Spring 2014

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CHARITY BRIEFING

No 1 "Overall Service Award" 2011, 2012 & 2013 | "Charity Expertise Award" 2011, 2012 & 2013 | Charity Finance Audit Survey

editorial | the strategic report | moving towards a more powerful Charity Commission | Charity Commission – latest fraud advice | Budget 2014 update | VAT update | how robust are your internal financial controls? | Annual Return Form 2014 | independence for Scotland

LETTER FROM THE EDITOR

Welcome to our latest charity briefing.

In this edition we look at the recent consultation on the extension of the Charity Commission's powers as well as the new information the Commission requires as part of the 2014 Annual Return. We have also reviewed the requirement to include a Strategic Report in a charity's Trustees Annual Report.

In our last issue of charity briefing we provided information and tips to help you make sure that your charity doesn't fall victim to internet banking fraud. This edition looks at other types of fraud and suspect donations.

In addition, we highlight important tax and VAT matters for charities arising from the latest Budget. And for those of you registered in Scotland or operating in Scotland we would also draw your attention to the guidance issued by OSCR, the charity regulator in Scotland, for charity trustees on the referendum on independence for Scotland.

As ever, if you have any feedback on this edition of the briefing, or wish to discuss any of the matters raised, do contact one of our team.

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THE STRATEGIC REPORT

In accordance with the Companies Act 2006 (Strategic Report and Director's Report) Regulations 2013, all large and medium sized companies, including charitable companies, with accounting periods ending on or after 30 September 2013, are now required to prepare a Strategic Report to accompany their financial statements. These regulations will therefore apply to all charities which are incorporated under the Companies Act and exceed the small company size criteria. The regulations do not apply to unincorporated charities or CIOs.

The regulations require the Strategic Report to include:

- a fair review of the charity's activities and performance for the year and financial position at year end, including financial and non-financial key performance indicators where necessary.
- a description of the principal risks and uncertainties facing the charity.

Where the charity prepares consolidated accounts, the Strategic Report must address these areas from a group perspective.

In January, the Charity Commission and OSCR jointly issued 'Information Sheet 5: The Strategic Report and company charities'. The information sheet recommends that relevant charities restructure their narrative reporting to present the information required for the Strategic Report in a clearly delineated section of the Trustees' Annual Report ("TAR"). The Strategic Report must be approved by the Board of Trustees and signed on their behalf by a director or secretary; so charities will need to include a separate statement confirming that, in approving the TAR as a whole, they are also approving the Strategic Report contained therein.

Charities which fall within the remit of the regulations should already be publishing the necessary information within their TAR in accordance with the SORP, so compliance with the new regulations will not entail a substantial amount of additional work for preparers of reports.

Should you require a proforma, please do not hesitate to contact us.

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MOVING TOWARDS A MORE POWERFUL CHARITY COMMISSION

Jo Coleman, Head of Charities at IBB Solicitors, looks at the recent Cabinet Office consultation on extension of the Charity Commission's powers.

The last year has been a difficult year for the Charity Commission. On one side it has been tied up on high profile cases such as the Preston Down Trust and on the other (post The Cup Trust) it has been defending its reputation from heavy criticism by the Public Accounts Committee (PAC) and the National Audit Office (NAO). Both the PAC and NAO focussed their criticism specifically on the limited use which the Commission makes of its enforcement powers.

The Commission has accepted that it needs to be more robust in exercising its powers but also identified a number of gaps in its existing powers. The Cabinet Office considered the Commission's request to extend certain powers and issued a public Consultation in December 2013. The Consultation looked at two main areas: amending the powers relating to disqualification of trustees and tightening up compliance, and enforcement powers where there is misconduct or mismanagement and risk to charity property.

I chaired the Charity Law Association's response to the Consultation. Our response to the seventeen proposals was mixed:

- Some seemed sensible. For example, a power to remove individuals from serving as a trustee where they are disqualified under the Act, and, preventing a trustee from resigning when the Commission has started its disqualification process.
- Others, whilst well-intentioned, lacked sufficient detail or appropriate safeguards. For example, the proposed list of offences which would trigger automatic disqualification is widely drawn and extends beyond the current offences where assets are jeopardised (deception and dishonesty) to other types of offences such as inciting religious or racial hatred and terrorism-related offences. The proposed new mechanism for the Commission to be able to disqualify trustees on a discretionary basis, did not include the judicial protections that are enshrined in similar legislation.
- A number did not seem to achieve their desired outcome, or, were not necessary as alternative powers were already available to the Charity Commission.

