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editorial



In this edition of charity briefing we include articles on the recent public benefit assessments,

PAYE Settlement Agreements, an update on VAT and consideration of fraud in current times.

We are also proud to announce that our team has increased yet again with the appointment of Tom Brain as a senior charity manager. Tom joins us from accountancy firm HCW and increases our specialist charity audit manager team to 10 strong.

We are also pleased to announce that haysmacintyre has won the Accountancy Services award at the recent Charity Times Awards 2009, an honour that acknowledges the strength and depth of our dedicated charities team.

As ever if you have any queries arising from the articles or comments on this briefing please do contact us.

Richard Weaver

charities partner | 020 7969 5567

rweaver@haysmacintyre.com

public benefit

The Charities Act 2006 became law on 8 November 2006 and resulted in all charities having to demonstrate explicitly that their aims are for the public benefit, rather than that fact being presumed. An inevitable consequence of this shift has been that charities, in producing their annual report and accounts, now have to acknowledge the public benefit test, the guidance issued by the Commission on public benefit, and clearly state what the charity has done during the course of the year, or a longer period, that meets the public benefit test.

Much has been written and spoken about in these areas, but it was not until the Commission reported on the pilot assessments in July this year that we really got a feeling for how they would assess individual charities.

The pilot studies covered a range of charity sub sectors. A consolidated report was produced which attempted to bring together the findings of all the pilot assessments, but being all encompassing is rather generic. The Charity Commission has set out these reports in a very clear format; each of the key elements of the public benefit test are identified and the Commission's assessment presented with a conclusion under each heading. The benefit of these reports is that they do give you a much clearer insight into the Charity Commission's thinking of what does and what does not constitute public benefit.

My experience in advising clients is that actually, the requirement to report on public benefit has not been as time consuming as first thought. It has required slight tweaks to the trustees report wording, and in certain cases a reformatting of the report.

In terms of reporting there are really two options; either you embed the public benefit test requirements throughout the report or you make a bold statement on public benefit addressing each of the key elements, a little bit like the reports issued by the Commission in their pilot assessments.

The format that you choose will largely depend on the type of charity you are (service delivery, grant funder, benevolent association etc) and how you are funded. The majority of my clients have opted for the embedded approach. Initial feedback from trustees has been that it has improved the trustee's report rather than hinder it by providing a more strategic focus.

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Inevitably the Commission will not have the resources to carry out hundreds of these reviews each year, but they should be able to get a feel for whether individual charities are satisfactorily benchmarking themselves against the public benefit test from the content of the trustees' report. It is therefore important that the trustees' report tells the story, and in doing so, in the nicest possible way, does not give the Commission concern that may trigger a further review.

Richard Weaver

charities partner | 020 7969 5667

rweaver@haysmacintyre.com

how common is fraud?



By its nature, fraud is a difficult issue to track within the charity world, in fact the only time we really hear about it is when the media reports a high profile story. Despite the lack of information about its occurrence, fraud can

impact greatly on a charity, not only in terms of reputational damage and financial loss, but also in terms of impacting on the range and breadth of activities that the charity can undertake.

Of the 213,000 registered charities in England, Wales and Scotland, approximately 18% of charities reported a fraud during the last two years, and the weighting tended to veer towards larger charities. Though these figures suggest that fraud is less prevalent in the NFP sector than in the corporate sector, it may simply be that the charitable sector is less inclined to report fraud and is mindful of the reputational issues.

Examples of reported fraud in the sector mirror those within the private sector and include card fraud, identity theft, bank fraud, the financing of terrorism, money laundering, and employee fraud. In addition, fraud surrounding public collections and fundraising is also noted. Frauds tend to be split between

internal fraud committed by employees or volunteers and is focused on either deliberately changing accounting data or claiming excessive expenses or payments, and external fraud which can include phishing (the criminally fraudulent process of attempting to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity in an electronic communication), unauthorised street collections and website redirections for donations. A recent example is that of a volunteer who was given a suspended jail term after organising charity events for sick children but keeping more than £8,000 of proceeds. This prosecution followed a 13-month investigation by Kent Police's serious economic crime unit. Officers said that he ran charity race nights at clubs and pubs, claiming the money would go to a charity based in Redbridge, Essex.

what can charities do?

There are a range of steps that charities can take to prevent fraud. Overall, ensuring that all staff and trustees know what to look for and how to deal with it if they find it is the key aim. Fraud prevention can be included as part of an induction process for those new to the organisation, prevention and identification seminars can be held in-house where appropriate, and for those people who work with finance directly, there are a number of professional courses and updates that may be useful.

no such thing as a free lunch!



