New fundraising rules to safeguard donors

The new Charities Act fundraising rules, which came into force on 1 November 2016, now affect the trustees’ annual reports of larger charities which raise funds from the public. Charities also need to make certain they draw up agreements with third-party fundraisers which raise money on their behalf.

Charities must ensure they comply with the law and demonstrate they have safeguards in place to protect donors and the public from poor fundraising practices. In recent years, the sector’s reputation has been overshadowed by numerous media reports of donors, particularly vulnerable members of the public, being subjected to intrusive and persistent fundraising approaches from organisations operating on behalf of charities.

The Charity Commission has released its “Charity reporting and accounting: the essentials” (CC15d) guide, which explains how charities of different sizes and types are to conduct their accounting and reporting practices. This includes the requirement that all auditable charities that raise funds from the public must provide the following information in their trustees’ annual report for financial years beginning on or after 1 November 2016:

• The fundraising approach taken by the charity, or by anyone acting on its behalf, and whether a professional fundraiser or commercial participator carried out any fundraising activities
• Details of any fundraising standards or scheme for fundraising regulation that the charity has voluntarily subscribed to
• Details of any fundraising standards or scheme for fundraising regulation that any person acting on behalf of the charity has voluntarily subscribed to
• Details of any failure by the charity, or by any person acting on its behalf, to comply with fundraising standards or scheme for fundraising regulation that the charity or the person acting on its behalf has voluntarily subscribed to
• Whether the charity monitored the fundraising activities of any person acting on its behalf and, if so, how it did so

• The number of complaints received by the charity, or by a person acting on its behalf for the purposes of fundraising, about fundraising activity
• What the charity has done to protect vulnerable people and other members of the public from behaviour which:
  - is an unreasonable intrusion on a person’s privacy
  - is unreasonably persistent
  - places undue pressure on a person to give money or other property

The Commission has also collaborated with the Fundraising Regulator to issue alerts about compliance with the law on data protection, handling of donors’ personal information and legal duties when working with third party fundraisers. Information about the new rules is available on the Gov.uk website.

For further information contact Louise Hallsworth on +44 (0)2380 221222 or lhallsworth@jamescowper.co.uk

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So what is the Common Reporting Standard about?

Many readers will have come across the Foreign Accounts Tax Compliance Act or FATCA – the US legislation introduced to try to ensure that US citizens worldwide pay the correct amount of tax to the IRS. That legislation was imported word for word into the UK’s domestic legislation and required certain transactions to be reported to HM Revenue & Customs (HMRC) for automatic exchange with the US tax authorities. Charities are exempted from reporting under that legislation.

The next stage in global transparency was to introduce CDOT – the Crown Dependencies and Overseas Territories legislation and then the Common Reporting Standard. The Common Reporting Standard or CRS will become the global standard for the exchange of tax information between governments and in due course, CDOT will fall away as it is replaced by CRS. Unlike FATCA, charities are not exempt from reporting under CRS. The first year for which CRS applies is the year ended 31 December 2016.

Does CRS apply to all charities?

No, it does not. A charity must be classified as a “Financial Institution” to be required to make a report to HMRC under the CRS rules. These rules only apply to charitable trusts and not to charitable companies.

How do I know if my charity is a Financial Institution?

A charity may be a Financial Institution if more than 50% of its income comes from investments. Income from grants, property, bank deposits and Gift Aid from subsidiaries is not considered to be investment income. Investment income is really restricted to income from investments such as stock market investments. Where that type of income makes up more than half of the charity’s income AND the investments are managed in whole or in part by a professional manager on a discretionary basis, then the charity will be deemed to be a Financial Institution. Charities that have a corporate trustee are also likely to be Financial Institutions, assuming that 50% or more of the income is investment income. The charity must look at its average income for the last three years or since it commenced, if shorter.

What if my charity is not a Financial Institution?

If the charity is not a Financial Institution then it will be deemed to be an active Non-Financial Entity or NFE. If it is an NFE then it does not have any reporting requirements.

What if my charity is a Financial Institution?

If the charity is a Financial Institution then it may have transactions to report to HMRC. The charity will need to review it maintains financial accounts. Charity trustees will need to undertake due diligence on their account holders and will need to record and to report certain information.

