

In this issue we look at:

- Charity annexes - update
- Diversity on the Trustees' Board
- Making Tax Digital
- BHP Trustee Training seminars
- Update from the Charity Commission

Editor's welcome

It has been an interesting start to 2018 for the charity sector. Although the collapse of Carillion is not directly linked it just goes to show the vulnerability of organisations delivering public sector contracts unprofitably and in the current funding environment there are lessons to be learned for our sector too. Then we have had the Presidents Club charity dinner fiasco and the Oxfam scandal.

When things go wrong it's what you do about them and what has to be learned that is important. In the case of Oxfam it has brought safeguarding right to the top of the agenda and this can only be a good thing, not only in the charity sector but across society as a whole. We must focus on protecting the vulnerable people that the staff and volunteers of charities come into contact with.

Thank goodness for Prince William's

uplifting speech at the Charity Commission APM in January when he stated 'it is more important than ever to nurture those institutions which transcend differences between us, which motivate us to put self-interest aside and which, explicitly, are beyond politics. Charities do this - in fact, they are the only on-the-ground infrastructure that we have in this country that does this'. He spoke about the sector having 'critical friends' and the need to 'encourage collaboration between charities'.

So as we progress through 2018 we need to strengthen our resilience, meet our challenges, collaborate where we can and above all do everything in our power to maintain public trust in our sector.



Jane Marshall
jane.marshall@bhp.co.uk

Charity annexes - update

Simon Buchan provides a summary of a recent VAT case on charity annexes.

When is an annexe not an annexe?

This was the question put to the First Tier Tax Tribunal (FTT) in the case of Litton & Thorner's Community Centre [TC06101].

The case considered the question as to whether a storage unit added to an existing building could be regarded as an annexe built for relevant charitable purposes and therefore zero rated or whether it was an extension, subject to VAT, at the standard rate?

The dividing line as to whether you have an annexe or an extension is a fine one and heavily dependent on the individual facts of each case. This is a common issue.

Rather unhelpfully there is no legal definition as to what an "annexe" is. According to HMRC, "in order to be considered an annex a structure must be attached to an existing building but not in such a way so as to be considered an enlargement or extension".

In addition the annexe must be capable of operating independently from the existing building and both the annexe and the existing building must have their own independent entrances.

In this case the storage unit had an external door as well as an internal one to the existing building. Crucially, the unit was intended to provide storage for more than just the attached building, it was also a storage area used for another free-standing building. It could therefore operate independently which was sufficient for the FTT to decide that it was an annex, since it passed the test of having independent functionality and its own entrance.

HMRC argued that the 'main' entrance was via the existing building and as the legislation says that the main entrance cannot be via the existing building, this alone meant it was not an annex. The FTT dismissed this argument, taking the view that both entrances were 'main entrances' in this context.

In an interesting and slightly confusing twist to its decision the FTT also considered that the storage unit qualified for zero rating as the continuation of the construction of a new relevant charitable purpose building. This arose because the building on which the storage unit was added had only been recently built, and had been designed to have the storage part, but this part of the building project had to be delayed.

How could the storage unit be regarded as both the continuation of a new building project and also an annexe to an existing building? I offer no answers to that question as the community centre did not care as the FTT found in its favour.

All this shows is that VAT is a tricky tax and that each project should be considered on the individual facts of the case.



For further information please
contact Simon Buchan
simon.buchan@bhp.co.uk

Charities must do more to promote diversity on their Boards

Jane Marshall considers the outcome of a report, published in November 2017, commissioned by the Office for Civil Society and the Charity Commission.



We all know that recruiting new trustees is a challenge in itself but the latest research shows that charities need to go further, by promoting diversity and encouraging applications from women, young people and people from ethnic and socially diverse backgrounds.

This should expand the pool of individuals and give access to a wider range of experience from which charities can select their new Trustees.

The research sampled over 19,000 trustees via a national survey and responses were received from around 3,500 of them.

Comfortingly, the respondents felt that they understood their responsibilities as trustees and felt positive about their role and the satisfaction that it gives them. But the report suggests that there may be a gap in terms of perception in relation to trustees' actual understanding of their legal duties.

