

Charity update



Welcome to our Autumn 2010 charity newsletter.

Each time we come to prepare this we think that this will be the time we will struggle to fill the pages and each time we find ourselves with far too many issues and not enough space. Recently we have issued helpsheets to cover certain topics in more detail to help you keep abreast of changes, if there are any you haven't received please use the fax back form and we will send them out to you.

The third sector is all set to face turbulent times in the coming months and our specialist service is ready and waiting to assist you with your budgeting problems, contract issues, funding shortfalls etc. If you would like to chat to us about any of your current issues we are happy to listen.

Sarah Case

Sarah Case

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Money laundering

Anyone who does anything with property they know or suspect to be criminal property is guilty of money laundering. The penalties are severe – up to 14 years in prison! Pretty serious stuff – but what does this mean for Charity trustees?

Charity trustees have a legal duty to take reasonable steps to reduce the risks to their activities, beneficiaries, property and reputation. They can be personally criminally liable for committing an offence or allowing it to be committed under the anti money laundering legislation. No concession is made for the fact they may be a volunteer.

In addition to this legislation the Charity Commission operates a zero tolerance approach to money laundering, requiring charities to report all serious incidents to them. The only defence to the money laundering legislation is to have reported your suspicions to SOCA – Serious Organised Crime Agency.

Charities should develop Anti Money Laundering policies that identify circumstances that could be suspicious so that internal alarm bells can ring when appropriate. These don't have to be extreme or involve performing money laundering checks on every donor; they just need to be risk based sensible precautions.

An easy target for money laundering is charitable donations; an ideal policy would be to examine these four issues in every instance:

- The size of a donation
- Where the money is coming from
- The identity and location of the donor
- Were there any strings attached to the donation

It would also be advisable to appoint a Money Laundering Reporting Officer so that anyone with concerns has a point of contact to voice their concerns with. Whilst this does not remove responsibility from everyone else it does give employees a method of reporting and discussing issues.

If you need any further advice in relation to controlling your charities risk then email us at charities@broomfield.co.uk



Changes to exempt charities

Exempt charities, for which no suitable principal regulator can be identified, will lose their exempt status and become excepted charities. They will fall fully within Charity Commission supervision, but initially only those charities with an annual income of over £100,000 will have to register.

The first phase of changes has included:

- Universities and other higher educational institutions in Wales
- Student Unions of further and higher educational institutions
- The Church Commissioners and the Representative Body of the Church in Wales

Later phases will include:

- Charitable industrial and provident societies in England that are not RSLs
- All charitable industrial and provident societies in Wales

The Charity Commission plans to work with these charities and/or their representative bodies to prepare for their registration.

The Charity Commission will update this guidance as further details become available. If you would like to talk to one of our charities team about the implications of these changes, please contact us at charities@broomfield.co.uk

The fit and proper persons test (Finance Act 2010)

As a consequence of a recent judgement in the European Court of Justice, the Finance Act 2010 introduces a new definition of charities for tax purposes which includes a new requirement for all charities and Community Amateur Sports Clubs (CASCs) to be managed by fit and proper persons.

The new definition currently only applies to Gift Aid; however, it is due to be extended to other charity tax reliefs later in the year. Consequently, charities and CASCs will *only be eligible for gift aid provided they meet this management test*.

Why introduce the fit and proper persons test?

The fit and proper persons test has been introduced by HMRC to deal with potential fraud and to ensure that charities are not managed or controlled by individuals who present a risk to the charity's tax position.

Who does the test apply to?

The legislation and HMRC guidance has been widely drafted in defining the term 'manager'. It applies to all individuals who have control over the running of the charity or CASC or the application of its assets.

What does fit and proper mean?

The legislation and HMRC guidance does not provide clear objective criteria for meeting the fit and proper test. It does indicate however, that the test may be failed by individuals:

- with a history of tax fraud,
- with a history of fraudulent behaviour including misrepresentation and or identity theft,
- for whom HMRC have knowledge of involvement in attacks against or abuse of tax repayment systems,
- who have been disqualified from acting as a charity trustee or company director.

What action do charities and CASCs now need to take?

Charities and CASCs are not required to contact HMRC to check that their managers are fit and proper persons as HMRC will generally assume that all people appointed by charities and CASCs are fit and proper persons unless they hold information to assume otherwise.

All charities and CASCs should however, review their current hiring and induction processes to consider if they are prudently asking the right questions of applicants to ensure that they are fit and proper. HMRC provides a suggested procedure and model declaration for charities and CASCs appointing new 'managers'. This can be found at www.hmrc.gov.uk/charities/guidance/notes/chapter2/fp-persons-test.htm

For more information or advice, please contact us on charities@broomfield.co.uk



Formal or informal? Make sure it's the right choice for you.