The Government's response is expected in the next few months. The Cabinet Office has indicated that it would like to take forward a tight package of extended powers, which have the support of the sector, and which might be given time in the next Parliamentary session. The Commission is not just waiting for these changes. Since April 2013 it has opened 48 inquiries (compared with 15 in the previous year), greatly increased the use of its existing enforcement powers and stepped up its scrutiny of charity accounts. Whether or not its statutory powers are extended, the Commission has already heralded an era of tougher regulation.

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CHARITY COMMISSION
LATEST FRAUD ADVICE

The Charity Commission has recently issued advice on two very different, but equally important, areas where charities could be susceptible to fraud.

Suspect donations

The Serious Organised Crime Agency (SOCA) has identified a number of instances where charities have been unwittingly involved in a donation scam using fraudulently obtained credit cards.

The scam involves a fraudster informing the charity that they will donate a large sum of money on the condition that they send half of the donation to another specified charity. When the charity agrees, a payment is made and the charity will then transfer half of the funds as agreed to the specified 'charity', however the funds are actually being transferred to the fraudster's personal account. The card issuer then identifies that the credit card has been compromised and recalls the money from the charity. The charity will also have been unwittingly involved in money laundering.

Technically any such monies lost to fraud would not be 'charitable expenditure' and theoretically HMRC could, in this instance, pursue the charity for the tax payable. How to treat such items is being considered in the new SORP, due for finalisation in the summer, so that in this instance charities don't become a hostage to fortune.

Cheque fraud

Despite most of us now using electronic banking in a personal regard, research carried out by the Charity Commission has found that over 90% of charities are still issuing cheques on a regular basis. Losses as a result of cheque fraud alone totalled £27.5 million in 2013.

It has been widely recommended for a number of years that the pre-signing of blank cheques is not acceptable as it is a serious fraud risk (even if they are kept in a locked safe!). To back this up further, a recent tribunal has confirmed such action as mismanagement. This would mean that Trustee liability would not be limited if such an event were to occur. As part of a Trustee's legal duties of prudence and safeguarding the charity's assets, Trustees must ensure that they put in place adequate financial controls and ensure they are adhered to. Such financial controls not only safeguard the charity's assets, but also acts as protection for the staff they employ.

The Cheque and Credit Clearing Company (C&CCC) at the Payments Council offers useful advice and tips for charities including:

- draw a line through all unused space after both the payee name and the amount
- if posting a cheque, make sure it isn't visible through a window envelope
- make sure there is as little space as possible between words when filling in a cheque
- check your bank statements regularly for unfamiliar transactions.

Further information and a factsheet offering advice in safeguarding against cheque fraud, can be viewed on the C&CCC's website:

http://www.chequeandcredit.co.uk/media/press_releases/-/page/2842/

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BUDGET
2014 ADVICE

The Chancellor delivered his fifth Budget on the 19 March 2014: his last but one before a 2015 General Election. Trailed as a Budget for a resilient economy and for savers, a lengthy list of measures was announced. Please find some key points relevant to charities set out below. Don't hesitate to contact our Tax Team if you have any queries.

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PERSONAL TAX

Income tax

- The tax-free personal allowance will increase to £10,000 for 2014/15 and £10,500 in 2015/16.
- The higher rate tax threshold will also increase to £41,865 in 2014/15 and £42,285 in 2015/16.
- A transferable personal tax allowance for married couples and civil partners will be introduced from April 2015, allowing couples to transfer up to £1,050 to their spouse. Only basic rate taxpayers will be allowed to do this.
- The current 10% starting rate for savings will be reduced to a 0% band in 2015/16 and expanded to cover £5,000 of savings income.
- There will be a consultation on limiting the UK personal allowance to UK residents and those living overseas who have strong UK connections – this could mean removing automatic entitlement to the personal allowance for all UK/EU citizens who are resident overseas.
- Income tax relief for interest paid on loans to invest in close companies will be expanded to include all companies resident throughout the European Economic Area (EEA).

BUSINESS TAX AND EMPLOYMENT TAXES

Social investment tax relief

- The relief will provide a range of income and capital gains tax reliefs to provide incentives for investment by individuals in qualifying social enterprises. The scheme is modelled upon the Enterprise Investment Scheme.
- It has been announced that income tax relief will be available at 30% of the amount invested available from 6 April 2014.

