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Editor's welcome

In my last editorial I made reference to the ongoing controversy in the sector around fundraising activities. Since the autumn the Public Administration and Constitutional Affairs Committee have published the results of their inquiry into fundraising in the charitable sector. One of the conclusions of the inquiry is that 'It would be a sad and inexcusable failure of charities to govern their own behaviour, should statutory regulation become necessary.' So this is the last chance for self-regulation of fundraising by the sector and it is vital for charity trustees to understand that they are legally responsible for their charity's fundraising activities.

This newsletter therefore includes some relevant articles about fundraising including a summary of the key principles set out in the Charity

Commission's charity fundraising guide for trustees.

Elsewhere Nicola Adams gives an update on SORP which is essential reading as charities start to prepare their accounts in the new format for the first time. It is certainly keeping our team busy here! Rachelle Rowbottom sets out some useful guidance about Gift Aid in the light of changes to the taxation of dividends and the impact for your donors. Simon Buchan looks at a VAT refund opportunity in relation to investment management fees.

As ever I hope you will find this newsletter useful – if you have any questions, please do get in touch.



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Charities SORP update

Nicola Adams takes a look at what this means for your accounts.

On 2 February 2016, the Charities SORP Committee issued Update Bulletin 1.

Update 1 amends the Charities SORP (FRS102) with effect for accounting periods commencing on or after 1 January 2016. Early adoption of the amendments for reporting periods commencing on or after 1 January 2015 is permitted providing that all the amendments to the SORP relevant to the charity, are effected.

The main feature of this update confirmed the withdrawal of the Charities SORP (FRSSE), an option for smaller charities, which was only intended to have a shelf life of one year. There is no replacement for the Charities SORP (FRSSE). All charities preparing their accounts on an accruals basis have to adopt the

Charities SORP (FRS102).

The changes are as follows:

- The definition of a 'larger' charity is one whose income exceeds £500,000.
- The carrying amount of the stock of goods donated for distribution to beneficiaries should be subsequently adjusted to reflect the lower of deemed cost and replacement cost. (Module 6)
- Where the economic life of capitalised goodwill cannot be reasonably determined it must be amortised over no more than 10 years (previously 5 years). (Module 10)
- An impairment loss for goodwill must not be reversed in a subsequent reporting period. (Module 12)
- A cash flow statement is only required for larger charities (i.e. gross income exceeding £500,000). (Module 14)
- Charitable companies will no longer be able to apply merger accounting to a business combination with a third party. (Module 27)
- The definition of a related party has been extended to include key management personnel services provided to/from the charity by another entity.



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Fundraising - a guide to trustee duties

Jane Marshall looks at the draft guidance on charity fundraising from the Charity Commission and the importance of this for charity trustees.



Many charities need to ask the public for money. They rely on public generosity, an enduring feature of our society, to carry out their important work helping those in need. In return the public place their trust in charities to raise money in a considerate way and to use it effectively.

Trustees of fundraising charities have a key role to play in setting their charity's approach to raising funds, making sure that it is followed in practice and reflects their charity's values.

The best way that trustees can ensure that they are running or directing their fundraising in a way that complies with their legal trustee duties is to put in place good governance. They need to ensure there is strong management of the people and organisations that the charity works with, and of its money, reputation and other assets. This doesn't mean never taking risks, but risks must be identified and managed.

The commission has published the latest guidance, principally for the trustees of fundraising charities, to help them comply with their legal trustee duties when overseeing their charity's fundraising. The guidance sets out 6 principles to help trustees achieve this.

It is the trustees of charities who are legally responsible for their charity's fundraising. Key to meeting these duties is operating effective control over:

- your charity's fundraising plan
- the fundraising which other people carry out for your charity
- the assets and resources you use and raise
- how your fundraising is explained to your supporters and the public

The 6 key principles to ensure your charity's fundraising is controlled are set out below:

1. Planning effectively

This is about you and your co-trustees being directly involved in setting and monitoring your charity's overall approach to fundraising. Your fundraising plans should take account of risks and your charity's values as well as its income expectations.

2. Supervising your fundraisers

This is about you and your co-trustees overseeing the fundraising which others carry out for your charity, so that you can be satisfied that it is in the charity's best interests. It means delegating responsibly so that your charity's in-house and volunteer fundraisers know what is expected of them. If you employ a commercial partner to raise funds for your charity, the arrangement must be in the charity's best interests and comply with specific legal rules and standards.

3. Protecting your charity's reputation, money and other assets

This means managing your charity's assets and resources in a way which meets your legal trustee duty to act in its best interests and protect it from inappropriate risk. It includes considering the impact of your charity's fundraising on its donors, supporters and the public, making sure that your charity receives all the money to which it is entitled, and protecting it from loss or fraud.

4. Finding out about, and fully complying with, any specific laws or regulations that apply to your charity's fundraising

The legal rules that apply to various types of fundraising can be detailed and complex. They cover compliance in important areas such as with data protection law, licensing, and working with commercial partners. You should make sure that you have access to sufficient information and appropriate advice to ensure that your charity's fundraising complies with the rules.

