



"MULTI AWARD-WINNING CHARITY TEAM"

Annual Charity Finance Survey 2006-2010

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editorial



Welcome to the Autumn 2011 edition of Schools Briefing. This issue includes an overview of the means-testing of bursary awards sessions at our recent Bursar and Governor training.

Employment tax can be an expensive area to get wrong and in this issue we include an article on some of the most common areas where problems can arise.

We also bring you up to date on recent guidance on Gift Aid for the schools sector, and salary sacrifice and VAT.

As many of you will know we finally have the results of the Judicial Review brought by the Independent Schools Council and the Attorney General's reference into the Charity Commission's guidance on public benefit which was undertaken in the Upper Tribunal in May. The result is a positive for the sector and puts the decisions on providing public benefit firmly back with Governors rather than the Charity Commission. Unfortunately, due to the timing of the result we were unable to include an article in this issue but will produce a separate publication shortly.

I hope you enjoy this edition and please do contact us if you have any questions or suggestions for future publications.

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salary sacrifice and VAT



Revenue & Customs Brief 28/11 issued on 28 July sets out HMRC's revised policy regarding VAT and salary sacrifice arrangements following the decision of the European Court of Justice in the case of AstraZeneca.

Previously, HMRC took the view that any reduction in salary under a salary sacrifice arrangement did not constitute consideration for a supply of goods or services. That position is changing with effect from 1 January 2012.

From that date, HMRC will take the view that the reduction in salary is consideration for whatever goods or services the employee receives under the salary sacrifice. Where those services are taxable, such as a Cycle to Work scheme the employer will be required to account for VAT. The value on which VAT must be accounted for will usually be the amount of salary foregone, but where employers supply benefits at below cost, the value should be based on the cost to the employer.

This change puts the treatment of a salary sacrifice for VAT on a par with the treatment of the supply of goods or services paid for by deduction from salary which HMRC has always viewed as being a supply for VAT purposes.

Where the services supplied are exempt, such as the provision of childcare vouchers then there may also be an impact. This is because any VAT on the costs which relate to their supply, such as an administration charge from the voucher provider, will now relate to the making of an exempt supply and will be wholly irrecoverable. This was previously an overhead cost and therefore at least partly recoverable.

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means-testing bursary awards – an art or a science?



At our Bursar and Governor training seminars this September we spent time considering means-testing bursary awards. Over three separate sessions our speakers, Tim Syngge – Badminton College, Mark Taylor – The King's School,

Canterbury and Ian Caws – The Dragon School shared their experiences of this challenging area, generating healthy discussion and debate amongst our delegates. In this article I will cover some of the key points that were raised.

the science

Our three speakers all followed a similar bursary cycle of:

- publicity
- application
- means testing
- review
- selection
- notification
- annual review

In our experience, this cycle is common to most schools however the processes applied at some of the stages can vary greatly.

A significant proportion of our delegates use the ISBA means-testing forms to collect the financial information they need (although this is only the start of the process!). It appears that many tailor the forms slightly for their own purposes.

The annual review process seems to vary significantly with some schools requesting parents provide full financial information each year and others asking that parents notify them of any significant change in circumstances only.

the art

The financial information submitted by parents does not always provide a complete picture of the financial position of families and so bursars have to resort to other techniques to help inform the decision.

From the comfort of their computers they can look at someone's home (and watch out for that swimming pool!) using Google Earth, and check house prices. However, sometimes good old detective work; checking what car they drive when they visit the school and innocently asking where they've been on holiday, can be invaluable.

Home visits were discussed during the seminar and generally considered to be a very good idea and enabled schools to really understand the circumstances of the families. However, this is a very time consuming exercise, particularly if you have a high number of bursary applications, and with many bursary departments already overstretched it is just not possible. It was also considered useful to send two people for home visits. For some, outsourcing home visits has proved very successful.

the decision

Sometimes the need for a bursary is clear but very often it is not. During our seminars we debated some of the situations which cause the most difficulties, including:

- family living in a large, expensive property with a high mortgage and little capital – should they downsize/extend mortgage term to reduce mortgage payments to enable them to pay fees?
- family living in a property with significant level of capital – should they remortgage/downsize to release capital to pay fees?
- two parent family where one parent chooses to not work – should ability of non-working parent to generate income being considered?
- ownership of investment property portfolio – should the ability to release capital be considered?
- arrival of new spouse/partner – should the income of a new spouse or partner to a household be considered?
- absent parent has significant income – should the ability of absent parent to pay fees be considered? One challenge in this case can be to obtain the information needed to inform the decision.
- grandparents with significant wealth – should the ability of grandparents to pay fees be considered? This was considered a particularly difficult dimension but it should be remembered that many grandparents already pay fees.