National Insurance Contributions (NICs)

- Legislation is to be introduced to collect Class II NICs alongside income tax and Class IV NICs under self-assessment.
- These changes will have effect from April 2016.

Employment allowance

- From April 2014, every business and charity with employees will be able to reduce their Class 1 National Insurance (NIC) bill by £2,000, as a result of the annual Employment Allowance.
- The allowance will be claimed through Real Time Information (RTI) and payroll software.

Tax-free childcare scheme

- A new tax free childcare scheme will be introduced from Autumn 2015. Eligible working parents will be provided with a top-up of 20p for every 80p they spend on childcare, up to an annual limit of £2,000 per child. Parents will be eligible if both are working (earning less than £150,000 a year) and the child is under 12. The scheme will operate via an online account.
- Current employer-supported schemes, such as childcare vouchers or directly contracted childcare, can continue for existing members; we recommend that employees consider which option is best for them.

VAT

- The VAT registration limit increases from £79,000 to £81,000, and the de-registration limit rises from £77,000 to £79,000. The changes took effect on 1 April 2014.
- There will be a change to the VAT treatment of prompt payment discounts. At present VAT is accounted for on the discounted price even when the discount is not taken up. In future, VAT will be due on the consideration received. For supplies of telecommunications and broadcasting services where there is no obligation to provide an invoice, the measure took effect on 1 May 2014.
- For all other supplies it will apply to supplies made on or after 1 April 2015, unless a need is identified to bring it forward for certain specified categories of supply.

PENSIONS

Designed to give a greater freedom and choice at retirement, a package of fundamental changes for defined contribution schemes has been announced. Currently, those retiring do not have full flexibility when accessing their pension funds: a 55% tax charge applies if they withdraw their full fund, effectively requiring an annuity to be purchased. Annuity rates have fallen significantly in recent years.

From April 2015

- Draw down of pension funds will be taxed at the pensioner's marginal tax rate (between 0% and 45%, depending on other income), rather than at 55%.
- The tax-free lump sum (25%) will still be available.
- Pensioners may still purchase an annuity, if they wish.
- The Government is consulting on these changes.
- Currently an individual has five choices with regard to the 75% balance (i.e. after the 25% lump sum).
- If you are 60+ and have pension savings of less than £18,000, you can take them in one lump sum.
- A capped drawdown pension allows you to take income from your pension, to a maximum of 120% of an equivalent annuity each year.
- Flexible drawdown does not impose a limit on the income that can be drawn each year, provided you have other guaranteed income of £20k per year.
- An annuity can be purchased.
- If you are 60+, you can take any pension "pot" worth less than £2,000 as a lump sum.

From 27 March 2014

- The level of guaranteed pension income required to allow flexible drawdown will be reduced from £20,000 to £12,000 per year.
- The capped drawdown limit will be increased from 120% to 150%.
- The size of a small pension fund that can be taken as a lump sum will be increased from £2,000 to £10,000.
- The number of pension funds of below £10,000 that can be taken as lump sums will be increased from two to three.
- The overall value of pension savings that can be taken as a lump sum will be increased from £18,000 to £30,000.

HOW ROBUST ARE YOUR INTERNAL FINANCIAL CONTROLS?

In our last issue of charity briefing Mark Leckie gave information and tips to help you make sure that your charity doesn't fall victim to internet banking fraud. But what about other types of fraud?

Trustees have a legal duty to safeguard the assets of their charity so that they can be applied for its intended beneficiaries. It can be difficult for Trustees, who are often not involved in the day to day running of the charity, to know what types of financial controls should be in place. The good news is there is a lot of useful guidance available to help.

The first step is: don't assume that it won't happen to you. The Annual Fraud Indicator, issued by the National Fraud Authority in 2013, estimated that fraud cost registered charities £147.3m in 2011/12. Of the charities that responded to this survey, almost one in ten had experienced fraud, most commonly payment or banking fraud.