5. Finding out about, and following, any recognised standards that apply to your charity's fundraising

These are in the [Code of Fundraising Practice](#). The code outlines both the legal rules that apply to fundraising and the standards designed to ensure that fundraising is open, honest and respectful. If your charity is a member of IOF or subscribes

to the Fundraising Regulator you must comply with the standards in the code as a condition of your membership. The commission expects all fundraising charities to fully comply with the code.

6. Being open and accountable

This includes complying with any relevant statutory accounting and reporting requirements on fundraising and using reporting to demonstrate that your charity is well run and effective. In your fundraising communications it is about being able to effectively explain your fundraising work to members of the public and your charity's supporters.

Complying with the accounting framework

Some larger charities must comply with particular rules and requirements about how they account for and report on their fundraising activity. These requirements are set out in the applicable Statement of Recommended Practice (SORP).

This is so that the readers of accounts and reports can understand what the fundraising activities were, how much was spent on raising funds, what was involved, and how the income raised assisted the work of the charity.

Smaller charities using the SORP might find some or all of this reporting useful to do as well.

The Charities (Protection and Social Investment) Act 2016 received Royal Assent and became law on 16 March 2016. The Act introduces new reporting requirements on fundraising for larger charities.

A full copy of the guidance and details of the consultation process can be found at <https://www.gov.uk/government/consultations/charities-and-fundraising-cc20-consultation>



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Back to basics - fundraising

Simon Buchan, outlines the conditions that must be met to allow the income of fundraising events to be regarded as exempt from VAT.

Fundraising can take a number of forms ranging from the soliciting of donations and sponsorship through to a wide range of business activities. A common form of fundraising is an event organised by a charity or other qualifying body such as a dinner or concert. It should also be noted that if a fundraising event meets the criteria for exemption from VAT it will also be exempt from tax. So what are the criteria?

- The event must be organised by a charity or another qualifying body eg a wholly owned subsidiary of a charity.
- The event must be held primarily for the purpose of raising funds and be clearly advertised as such in the publicity for the event, on the tickets etc. Something like concert to raise funds for "xyz" charity or all proceeds for "abc" charity should suffice.
- All the funds raised by the event must be for the organising charity's own benefit and used in carrying out its objectives.



Where the event is undertaken by a subsidiary the funds must be used for the benefit of the parent charity.

- There cannot be more than 15 events of the same kind at the same location during your financial year. The 15 event limit does not apply to frequent small scale events such as a weekly coffee morning which raises no more than £1,000 per week.

There is no restriction on the type of event that qualifies for exemption providing the criteria outlined above are met. So qualifying events could include large scale events such as a charity ball or dinner through to a quiz or car boot sale.



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Gift Aid – inform your donors!

Rachelle Rowbottom provides a reminder about the importance of paying sufficient tax when making a Gift Aid declaration.

It is common knowledge that, in order to support a Gift Aid claim, a taxpayer has to have paid sufficient tax (income tax or capital gains tax) to cover the tax deemed to have been deducted from the Gift Aid payment (ie 20/80 of the payment).

The tax credit attaching to dividends can be counted towards this tax – thus, a dividend of (say) £900 attracts a tax credit of £100 – this tax can support a Gift Aid payment of £400. However, from 6 April 2016, dividends will no longer have a tax credit attached; in addition, the first £5,000 of dividend income will be tax-free.

This means that donors who have only modest non-savings income of, say, no more than their personal allowance, and dividend income of less than the £5,000 tax-free figure will probably no longer pay sufficient tax to cover a Gift Aid payment.

So....what happens if a donor is in this position?

The donor must make good to HMRC the shortfall in tax. If the donor completes a tax return, then this will be collected via self-assessment; if outside the self-assessment system, the donor should declare the liability to HMRC.

Can anything be done by the donor?

Firstly, an individual who is no longer paying sufficient tax should notify the charity that any enduring Gift Aid declaration is withdrawn. Secondly, it is possible for a donor to carry back Gift Aid payments, so that they are treated as having been made in the previous tax year (when, perhaps, they had paid enough tax). Carry back has to be done on a self-assessment tax return, submitted by the due date;



it can only include payments made before the return is submitted and cannot be done by amending a return that has already been submitted.



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VAT refund opportunity

Simon Buchan gives an update on the University of Cambridge investment management fees case.

Regular readers of the BHP charity newsletter or who have attended BHP charity conferences and VAT/Tax seminars will be aware of the University of Cambridge case concerning the recovery of VAT charged on investment management fees.

In a nutshell the issue at stake is whether the VAT suffered on investment management fees incurred by the University in connection with its endowment funds should properly be regarded as a direct cost of managing the funds and therefore non – recoverable as argued by HMRC, or whether

it should be regarded as a general overhead cost with partial VAT recovery according to the University's partial exemption position – the University's view.

The First Tier and Upper Tier Tax Tribunals have both ruled in favour of the University. Towards the end of 2015 HMRC received permission to appeal to the Court of Appeal with the hearing pencilled in for early 2017 with the decision likely to be released sometime in the spring/summer 2017. It is more than likely that the loser will seek leave to appeal to the Supreme Court or seek a ruling from the European Court and therefore it

will be sometime before the issue is settled one way or another.

Charities that suffer VAT on investment management fees should review their position and consider submitting a protective claim to HMRC in case the University is eventually successful. Such claims are limited to 4 years and so a claim submitted in May 2016 can go no further back than May 2012.



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