

The effect of the CSR on Charities and the Voluntary Sector

The sector is still assessing the impact of the Comprehensive Spending Review (CSR). For many charitable organisations the landscape is still hazy as they wait for the public sector to finalise budgets for grants and service agreements, for the impact of the economic climate on the level of public donations to become clearer, for the effects of the increase in VAT to 20 per cent in January 2011 and the withdrawal of transitional relief on Gift Aid claims from April 2011. The list seems endless, but what does seem evident is that there will be an increasing demand for services, both as a result of the Government's policy to promote the role of the voluntary and community sectors in the delivery of public services and, sadly, due to a likely increase in the number of people seeking help and support.

The Government has pledged to spend £470m over the next four years to help build the capacity of the sector. This includes funds to pilot a National Citizen Service and to set up a Community First Fund to support local and community organisations.

The charity and voluntary sector is clearly about to enter a new era, and the opportunities and the threats will be many and varied for each organisation. There are, however, a number of key steps which all trustees can take, whatever the size and nature of the organisation, to make sure they are well placed to weather the storm:

- Make sure you understand the risks your charity faces
- Develop a Strategic Plan which focuses on the key charitable objectives which the charity is best placed to deliver, but with built in flexibility to respond to new opportunities or challenges
- Keep up to date with new funding opportunities and ensure that you are able to demonstrate tangible and measurable public benefit when applying for funding
- Consider working in collaboration with other organisations to access funding and share resources

And finally, the Charity Commission itself has not escaped the public sector spending cuts and faces a budget cut of 25 per cent over the next 4 years. The Commission is carrying out its own strategic review as it recognises a need to make significant changes to the way it engages with charities and the public, the services it offers and the shape of its regulatory activity. Cynics have expressed concern that the results will mean poorer regulation. However, the Commission has already made plans to move more services online and to reduce back room administrative costs and is determined to rise to the challenge. It has undertaken a public consultation on the shape of its future role and the services it provides.

Announcing the initial conclusions, Chair of the Charity Commission Dame Suzi Leather said,

"The public and the charity sector have warmly endorsed the critical role we play in protecting and serving the public interest in charity and in holding charities accountable for the privileges of charitable status. They also endorse our general approach and recognise our improved effectiveness.

"However, it is also apparent that we can change and improve. There is strong support for a clearer focus on our core regulatory role, and on doing what only we can do.

"This will mean a rebalancing of the relationship between the sector and the regulator so that umbrella bodies, and charities themselves, take back responsibility for sharing and promoting good practice – building the strength and prominence of sector organisations. It will mean reinforcing the confidence and self-reliance of charities to make their own decisions within the legal boundaries wherever possible. It will mean reducing our interventions in individual charities and, over time, our one to one advice to charities".

The key priorities agreed by the Commission are:-

- Registering charities
- Providing guidance to trustees to enable them to manage their charity effectively
- Giving permissions as required in law
- Taking action to deal with serious mismanagement or abuse of charity funds
- Create a new structure with a flatter hierarchy, and fewer layers of decision-making

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Charities don't do VAT?

Charities commonly rely upon grant funding and public donations to fund their charitable activities, however in these days of austerity many charities are faced with the prospect of reduced income.

As such many Charities are looking at activities that may generate additional income streams. Under the Governments Big Society, charities are being encouraged to contract for services with the likes of PCT's and Local Authorities. Is this an issue with regards to VAT? Charities don't do VAT do they?

It is a common misconception that charities are exempt from VAT but in reality only a relatively small amount of activities or expenditure are entitled to special dispensations. Although no VAT is usually due on income generated through donations or grant funding, VAT is chargeable on "business" activities, therefore a charity is treated the same as any other business, in this respect.

A charity which is considering expanding its activities needs to consider the following:

- Are the proposed activities within the existing objects of the charity
- If not already VAT registered, whether there is an obligation to register or if not, whether it would be beneficial to do so. (The current threshold is £70,000 p.a.)

- What the VAT liability of the supplies is. Many contracted services will fall under the health or welfare banner and may be exempt from VAT.
- How to calculate how much VAT can be recovered. VAT incurred on business expenditure is recoverable, however VAT incurred on charitable (or "non-business") activities and exempt activities is not. This results in the requirement for the use of partial exemption and/or business/non-business apportionment calculations to determine the recoverable amount of VAT.
- Some expenditure by a charity should be zero rated, or treated as exempt by the supplier, this is important if VAT charged in error would not be recoverable. Suppliers often charge VAT incorrectly in relation to advertising and on the development of buildings used for charitable activities.

As can be seen above, a charity can face complex VAT issues because of the differences in VAT treatment its income streams may have. By carefully considering these issues at the outset a charity can be confident of paying the right amount of VAT with the least administrative burden.



Gift Aid

An extra 28% is always worth the effort!!

