charity and Not-For-Profit matters please email Alan Jordan at [ajordan@menzies.co.uk](mailto:ajordan@menzies.co.uk), or contact your local Menzies office

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