The Charity Commission's guidance on fraud, Safeguarding your Charity: Compliance Toolkit is available on their website (search on the Charity Commission site for 'Compliance Toolkit') and gives practical guidance on what Trustees should be doing to mitigate the risk of fraud in their charity. It also outlines ten tips for Trustees:

- Review financial controls regularly and keep them up to date
- Segregate duties in the finance department
- Reconcile financial records to supporting documentation such as receipts and invoices
- Don't take short cuts such as pre-signing cheques, or sharing bank passwords
- Keep an up to date fixed asset register
- Ensure that online banking arrangements are secure and require two authorisers
- Take up references when recruiting staff
- Carry out due diligence on grant applicants
- Ensure that Trustees receive regular, appropriate financial information
- Make sure you know what to do and who to inform if you suspect fraud

For assistance on what sort of financial controls are appropriate, the Charity Commission's checklist of internal controls (CC8) is also a good place to start – search for 'Internal Controls Checklist' on their website.

If you would like more information on how to strengthen your internal controls we would be happy to support you.

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VAT UPDATE

There was little of interest in the Budget regarding VAT, other than the customary increase to the VAT registration threshold to £81,000 and a corresponding increase in the de-registration threshold to £79,000.

Of potentially more interest is a recent European Court decision regarding defined contribution pension schemes. The decision in the case in question, ATP Pension Services A/S was released on 13 March. Essentially the decision confirmed that management charges for such schemes should be regarded as exempt from VAT.

It may well be that insurance backed schemes have already been treated as exempt, but where the scheme is not an insurance backed product and VAT has been charged, either directly to the employer or the pension fund itself, then you should contact your fund manager and ask that they issue credit notes and repay the over charged VAT. Credit notes can be issued going back a maximum of four years.

In an earlier case; PPG Holdings BV which dealt with Defined Benefit schemes, the Court had confirmed that the management of such a fund was taxable, but that it was a cost to the employer and that the VAT was therefore recoverable in accordance with the normal VAT recovery position of the employer.

The case extends HMRC's previous view which only allowed VAT to be recovered on costs relating to setting up a scheme, and its day-to-day administration. VAT on the management of the investment activities of the scheme had been regarded as irrecoverable.

Following the case HMRC now accept that where the supply by the scheme manager is to the employer, i.e. the employer commissioned and paid for the service, and it covers both day-to-day administration and investment management, VAT on both elements is recoverable in accordance with your normal VAT recovery position. Details are set out in Revenue & Customs Brief 06/14.

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ANNUAL RETURN FORM 2014

Following consultation last year, the Charity Commission has updated the annual return form for 2014, which is now available on their website, along with guidance to help those filling in the form. The return must be completed by all registered charities with an income of over £10,000. The annual return must be completed within 10 months of the financial year end.

There are seven new areas that charities will be required to complete. The information will be published on the Charity Commission's online register of charities to be available in the public domain. The new question areas include:

- whether the charity pays Trustees
- whether the charity raises funds from the public
- whether the charity has a trading subsidiary
- whether the charity has written policies for risk management, investments, safeguarding vulnerable beneficiaries, conflicts of interest, complaints handling and volunteer management
- whether the charity is regulated or registered with particular other regulators than the Charity Commission
- how the charity awards grants.

The seventh question allows the charity to give more information about its achievements.

The Commission will now also publish information that they already hold about charities. This includes:

- whether the charity is insolvent
- whether the charity is in administration
- whether the charity is subject to enforcement action for non-submission of accounts.

The Charity Commission will also publish information about whether a charity is a member of the Fundraising Standards Board (FRSB). This information will be collected directly from the FRSB.

The Summary Information Return, which charities with income in excess of £1million were required to complete, in addition to the annual return, is being discontinued.

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GUIDANCE FOR CHARITY TRUSTEES ON THE REFERENDUM ON INDEPENDENCE FOR SCOTLAND

OSCR had issued guidance for both Scottish charities and charities operating in Scotland setting out the legal principles, explaining the key issues that charities must consider, and provides examples to illustrate some situations that charities may encounter in relation to the independence referendum.

The final guidance has been written in consultation with the charity sector and is aimed at informing and supporting charities as they consider the potential impact of the referendum, as well as ultimately supporting the public confidence in the work of charities.

This can be found at
http://www.oscr.org.uk/media/433188/2014-03-05_referendum_guidance_for_charities.pdf

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future events

SORP seminar	9 September 2014
SORP seminar	24 September 2014
haysmacintyre VAT exchange	1 October 2014

Trustee training 2014/2015 dates coming soon.

For further information on these events please contact Jenni Whale on 020 7969 5698, jwhale@haysmacintyre.com or visit www.haysmacintyre.com

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