In a time of increasing concern over our economic situation and public finances, many charities are considering some kind of business combination with another organisation that might enable them to fight leaner for the future.

Some will be able to identify a suitor that has so much in common with it (including goals, aspirations etc.) that a formal merger of the entities might be the most natural way forward. Formal mergers will usually involve the complete legal pooling of assets, liabilities, trades and even identities. It is a significant undertaking which is usually entered into for the long term.

Others might opt for a more casual partnership arrangement. This might allow many of the benefits of a formal partnership, but at a lower level of commitment and without some of the potential drawbacks that might be involved in a formal merger.

Whichever you choose for your charity, there are a number of key considerations before committing:

- 1. Make sure you perform your due diligence.** Find out all about your potential partner. There are a number of obvious factors to examine such as their financial standing, future prospects and internal controls but also try to think about other non-financial aspects. Cultural issues can be just as important – the way an organisation makes decisions, treats its staff and conducts its activities are all part of what gives it its identity. And it is this identity with which its trustees, senior management, staff, volunteers and even beneficiaries relate. Get this wrong, and you can easily find yourself losing the goodwill of those on whom you rely.
- 2. Keep looking towards the horizon.** Many partnerships work well because the parties involved are working towards the same or similar goals. Scale of activities and their geography for example, have a major impact on the appetite for resources of each entity – make sure there is either enough fit or enough flexibility in agreements to accommodate any material changes in the partnership.
- 3. Think about risk.** Remember that unless a

formal merger is undertaken, trustees will remain responsible for risk management of their own charity – but this now involves an understanding of the major risks affecting your partner organisation. Sharing common 'corporate governance' reporting arrangements can help in this respect.

4. Beware taxation. One of the biggest pitfalls for the unwary with partnership arrangements is the failure to identify the current VAT status of any costs which are recharged between entities which have, regardless of any partnership agreement, their own legal status. If partner A invoices partner B for their share of the costs of occupying 50,000 sq ft of office space, 50% of the admin department and so on, and if partner A is VAT registered, then those recharges are likely to amount to 'taxable supplies' upon which VAT may be due (there is a mandatory EU exemption from VAT for such supplies by charities which is currently not being applied in the UK – watch this space for more on this).

5. Know where the exit routes are. Not all partnerships last, and it is important to know at the outset, that should the parties need to go their own way, how they would go about doing just that. This isn't pessimism or negativity, it's just good planning, and it may even be essential to safeguard the interests of the charity, its objectives and its beneficiaries.

Our team have specific experience and expertise on these matters – please contact us on charities@broomfield.co.uk for any assistance or advice.

Latest from Charity Commission on Charitable Incorporated Organisations (CIO)

The aim is for the legislation to be taken forward as soon as possible in the new Parliamentary session. The CIO is, therefore, expected to be an option available for charities in early 2011

A final decision has not been made on whether the CIO provisions will be implemented as a whole, or whether implementation will be phased (for example, enabling new CIO formations first, with conversions becoming possible at a later date).

More information can be sought from charities@broomfield.co.uk or on the Charities Commission web site at www.charity-commission.gov.uk

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To disclose or not to disclose?

The MPs expenses scandal has sparked an initiative from the National Council for Voluntary Organisations and the Charity Finance Directors' Group to compile information and evidence on the disclosure of expenses by registered charities in England and Wales.

The report highlighted that there is still room for improvement in the disclosure of Trustees expenses within the charities expenses and that there is still some confusion over what the SORP requires.

SORP specifically requires the following to be disclosed:

- The total amounts of expenses paid to trustees
- The number of trustees claiming expenses
- A brief description of the nature of the expenses claimed, e.g. travel, accommodation and subsistence; and
- If no expenses are claimed, this must be stated in the notes to the accounts

Where there seems to be confusion is whether amounts paid for by the charity to third parties in relation to trustee's expenses should be included? However, the SORP is very clear on this issue - it must also be disclosed. The SORP makes no distinction between whether accommodation is booked and paid for directly or if a trustee is reimbursed by the charity - they both must be disclosed.

The report highlighted the importance of good internal control procedures on the payment of expenses to trustees, staff and volunteers. The Charity Commission recommends that a formal written policy should be in place for the payment of expenses and goes further in recommending that:

- a formal expense policy should exist applying to all trustees, volunteers and staff including the CEO and senior management;
- the policy should be clearly communicated within the charity and included within induction training;
- expense claims should be authorised by someone other than the claimant and checked for accuracy before payment;
- expense claims should contain a self-declaration that the claim is accurate and incurred in connection with the business of the charity;
- to minimise the charity's cash payments, reimbursement should be made by cheque or BACS transfer; and
- any mileage rate paid for motor and travel should be at HMRC rates which will not result in a tax or national insurance liability for the charity or the claimant.

Please contact our charities team on charities@broomfield.co.uk if you would like any further information or advice on management of your expenses