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Charities Act 2011, Charities Act Review, Gift Aid, and new definition of Charity for tax purposes

Over the last few months a number of technical changes have been introduced including a new Charities Act. In most cases these changes will have little, if any, impact on most charitable organisations' daily operations, but all charities should take note. In particular you should ensure your gift aid declarations comply with the new HMRC guidance. The changes are as follows:

Charities Act 2011

The Charities Act 2011 came into effect on 14 March 2012. The new Act replaces most of the Charities Acts 1992, 1993 and 2006 and all of the Recreational Charities Act 1958. Its intention is to make the law more accessible by replacing the four different Acts. However the new Act does not make any changes to the law. It does not replace the sections in the previous Acts about fundraising where these have not yet been implemented.

There is no immediate need to make any changes to a charity's existing activities or documentation as a result of the implementation of the new Act. However, when entering into documents and other legal agreements references should be amended to refer to the Charities Act 2011 rather than the previous Acts.

Charities Act Review

The 2006 Charities Act required that the Act be reviewed five years after it came into force. You will probably know that Lord Hodgson has been appointed to lead the review. Its terms of reference are widely drawn which is helpful in that a wider perspective can be taken than merely introducing technical changes to the legislation. The Cabinet Office and Lord Hodgson are seeking input from charities and members of the public. What the report concludes, especially in relation to sensitive issues such as the payment of trustees, and whether the then government has the political will to implement any of its recommendations, will be the interesting questions.

Further information can be obtained from: http://www.cabinetoffice.gov.uk/content/charities-act-review

Gift Aid

HMRC has provided new guidance on gift aid declarations. In particular, they have included a new checklist covering the minimum amount of information that must be included in a declaration. They have also changed their guidance on the retention of records.

Gift aid declarations must now also confirm that the donor has been given an explanation that they must pay at least as much UK income tax and/or capital gains tax for the year of the donation as the amount that will be claimed by the relevant charity (or Community Amateur Sports Club ("CASC")) and any other charities (or CASCs) they donate to.

HMRC has also identified that previous guidance relating to the retention of gift aid records was incorrect when it stated that records only needed to be retained for four years. The records must be retained for a period of six years.

The guidance can be found at http://www.hmrc.gov.uk/charities/gift_aid/declarations.htm.

New definition of charity for tax purposes from April 2012
From April 2012 the new definition of "charity" as set out in the Finance Act 2010 applies to all charities that claim UK tax reliefs and exemptions. In addition, the new definition applies to charities based in an EU member state, Iceland or Norway.

The definition has been in force in relation to Gift Aid since 1 April 2010 and many charities will therefore be familiar with the new criteria. Those charities who have not claimed Gift Aid since April 2010 should familiarise themselves with the criteria necessary to be eligible for tax relief and exemptions.

Under the new definition, charities must be able to demonstrate that:

- they are charities under the law of England and Wales, or would be, if they were established in England and Wales; and
- they are located in the UK or an EU Member State, Iceland or Norway; and
- they are registered by the Charity Commission where the law requires them to be, or are registered by a regulator equivalent to the Charity Commission in their home country if the law of the home country requires; and
- they meet the management condition – which means that the people involved with the charity's finances must be "fit and proper persons".

The "fit and proper persons" test exists to ensure that charities are not managed or controlled by individuals who might misuse the tax reliefs the organisation receives. HMRC considers an individual to be "fit and proper" if they ensure that charity funds and tax reliefs are used only for charitable purposes. Factors that may lead to HMRC deciding that a manager is not a fit and proper person include individuals with a history of fraudulent behaviour and individuals who have been disqualified from acting as a company director.

Detailed guidance is available on the HMRC website. The new definition of a charity will apply to all UK charity tax reliefs from April 2012: http://www.hmrc.gov.uk/news/charity-definition.htm

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