A recent report commissioned by the Charities Aid Foundation estimates that £750m Gift Aid is unclaimed every year because the system of claiming a Gift Aid is too bureaucratic and burdensome. The report calls for Gift Aid claims to be filed online and it is hoped that this will happen soon as the 28p on top of every £1 donation that Charities can currently claim is well worthwhile.

In the meantime, much has been done to improve the scope for making Gift Aid claims on cash receipts. HM Revenue and Customs (HMRC), to their credit, publish very helpful guidance to ensure Charities can make claims wherever possible.

Almost all Gift Aid queries revolve around excessive "reciprocal benefits" – i.e. where the donor (or anyone connected with the donor) receives a benefit back from the Charity for any donations made. However as the Charity has complete control over all reciprocal benefits it is usually very easy to avoid going over the very strict limits on reciprocal benefits which can be summarised as follows:-

Donation (cash only)	"Benefit" limit
£0 – £100	25% of donation
£101 – £1000	£25
Above £1000	5% of donation
Above £10000	£500

Apart from "pure" cash donations, Gift Aid can be claimed on any "freewill" gifts of cash, including:-

Sponsored events – e.g. dinners and concerts provided the sponsor/donor who makes a freewill cash donation to the Charity does not get back more than the above limits – e.g. no more than £25 worth of free tickets for a £1000 cash donation. Tickets sold can also qualify for Gift Aid on any suggested further freewill donation – e.g. a £10 ticket to cover the cost of the dinner plus a further £5 Gift Aid voluntary donation.

Adventure events – e.g. sponsored walks provided any participant/sponsor does not get back more than the above limits – e.g. no more than £25 worth of free T shirts/baseball hats, free bottled water/food, and free coach trips to and from the sponsored walk for a £100 donation.

"Retail" Gift Aid – e.g. giving an unwanted DVD player to a Charity for the Charity to sell on your behalf and then donating the sale proceeds to the Charity, provided a Gift Aid certificate is given by the Charity and the donation of any sale proceeds is purely voluntary.

Charity auctions – e.g. auctioning goods and services (but not 'promises') for more than their value – e.g. raising £100 for a book with a retail price of £10 qualifies as the reciprocal benefit (i.e. £10) is less than 25% of the donation. Where the limit is exceeded the benefit can be "bought" to ensure a Gift Aid claim – e.g. raising £100 for a £50 tennis lesson would still qualify for a £50 Gift Aid claim if it was clear the tennis lesson had been bought for £50 and a separate voluntary Gift Aid £50 donation had been made.

Many more Gift Aid opportunities apply to other income streams including: membership and "friends of" subscriptions, church collections, school prizes, school trips, volunteer expenses and entrance fees to view Charity property.

■ Please do get in touch if you would like any further information at any time.

Trustees' Responsibilities



Being a charity trustee can be highly rewarding and it is a great way to give something to a cause that you feel passionate about, but it is never a position that should be taken on lightly.

As a trustee of a charity you share, along with your fellow trustees, the collective responsibility for directing the affairs of the charity and delivering the charitable outcomes for the benefit of the public. Specifically as a trustee you must ensure that the charity is compliant with all relevant regulations, that you act with a duty of prudence and that you act with a duty of care.

Compliance

Compliance is sometimes seen as putting the right ticks in the right boxes and is often outsourced by the trustees to professional organisations. Getting it right is crucial as, more so than the other duties, failure to do so can result in hefty penalties.

As a trustee you must ensure that the charity complies with charity law, and company law for charities that are incorporated. You must also ensure that the requirements and regulations in the governing document, which set out what the charity does and how and where it does it, are adhered to. Many charities will also be subject to regulation by other organisations, for example HMRC, and you must ensure the charity is fully compliant. As a trustee you must act, at all times, with integrity and avoid personal conflict of interest and the misuse of charity assets.

EXAMPLE – Application of Income. When planning the charitable activities for the coming year the trustees must give due consideration to whether the purposes in the

governing document are being met, who the beneficiaries will be and whether the income is applied fairly between beneficiaries. If the trustees are anticipating an excess of charitable income over expenditure they must ensure that they have the authority to accumulate funds and that these funds are held in a suitable form e.g. cash, investments etc. The trustees must also ensure that any income generated from a specific fundraising campaign are separately accounted for and applied to the purpose for which they were raised.

Duty of Prudence

In fulfilling your duty of prudence, you, as a trustee, must ensure the charity is solvent and well run, that funds and assets are used solely to further the charity's objects and that you avoid placing the charity under undue financial or reputational risk.

EXAMPLE – Land and Buildings. If a charity owns a property which is used to generate income the trustees must ensure that the property is used for an appropriate activity, that the charity gets the maximum return for its assets and that the insurance and up-keep of the property are sufficient to ensure that the future of this income stream is not put at risk.