Employment tax compliance is an area which causes employers headaches on many fronts. Incorrect treatment of some very minor 'benefits' can result in a large liability accruing. Charities are no less at risk than any other

organisation - HM Revenue & Customs do not treat charities any differently or more leniently.

staff canteen

Let's take as an example providing free meals at work to your employees. There is an exemption from tax under Section 317 ITEPA for meals provided for an employee by an employer but this only applies where:

- the meals are provided in a canteen, or
- on the employer's business premises

and the following conditions must be met:

- the meals are on a reasonable scale
- all of the employer's employees, or all of them at a particular location, may obtain one or both of the following – a free or subsidised meal or a free or subsidised meal voucher or token.

The rules are not complex but it is important that the whole exemption is not put at risk by, for example, making some people pay for meals where others get them for free.

There are organisations that offer advice to prevent fraud including the Charity Commission, the Serious Fraud Office and CIFAS and there are widely available anti-fraud policies that can be altered to suit your requirements and adopted within your charity.

what happens when fraud occurs?

If you are unfortunate enough to be a victim of fraud, there are some steps that should be taken. Careful consideration needs to be given to whether there is a requirement to formally report it. This might include reporting to the Charity Commission or the police and is a legal requirement if you suspect or experience fraud at any level. In addition, you are required to confirm that all reportable frauds have been communicated appropriately when you complete and sign your annual return. Once the regulator has been informed, you may need to notify insurers, auditors, IT providers, lawyers and potentially PR staff if the fraud is likely to become public knowledge. There is naturally a reluctance to disclose a fraud, although it may act as a deterrent to future frauds if it is clearly and publicly demonstrated that action has been taken.

The overall message is that fraud happens. The risk can be mitigated and managed but it is impossible to eliminate entirely. If it happens to your charity, the best policy is to be transparent with the Charity Commission, staff and donors, and to take action to recover lost funds. If you are concerned that your current systems and procedures may not be adequate, please contact us and we can arrange to review them and to offer further suggestions. Generally, reported frauds do not result in significant direct financial loss, however, reputational damage can be very significant, and prevention is cheaper than cure.

David Haines

senior internal audit manager | 020 7969 5543

dhaines@haysmacintyre.com

“only 18% of charities reported a fraud during the last two years”

working lunches

Do your staff ever have 'working lunches', or perhaps a few drinks out while discussing work? As far as HMRC is concerned this is staff entertainment, as indeed are sandwich lunches provided for meetings unless all employees can access them which is not usually the case.

Christmas parties

There is an exemption for annual events costing less than £150 per head. If you hold more than one event, where the cost of such events totals more than £150, only those totalling less than this amount will be exempt. The full cost per head of any other occasions will be taxable. The £150 limit is VAT inclusive, regardless of whether any of the VAT is recoverable. The exemption does not apply just to Christmas parties, it can be any event so long as the event is held annually.

taxable benefit

Any entertaining where only employees are present is a taxable benefit unless covered by the exemptions above, or where it is in fact subsistence because the employees are travelling away from their usual place of employment. The correct treatment is to report the 'benefit' on the employee's year end P11D or, the employer can account for the tax under a PAYE Settlement Agreement; failure to do so will result in a liability for the tax and NIC on the benefit along with interest and penalties.

Lorraine Owens

employment tax manager | 020 7969 5578

lowens@haysmacintyre.com

happy birthday option to tax



1 August 2009 was the twentieth anniversary of the introduction of the option to tax land and property. The significance of this was that the option to tax legislation had always contained a provision to allow an option to be revoked after 20 years,

but until 1 August no option would ever have been in place long enough to have qualified.

As that milestone has now been passed a theoretical possibility has become a reality. Clearly many options will not have been in place for that long, but for many charities who cannot reclaim VAT and who are paying VAT on their rent it may well be worth enquiring whether their landlord is able to revoke any option to tax they have in place.

As the option allows a landlord to reclaim VAT on their expenditure relating to the opted property it is unlikely that they will choose to revoke an option without being "prompted", and a tenant may well need to negotiate with them to see if the revocation could be made beneficial to both parties.

zero-rated charitable buildings

An apparently less happy occasion was the announcement a month earlier on 1 July of the withdrawal of the Extra Statutory Concession that allowed the zero-rate to apply to buildings used for a relevant charitable purpose.

The relevant legislation allows construction services incurred in the course of construction of a building intended for use solely for a relevant charitable purpose to be zero-rated. The same applies to the supply by a developer of a new building intended for such use.

A relevant charitable purpose is defined as use by a charity for a non business purpose. Clearly many charities will use their buildings for a mixture of both business and non business purposes, and a strict interpretation of the word "solely" in the legislation would therefore rule out the possibility of zero-rating in most cases.