It appears there is no right answer. Those awarding bursaries need to consider all the information available and make a judgement. Certainly, at the end of our three seminars I felt that means-testing bursary awards is most definitely an art!

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employer compliance checklist



Employer compliance is an area where it pays to keep your eye on the ball. The reality is often that following, say, an employer compliance review by either HMRC or your professional advisors, the paperwork is filed

away and forgotten as other challenges and day to day work take precedence. It is, however, important to ensure that you put procedures in place which will allow you to maintain control.

The following is a check list of key areas to consider. If you don't already have procedures in place to monitor these areas, now is a good time to give it some thought and determine what changes you need to implement. Consider also who is actually responsible for the various areas - it may be that the bursar has overall responsibility but on a day to day basis who is managing it?

P11D reporting dispensation

A dispensation absolves you of the requirement to report all business expenses on your employees year end forms P11D, without one you should be reporting most business expenses. Can you find your dispensation and is it up to date?

P11D reporting

When employers tell me that they do not prepare P11Ds, it is often said in a way that suggests this is not something they have had to do in the past and so it is assumed that this applies in perpetuity. You should be thinking about whether P11Ds are required every 6 April.

expenses

If you don't have an expenses policy in place how can you be sure that employees have enough information to enable them to submit the right claims? If you do have one, when was it last reviewed? Don't forget expenses can be paid through more than one route, have you got them all under control?

PAYE settlement agreement (PSA)

This is an agreement with HMRC whereby the employer can settle the tax due on minor and irregular benefits on behalf of the employees. Do you have a PSA in place, if not, do you need one? Staff entertainment and staff gifts are common in schools and yet this is an area frequently forgotten. PSAs are often used for these items rather than reporting them on employees P11Ds.

accommodation provision to employees

Do you have a system for reviewing all changes to accommodation such as new starters, moves by existing staff, changes in duties of staff provided with accommodation? Do you diarise important dates such as the six year rule? Even where no obvious changes have taken place rules can change, how do you keep up to date on any such changes? For example, HMRC's interpretation of when caretakers qualify for exempt accommodation under the proper performance test changed from 6 April 2010.

peripatetic teachers

Such teachers are engaged in different ways by schools. The teacher may contract with the parents directly or with the school on an employed or a self employed basis. Whichever applies, do you have procedures in place to make sure that the correct tax treatment is applied and that new peripatetic teachers have not been taken on beneath the radar and paid through the purchase ledger in error? For the avoidance of doubt, peripatetic teachers include music, sports and any other imaginable hobby coach.

HMRC reviews

If HMRC has inspected your employer compliance in the past it is a very good idea to review the paperwork. If they come back again and you are making the same mistakes as last time, your excuses are few and unconvincing.

In all areas of doubt I would recommend speaking to your tax advisors before calling HMRC as this may have a nasty side effect of raising your profile to the extent that they may want to come and see you.

Compliance is only as good as the last time you looked at it! The above represents some of the more common errors but it is not a complete list of everything that can go wrong. If you have any questions on employer compliance contact haysmacintyre's employment tax team for advice.

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Bribery Act 2010



The Bribery Act 2010 (“the Act”) became effective on 1 July 2011. We set out in this article some key aspects of the Act and the associated Guidance.

The Act defines four bribery offences. Although the legal definitions of each type of bribery are different they all involve two features: trying to obtain an advantage and inducing or rewarding improper conduct.

offences for individuals:

- bribing another person;
- being bribed; and
- bribery of a foreign public official.

corporate offence:

- failure of a commercial organisation to prevent bribery.

The only defence for an organisation facing prosecution for this corporate offence is that it had adequate procedures in place to prevent persons associated with it from undertaking such activity. Guidance as to what would constitute “adequate procedures” has been published by the Department of Justice, in accordance with section 9 of the Act, which is structured around six key principles:

- proportionality;
- top level commitment;
- risk assessment;
- due diligence;
- communication; and
- monitoring and review

The specific processes which will need to be in place will depend on the structure and the activities of each individual organisation and the particular risks it faces.