The research highlighted that:

- 71% of chairs of Trustee Boards are men;
- 68% of charity treasurers are men;
- the average age of trustees is 55-64 years and just over half are retired;
- 75% of trustees have household incomes above the national median;

- 60% of trustees have a professional qualification;
- 71% of trustees are recruited through an informal process;
- in 80% of charities trustees play both a governance role and an executive role;
- 70% of trustees who responded were involved in charities with incomes of less than £100k a year;
- trustees reported lacking relevant legal, digital, fundraising, marketing and campaigning skills at board level;
- trustees are concerned about their skills in dealing with fraud and external cyber-attack;
- trustees seek support and advice from one another - 80% of all respondents regard this as their most important internal source of advice and support, with only 6% seeking guidance or training from an external provider;
- on average, trustees donate almost 5 hours a week to their trustee roles.

The statistics show that trustees are drawn from a narrow cross section of the communities that they serve with the vast majority being White British, over 55 and above average income and education. There is clearly a need to promote greater diversity within trustee Boards so they reflect the communities within which they operate, have perspective and empathy with

the beneficiaries of the charity as well as having the widest range of skills possible.

Good governance is demonstrated by a Board that has perspective, different experiences from which to draw knowledge and different ways of approaching situations. A balanced Board can challenge decision making so that appropriate outcomes and direction are provided.

Charities should not be complacent and should review their processes for recruiting new trustees. It is no longer appropriate for trustees to be recruited because 'someone knows them' or because 'they are part of the club'. It is essential to have an open recruitment process to attract a Board with the widest set of skills and experience so charities are properly governed and have practices that promote public trust.

A summary of the report can be accessed at:

<https://www.gov.uk/government/news/charities-must-do-more-to-promote-diversity-on-their-boards-new-research-shows>



For further information please contact Jane Marshall
jane.marshall@bhp.co.uk

Making Tax Digital (MTD)

Simon Buchan takes a look at the impact for charities.

In 2017 HMRC announced that MTD will be introduced for VAT with effect from 1 April 2019.

In December 2017 HMRC published draft regulations which provide the detail as to how MTD is expected to work and announced a brief consultation exercise which ended on 9 February 2018.

The reason MTD is being introduced is because HMRC believe that when accounting records are kept in a digital format there are less careless errors made and therefore the VAT returns submitted are more accurate than would otherwise be the case.

Current HMRC estimates suggest that the tax gap (the difference between the actual and expected tax take) is £34 billion of which £9.4 billion is due to failure to take reasonable care and therefore HMRC believe that MTD will go some way to reducing that gap.

MTD will be compulsory for all VAT registered organisations (including charities) with taxable turnover exceeding the VAT threshold (£85,000).

HMRC envisage that "functional compatible software" will be used to maintain the mandatory digital records, calculate the return and submit it to HMRC via an Application Programme Interface (API).

It will not be possible (after 1 April 2019) for VAT registered businesses with taxable turnover exceeding the VAT threshold to submit VAT returns via the online portal on HMRC's website.

HMRC say they will provide a list of software products that comply with MTD but have not yet done so. It is expected that products from major providers such as Sage, Xero, Quickbooks will be compliant and no doubt there will be several others too.

HMRC have also stated that it will still be possible to use spreadsheets provided there is the required digital link/Application Programming Interface (API) to a software product or HMRC.

The type of records that HMRC require to be kept digitally include;

Designatory data

Business name, address, VAT, any special schemes for example cash/annual accounting, partial exemption etc

Digital records

Sales – time and value of supply, the rate of VAT charged, value of sales split between standard, zero rate etc
Purchases – time and value of supply, the amount of VAT claimed and value of any irrecoverable VAT



In addition HMRC require details of your VAT account which is the link between the accounting records and the VAT return.

One final point to emphasise, MTD does not alter the timings of submission and payment of VAT returns or when you should register for VAT. It does affect the way records should be kept and how returns should be submitted.

All VAT registered businesses should review their VAT record keeping procedures as soon as possible and make any necessary changes so that they can comply with MTD when it is introduced.



*For further information please contact Simon Buchan
simon.buchan@bhp.co.uk*

Calling all charity trustees!