What does “account holder” mean?

This means anyone who has an equity or debt interest in the charity. This includes the settlor, beneficiaries and any protector, and anyone who has made a loan to the charity, together with trustees and all persons exercising ultimate effective control over the charity. For those cases, the charity must obtain information from those individuals who can self-certify their status.

What information must be collected and reported?

The account holder’s name, address, place and date of birth, tax residence and tax identification number must be collected. If a resident in more than one jurisdiction, then all jurisdictions need to be identified. Information is only reportable to HMRC when the account holder is tax resident in one of the reportable jurisdictions outside of the UK. The transactions to be reported are the account balance and the gross amount paid in the year. Where a beneficiary permanently ceases to be a beneficiary, then that information must also be recorded and reported if appropriate. If the charity makes grants to other charities, then no further information needs to be collected provided that the recipient charity is on the English and Welsh, Scottish or Northern Irish register of charities.

How and when is reporting made?

If reporting is required, the charity should register with HMRC under CRS. HMRC have confirmed that reportable transactions are for the calendar year. Reports must be made annually by 31 May following the end of the calendar year. Individual charities can report to HMRC via the specific CRS portal.

How do I find out more?

Either ask your adviser or read the guidance published by HMRC. Please remember that recording under CRS only applies to charities that are Financial Institutions, not to charities that are Non-Financial Entities, and that the only reports that are required are where there are reportable accounts and the individual is a tax resident in a jurisdiction outside of the UK.

Finally

The latest guidance from HMRC addresses Human Rights concerns. If a charity has concerns that making this information available could place the beneficiary at risk, then the charity should discuss those concerns with HMRC with a view to redacting the disclosure.

For more information contact: Ian Miles on +44 (0)1491 848500 or imiles@jamescowper.co.uk.
Grant funded charities and input tax recovery

The free supply of services, with no fees charged to the customer or recipient, is treated by HM Revenue & Customs (HMRC) as a “non-business” activity for VAT purposes. A tribunal shortly after the introduction of VAT in 1973 established some key criteria for an activity to be treated as “business”.

One of the key criteria is that the activity must be predominantly concerned with the making of taxable supplies (standard rated, zero rated or reduced rated) for a consideration. Organisations that make only non-business activities are not allowed to register for VAT, but there are some special exceptions and schemes for government departments, local authorities, the NHS, academy schools, air ambulance, and search and rescue charities.

It is a common misconception that the receipt of grant funding or donations automatically means that the onward activity is non-business and VAT on costs disallowed in part or in full. It is not the funding that determines VAT recovery on costs, but rather the nature of the onward activity. There are some organisations or charities that are entirely funded by grants or donations, which never raise fees to their “customers”, and which are unable to recover VAT on costs. For example, a charity that provides accommodation for their “customers”, and which are unable to recover VAT on costs.

HMRC traditionally had a very rigid approach to VAT recovery on costs, insisting that the costs must be a specific component of an onward taxable sale, but this has been successfully challenged over a number of years. HMRC has updated their internal guidance (also available online to businesses) to explain that outside the scope income does not automatically mean that the activity is non-business or lead to an apportionment of input tax.

A recent VAT case (Folkestone Harbour GP Ltd) involved the construction of a fountain by a property developer at the request of a local authority, not on the developer’s land, free to enjoy without payment. HMRC challenged the input tax recovery but the tribunal decided that the cost had a direct and immediate link to the taxable activities of the neighbouring development. The case demonstrates that a wider, overarching examination of the costs and the link between the costs and associated sales arising is required.

Other case decisions have confirmed that the mere fact that some costs are covered by a subsidy has no bearing on whether input tax can be recovered, and that a simple cross-reference of the value of costs to the price of the onward sales is not valid. Other situations where VAT recovery on cost is allowed, even though the activities are grant funded, are described below:

- Academic or scientific research funded typically by government grants or donations (both outside the scope of VAT), which can be exploited in the future to make commercial sales for a fee. The research does not necessarily have to produce a set product or have a fixed application. The gain of skills, experience and expertise, if used to make onward taxable sales, allows input tax recovery. It is possible that there is a time lag between the research and its future commercial exploitation. A good example is an educational charity that receives grants to deliver coaching to schools for free. It can use the skills gained to deliver the same service to other schools for a fee.
- Ongoing activities that are subsidised by a grant or a donation. The activity or the whole business is partly funded by fees from customers and partly by donations or subsidies. The onward activity is “business” and input tax is fully recoverable. The HMRC criteria for an activity to be treated as business do not require that it is profitable, so a partly subsidised activity is still “business.”
- For further information contact Meera Rajah on +44 (0)1635 35255 or mrajah@jamescowper.co.uk

Financial health check for charities

A 15-question checklist designed to help charity trustees maintain their financial health and wellbeing of their organisations has been published by the Charity Commission. The ‘Charity governance, finance and resilience: 15 questions’ document helps trustees understand how to keep track of their charity’s income and spending as well as knowing how to spot critical issues which affect solvency and assets. The checklist includes questions such as:

- Are we making best use of our staff and volunteers?
- Have we reviewed any contracts to deliver public services?
- Do we have adequate safeguards in place to prevent fraud?
- Are we financially strong enough to continue to provide service for our beneficiaries?
- What is our policy on reserves?

Each question is carefully crafted to get trustees to pause to take stock of how their charities are being run and to delve deeper into key questions such as when and how to:

- Explain variances between financial forecasts and actual results
- Review sources of income
- Assess risks and tell if the charity is facing insolvency
- Consider merging with another charity
- Secure existing funding and look for other sources of funding

The Commission’s 15 questions trustees should ask document can be used as a strategic planning tool to help charity trustees achieve the long-term success of their organisations.

For further information contact Darren O’Connor on +44 (0)118 9590261 or doconnor@jamescowper.co.uk

Our services include charity accounting, auditing, tax, VAT, outsourcing and payroll, as well as specialist advice on restructuring and insolvency, mergers and collaboration, governance and trustee training, which are all provided by a dedicated team that specialises in the sector.

We also work with many independent schools and academies. With an expanding academies programme and schools looking to convert to academies, our team of experienced advisers are ready to work alongside clients to navigate the challenges ahead.

As a member of the Kreston UK Charities Group that advises over 1,760 charities across the UK, we are able to draw on the knowledge and experience of group members, which enables clients to benefit from an extensive range of services and specialist advice. Additionally, our membership of Kreston International, a global network of independent accounting firms, gives us the scope to deal with charity-related issues at an international level.

For further information contact Mike Farrell on +44 (0)1635 35255 or mfarrell@jamescowper.co.uk
Charity collaboration and mergers

For several years now there has been a belief at the Charity Commission that there are too many charities trying to do similar things and competing for the same funds. It is relatively easy to establish a new charity and, partly as a result of this, the sector has grown in an unplanned way. Whilst it might be sensible for similar charities to continue to exist, it may also be that in time it is right to merge or at least work together.

The issue was highlighted recently by the House of Lords Select Committee on Charities in their report “Stronger Charities for a Stronger Society” published in March 2017, which urged the law to be simplified to make the merger process easier. The report also made a number of other recommendations including the idea of a time limited charity. For example, the charity would simply close after a certain period of time.

The report noted that charities are not as good at collaboration as they ought to be and that mergers should actually be seen as a sign of success rather than failure. Nonetheless, there are of course risks involved in any new relationship and this is certainly true when considering a more formal collaboration or merger.

At the most basic level, collaboration could be quite easy to set up with charities working together to save costs and work more efficiently. For example, if a number of local charities are required to provide a certain type of training to staff or volunteers it might be more cost effective to organise this together rather than have each charity doing it on their own.

More formal collaboration and merger needs careful planning. Perhaps unsurprisingly, research has proved that mergers work best where all trustees are united and committed to the process.

Other key success factors include:

- Cultural integration
- Good communication and clear statement of intent and desired outcome
- Planning
- Due diligence by sector specialists
- Speed
- Timing
- Staff buy-in

Where mergers fail, it has been found that reasons included:

- A slow decision-making process
- Loss of focus
- Parties with separate aims
- Working practice and cultural differences

Despite the challenges, it is clear that merger and collaboration opportunities are something that charity management and trustees should make sure they keep on their agenda so that openings are grasped when they arise.

For further information contact Alex Peal on +44 (0)118 9590261 or apeal@jamescowper.co.uk