It is likely that, for most schools, many of these requirements will be met by existing policies and procedures, although it will be necessary for these to be reviewed to ensure that they are fit for purpose. In particular, policies relating to the acceptance of gifts or hospitality are likely to need to be updated.

Communication of policies throughout an organisation will be vital to ensuring that the organisation is able to demonstrate the adequacy of its bribery prevention procedures. It is important to note that the term “persons associated” with an organisation is not limited to its employees: it applies to anyone who is acting on behalf of the organisation in any capacity. Agents and sub-contractors would constitute associates of an organisation and would therefore need to be considered as part of the organisation’s assessment of risk, its communications of internal policy and its control procedures.

Particular areas for schools to consider are donations made by parents to influence admissions processes, donations by suppliers to influence the tender process and there are also concerns regarding some fee discounts offered to teachers at other schools.

The full Guidance and a more condensed “Quick Start Guide” can be found at:

<http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>

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in brief...



national minimum wage
The National Minimum Wage rates depend on the age of your employees and whether or not they are an apprentice. The new rates in force from 1 October 2011 are:

- £6.08 - the main rate for workers aged 21 and over
- £4.98 - the 18-20 rate
- £3.68 - the 16-17 rate for workers above school leaving age but under 18
- £2.60 - the apprentice rate, for apprentices under 19 or 19 and over and in the first year of their apprenticeship

advisory fuel rates

The Advisory Fuel Rates which apply to mileage claimed in employer provided vehicles changed again on 1st September 2011. It should be noted that HMRC will be reviewing the rates four times a year from now on and it is important that you communicate this to affected employees.

Full details of the rates can be found at:

http://www.hmrc.gov.uk/cars/advisory_fuel_current.htm

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Gift Aid

some new guidance for schools



In August 2011 some new guidance was published by HMRC on the operation of Gift Aid and payroll giving which is specifically aimed at schools. The guidance gives a number of useful examples of how HMRC will apply

the legislation in some common circumstances.

Broadly, payroll giving and Gift Aid are methods of making donations that benefit from favourable tax treatments. Donations under payroll giving are deducted from the donor's gross pay before tax (so all of the tax relief is passed to the charity) and donations under Gift Aid are made by the donor from their net income (the charity can then reclaim the tax suffered at the basic rate and the donor can claim any tax relief that is due at the higher rate).

The underpinning requirement under both schemes is that the donations should essentially be a gift (although, under the Gift Aid scheme at least, the donor is able to receive small benefits provided that the value does not breach certain limits).

Although the situation is not always as black and white as one would wish, the guidance does a good job of clarifying whether HMRC would view payments made in particular circumstances as a gift for most situations.

Historically, schools have not tended to push Gift Aid relief as fully as they perhaps could. In cases where Gift Aid has not been pursued due to doubts over whether payments are gifts, the new guidance will give some assurance as to how HMRC would view the position. This is a good opportunity to consider how Gift Aid may be better utilised for your school's benefit.

The guidance is available online at:

http://www.hmrc.gov.uk/charities/gift_aid/rules/school-charities-ezine.pdf

donation of school fee deposits

It is commonly queried whether the waiver of a returnable deposit by a parent can be Gift Aided. The major stumbling block with this is that, in order to qualify for Gift Aid, a gift must take the form of a payment of a sum of money. The waiver of a debt does not constitute a payment and this would seem to stymie the possibility of Gift Aid applying. Schools are then often left with the choice of either foregoing Gift Aid, or, taking the risk of refunding the deposit to the parent (in the hope that the parent would then return the funds as a gift). Where, however, the school has links with another charity (such as a separately constituted bursary fund) it can be possible for gift aid to apply without the funds being physically returned to the parent.

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future events

- trustee training event series
 - 1 full day session on what every trustee should know 3rd April 2012
 - 2 trustee refresher sessions 28th February 2012
 - 3 charity law update 22nd November 2011
 - 4 managing cash and investments 13th December 2011
 - 5 understanding charity accounts 17th January 2012
 - 6 charities and their property 7th February 2012
 - 7 building your charity's strategy/business plan 20th March 2012
 - 8 charities and their people 24th April 2012
- benchmarking survey submission deadline 31 January 2012
- haysmacintyre annual schools conference 1 February 2012

For further information on these events please contact our events team on 020 7969 5698, events@haysmacintyre.com or visit www.haysmacintyre.com



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