BHP, Chartered Accountants is delighted to invite you to attend one of our popular free trustee training seminars. This year's events will be held in three fabulous locations across Yorkshire; the De Grey Rooms in York (21 March), The Hepworth Gallery in Wakefield (2 May) and Sheffield United Football Club in Sheffield (16 May).

These seminars offer a comprehensive introduction for new trustees as well as a useful refresher for existing trustees, ensuring they are fully aware of their legal and financial responsibilities as trustees.

The speakers are Jane Marshall, Head of Charities at BHP, who will present a session on financial duties and responsibilities and Catherine Rustomji, Partner at Browne Jacobson, who will explain the legal duties and responsibilities of charity trustees.

Informative and practical, these seminars will also provide an opportunity for you to network with other trustees and organisations in order to develop new perspectives and insights into the running of your charity.

For more information, please visit www.bhp.co.uk/events

News in brief

In our regular feature, Nicola Adams reviews the latest news from the Charity Commission.

Charitable companies converting to charitable incorporated organisations (CIOs)

Following legislative changes in Parliament in November 2017, charitable companies can now convert to charitable incorporated organisations [CIO's].

This process means the charity continues to exist, with its current name and charity number, but in a different form. You should be able to keep your existing bank accounts and any legacies left to the original charitable company will still be received.

There is a phased timetable for conversion, from 1 January 2018 to 1 August 2018, which allows smaller charities to convert first, based on their annual income bracket, followed in stages by larger charities.

The conversion process should be simple and straightforward via an online application to the Charity Commission. A special resolution and proposed CIO constitution will need to be included.

The new legislation means that all CIOs will be listed on the business names index owned by Companies House and the Commission with liaison with Companies House to ensure necessary records are updated correctly. However, CIOs do not have to send accounts to Companies House as well as the Charity Commission.

Full details are available at <https://www.gov.uk/guidance/legislative-changes-affecting-the-charitable-incorporated-organisation-cio>

General Data Protection Regulation – new helpline for charities

From 25 May 2018, the General Data Protection Regulation [GDPR] will come into force. The regulation applies to processors and controllers of data to strengthen the rules around personal

data and protect the rights and freedoms of individual persons. To aid charities in complying with the new law the Information Commissioner's Office [ICO] opened a dedicated helpline to provide advice and support to smaller organisations.

There are already resources on the ICO website (ico.org.uk) to help organisations employing fewer than 250 people prepare for the GDPR. But the new phone line will offer additional, personal advice to small organisations that still have questions.

To reach this helpline dial 0303 123 1113 and select option 4.

Changes to automatic disqualification rules

From 1 August 2018 automatic disqualification rules, which currently only apply to trustees, will be extended to some senior management positions. These will be the Chief Executive [or equivalent] and the Chief Finance Officer [or equivalent] positions. The focus is on the function, and not the title, of the positions.

These rules are to protect charities from being run by people who meet certain criteria or have specific unspent convictions and who are not authorised by a Charity Commission waiver to serve as a trustee. Current reasons are mainly bankruptcy related or crimes involving dishonesty or deception but the new rules also include being on the sex offenders register or unspent convictions for money laundering.

For trustees and senior management positions currently in post, a signed declaration should be obtained from each individual to confirm they are not disqualified under the new rules. People who will become automatically disqualified when the rules change on 1 August 2018 can choose to apply for a waiver of their disqualification now.

Simple steps will also need to be taken to update recruitment checks to ensure new trustees and senior management positions also complete a signed declaration to state they are not disqualified.

The guidance explaining the new rules and the waiver form are available from <https://www.gov.uk/guidance/automatic-disqualification-rule-changes-guidance-for-charities>

Commission publishes draft guidance on connections to non-charities

The Charity Commission has published draft guidance setting out how charities should handle relationships with connected entities such as funders, public bodies and trading subsidiaries.

The draft guidance will apply to tens of thousands of charities, including those which have trading subsidiaries, those connected to a single company which provides much of their income, and those connected to public bodies such as schools or hospitals.

The Commission has opened a consultation on the guidance which closes on 15 May.

<https://www.gov.uk/government/news/have-your-say-on-new-guidance-for-charities-that-are-connected-with-non-charitable-organisations>



For further information please contact Nicola Adams
nicola.adams@bhp.co.uk