Duty of Care

Being a trustee is about much more than turning up to the board meetings. All trustees must have sufficient time available to dedicate to their role and must use care and skill to ensure the charity is well run. This includes recognising when getting external professional advice is appropriate. While it may take years to build up a charity's reputation it can be ruined overnight if sufficient care isn't taken over an important decision.

■ **If any of this has 'got you thinking' and you would like to discuss any aspect of the governance of your charity in more detail then please do get in touch.**

Overview of Charity Functionality in Sage 50 Accounts



Improvements have been made to Sage 50 Accounts specifically for charities. Sage 50 Accounts charity accounting module can provide important analysis throughout the year, helping manage the funds and activities of the organisation easily and effectively.

Managing your funds

By setting up fund records there is the means to track the income and expenditure of the funds being managed. As income and expenditure is recorded the relevant fund can be assigned to a transaction.

Funds can be categorised as Restricted, Unrestricted or Endowment to support SOFA reporting and enable easier fund management.

Statement of Activities (SOFA)

As a non-profit making organisation the nominal accounts must be associated with SOFA categories, this enables the SORP reports to be generated. There is a standard set of SOFA categories but these can be changed to suit specific needs.

Gift Aid Management

Gift Aid Management is made easier to help maximise the opportunity to reclaim tax on donations. Sage 50 Accounts can generate an HMRC approved Gift Aid Return that can be submitted directly to HMRC.

Financial Reporting

A package of charity specific reports are provided to monitor activity against any fund, including an Income and Expenditure Account and Balance Sheet by Fund, as well as Fund nominal activity.

Managing your projects

A project costing feature is available to provide a further level of control when managing projects of the charity. This feature allows income and expense to be associated against each activity type for a given project.

■ **If you would like any information regarding Sage 50 Accounts then please get in touch.**

The Finance Act 2010

The Finance Act 2010 introduced a new definition of charities and organisations entitled to UK tax reliefs. This includes allowing EU charities to enjoy the same tax reliefs as domestic charities provided certain conditions are met as follows:-

- 1 The organisation must be established for charitable purposes.**
- 2 It must be within the jurisdiction of an EU member state, Norway or Iceland.**
- 3 It must be registered with its local charities regulator (if required), and...**
- 4 It must be managed by 'fit and proper' persons.**

An organisation in the UK or abroad, that fails any of the tests is not a 'charity' for tax purposes and will not be eligible for Gift Aid, or other charitable reliefs including those from income, capital gains, corporation tax and the benefit of VAT reliefs and exemptions.

In principle, meeting the fit and proper test should be straightforward. However the legislation is widely drafted and a 'manager' can extend beyond trustees to charity employees including the Chief Executive, Finance Director, Business Manager or others who are in a position to direct how charity assets are used. In addition there is also uncertainty about what 'fit and proper' means. It is clear that those with a history of tax fraud or other fraudulent behaviour will fail, as will anyone previously disqualified from acting as a company director or charity trustee. However it is expected that the definition will go beyond this.

HM Revenue & Customs assumes that trustees of a charity would not knowingly appoint someone who was not a fit and proper person and they will expect charity trustees to be able to demonstrate that they have given proper consideration to the suitability of people they appoint to a position of trust or influence, either as trustees or employees.

It is up to charities how they go about demonstrating that proper consideration has been given to the appointment of managers. HM Revenue & Customs have published guidance on their website including a suggested procedure that includes asking new managers to read and sign a model declaration. Detailed information can be found at: www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test



CONTACT US

To speak to one of our charity specialists please contact your nearest Mitchell Charlesworth office or email charities@mitchellcharlesworth.co.uk

In 2010 Mitchell Charlesworth raised over £8,000 through a variety of activities including dress down days, marathons, Iron man contests and seminars with the proceeds being distributed to various charities.

We would like to thank all those that gave their free time and we will continue to support local charities in 2011 and will no doubt be working alongside some of you to do so!

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Feeling the pinch? Need insurance advice?

Many charities are facing reduced donations and cuts in grants. This is forcing charities to change their operations and the way funds are gained. Unforeseen risks can arise with new practices, more ambitious fundraising events, or in seeking funds from different sources. In addition many charities are unaware of new legislation impacting on them such as the Finance Act, Equality Act and the Bribery Act. On top of this, society is becoming more litigious and making claims against charity directors and trustees with allegations of maladministration.

Mitchell Charlesworth Insurance Solutions can help with risk assessment and ensure you are adequately

insured. We are authorised by the Financial Services Authority as general insurance specialists. Our membership of the Willis Commercial Network (part of the global Willis Group) provides us with access to insurers, insurance schemes and competitive rates. One of the insurers we deal with, Markel UK Limited, specialises in charities and can even visit clients to get to know their needs to deliver the best insurance solution.

Please contact Richard Gorst on 0151 423 7500 to discuss. Alternatively, please e-mail your name, charity name and insurance renewal date to richard.gorst@mcinsurancesolutions.co.uk

We look forward to being able to help you.

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