By concession zero-rating has been allowed where the business use is below 10%, and whilst the ways in which this were measured were prescribed by HMRC, and required their permission in all bar one case, this was a welcome easement.

If the non business use fell below 90% within a period of 10 years from completion, a VAT charge was triggered which imposed VAT on the previously zero-rated supply. The way this worked was that each complete year of qualifying use crystallised 10% of the amount which had been zero-rated, so that a charity whose qualifying use fell below 90% in year 5, say, would have to pay VAT on 60% of the amount originally zero-rated.

Even more welcome was the announcement in 2007 that HMRC would not seek to impose this charge where the change of use was not anticipated at the time the zero-rating was secured by the use of the concession.

It was therefore somewhat alarming when HMRC, without any consultation, announced that this concession was to be withdrawn and that with effect from 1 July 2010, zero-rating will only be allowed where the non business use is 95% or more.

On the plus side any fair and reasonable method can be used to calculate the qualifying use, and permission to use a method will no longer be needed, but that still leaves a charity with less room for manoeuvre, and any unanticipated increase in non qualifying use will now trigger the VAT charge which was limited in 2007.

One common problem that arises when HMRC say that "any fair and reasonable method" can be used is that individual officers carrying out VAT inspections may take a different view of what is fair and reasonable, and seek to challenge the methodology used. We understand that HMRC will provide clearances as to the methodology used, and whilst that may provide some degree of security if such a clearance can be obtained, there is no guarantee it will be, in contrast to the prescribed methods which were previously in force.

HMRC's view is that this flexible 95% criterion covers almost as many charities as the previous more rigid 90% criterion. It remains to be seen if this is correct. If it is, then that demonstrates that the old 10% easement, with its inherent rigidities, was in effect worth only 5% in real terms. But, it is not clear that HMRC is correct in its assumptions. Time will tell.

In addition to the withdrawal of this main concession, two related concessions were also withdrawn. One of these was a "look through" concession where you could disregard some business use by looking at the use of the property by the occupier, e.g. if you sub-let part of the building (a business use), but the tenant was a charity using the property for a relevant charitable purpose.

The second related concession was the so called "switching areas" concession where although the use of a particular area might change, the overall use of the building was not. However, this remains in effect because the flexible approach to calculating 95% can incorporate it.

At the time of writing we understand that HMRC have met with the CFDG, and that some further guidance will be issued between now and 1 July 2010.

Phil Salmon
director of VAT services | 020 7969 5611
psalmon@haysmacintyre.com

"zero-rating has been allowed where the business use is below 10%"

haysmacintyre
Fairfax House
15 Fulwood Place
London
WC1V 6AY

t 020 7969 5500
f 020 7969 5600
e marketing@haysmacintyre.com
w www.haysmacintyre.com

charity team



Bernie Watson
Charities Partner
020 7969 5510
bwatson@haysmacintyre.com



Murtaza Jessa
Charities Partner
020 7969 5551
mjessa@haysmacintyre.com



Richard Weaver
Charities Partner
020 7969 5567
rweaver@haysmacintyre.com



Adam Halsey
Charities Partner
020 7969 5657
ahalsey@haysmacintyre.com



Noble Hanlon
Charities Partner
020 7969 5548
nhanlon@haysmacintyre.com



David Sewell
Charities Partner
020 7969 5568
dsewell@haysmacintyre.com



Tracey Young
Charities Partner
020 7969 5654
tyoung@haysmacintyre.com



Kathryn Burton
Charities Partner
020 7969 5515
kburton@haysmacintyre.com



Graham Elliott
VAT Partner
020 7969 5610
gelliott@haysmacintyre.com



Anne Gregory-Jones
Tax Partner
020 7969 5520
agregory-jones@haysmacintyre.com



Les Jones
Charities Consultant
020 7969 5538
ljones@haysmacintyre.com



David Clark
Religious Charities Consultant
020 7969 5500
dclark@haysmacintyre.com

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A list of partners' names is available for inspection at Fairfax House, 15 Fulwood Place, London WC1V 6AY.

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future events

- **2009/2010 Training Courses for Trustees:**
 - trustee refresher session 27 October 2009
 - understanding charity accounts 17 November 2009
 - what every new trustee should know 24 November 2009
 - managing cash and investments 12 January 2010
 - charity law update 19 January 2010
 - good governance 26 January 2010
 - charities and their property 10 February 2010
 - charities and their people 23 February 2010
- **annual conference for independent schools: 03 February 2010**
- **ISBA conference: 12 & 13 May 2010**

For further information on these events please contact Juan Muguerman on 020 7969 5668, juanmuguerman@haysmacintyre.com or visit www.haysmacintyre.com



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