Mercer & Hole | Charities & Not for Profit

Introduction

Welcome to the July 2018 edition of our Charities & Not-for-Profit newsletter.

Since our last publication, we have seen Oxfam face criticism over its handling of misconduct allegations against its staff in Haiti. As well as the world's media, the case attracted the attention of The Secretary of State for International Development, Penny Mordaunt, who warned that funding could be cut off if the charity could not account for the way in which it handled the claims. The Charity Commission also opened a statutory enquiry into Oxfam, using its powers to conduct the most serious action they could take. The charity lost a large number of donations with the BBC reporting that over 1,200 people cancelled their direct debit payments in just the three days after the story broke. The longer term impact on fundraising will, of course, be much greater. Oxfam's reputation has been severely damaged and celebrity ambassadors have sought to distance themselves from the charity by stepping down. Significantly, the case provides a stark reminder in how important good governance is for charities and the risks that face them if they do not have robust measures in place.

The Charity Commission have published a new welcome pack for new charity Trustees, providing information on governance basics, financial filing requirements and how the Charity Commission can offer support. All new Trustees who have provided their email address should receive this but existing Trustees may also find it a useful refresher. Section 3 'Get to know your 6 main trustee duties' is particularly important and is well worth a read. The pack can be found at www.gov.uk/government/publications/charity-trustee-welcome-pack.

Academies are the focus of Wendy Bambrick's update, where she covers the year-on-year changes to the Academies Accounts Direction, levels of executive pay and best practice in financial management and governance.

Louise Giles looks at what is new and what has changed for charities over the last few months in her update. This includes the new General Data Protection Regulation (GDPR), which provides a fresh challenge for charity fundraisers. Guidance on where to find useful information to ensure charities comply with rules surrounding donor data is detailed. Louise also brings us up to date with Gift Aid payments from subsidiaries and the new reporting requirements in the Charities (Protection and Social Investment) Act 2016.

The VAT regime can be complex for charities but Richard Collier seeks to make it easier to understand where the challenges are. Outsourcing may be the answer for some and now is a good time to explore the option with the implementation of Making Tax Digital from April 2019.

I hope you find the contents of this publication useful and if anything here raises interest or concern, please do get in touch with me or a member of our team.

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Academies Accounts Direction 2017/2018 (AAD)

Detailed guidance for academy trusts and auditors in preparing and auditing academy trusts annual financial statements has recently been updated and you will be pleased to see there are no significant changes.

For accounting periods ending 31 August 2018

The AAD 2017 and 2018 was released in May 2018 and runs to 160 pages. The brief changes are as follows:

- Reinforcing that the deadline for submission of accounts is 4 months after the accounting period, for most academies this is 31 December 2018.
- Requirement to include information on trade union facility time and also fundraising practices in the trustee's report.
- Areas to be covered in the auditor's report to comply with revised auditing standard.
- Expenditure on raising funds to be split between direct and support costs.
- Funds note to include comparative information and an analysis showing the combined position for both years.
- Treatment of capital grants if there is no land and buildings in the accounts.
- Treatment of the apprenticeship levy payment and funded training received.
- Revision of fixed asset note to align classifications with the annual accounts return.
- Enhancing the related party note.
- Disclosure of activities relating to teaching schools.

Levels of Executive Pay

In December 2017 and February 2018 the Education and Skills Funding Agency (ESFA) sent letters to the Chair of Trustees of acad emies whose accounts showed they were paying an executive salary above £150,000. The Academies Financial Handbook 2017 states that, 'the board of trustees must ensure that their decisions about levels of executive pay follow a robust evidence-based process and are reflective of the individual's role and responsibilities.' This is to ensure that due consideration is given to salary setting and a thorough process is followed. The letter requested further information regarding executive salaries from the academies.

Best practice in financial management and governance

We recently received a letter from the Parliamentary Under Secretary of State for the School System as part of their drive to increase awareness of best practice in financial management and governance. The areas covered in the letter were:

- General Annual Grant (GAG) pooling
- Integrated Curriculum Financial Planning (ICFP)
- 3 year forecasting
- Better use of KPIs and benchmarking
- Best of breed templates
- Auditors' management letters
- Internal audit requirements
- Operational challenge

In the letter we were encouraged as auditors to discuss these areas with our clients. We will be doing so in due course as part of the audit process.

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Charities and Not-for-Profit Update

Charities are constantly having to navigate a changing landscape. The General Data Protection Regulation (GDPR) provides new data handling considerations for our clients and with it new potential risks. Concurrently, subsidiaries are having to take on new Gift Aid reporting requirements. Further, in our role as auditors, we are frequently advising our clients on year-on-year changes to reporting requirements. Below I summarise the topical key points and provide signposts for more depth of detail.

General Data Protection Regulation (GDPR)

The EU's General Data Protection Regulation (GDPR) came into force on the 25 May 2018 and supersedes the UK Data Protection Act 1998. It expands the rights of individuals to control how their personal information is collected and processed, and places a range of new obligations on organisations to be more accountable for data protection.

The GDPR applies to personal data. This is any information that can directly or indirectly identify a natural person, and can be in any format.

The Information Commissioners Office (ICO) has produced some specific guidance for charities needing advice on implementing GDPR. Please visit ico.org.uk/for-organisations/charity/

Gift Aid payments from subsidiaries

Financial Reporting Standard 102 (FRS102) was updated in December 2017 to ensure there is clarity and consistency in how Gift Aid payments by subsidiaries are reported. The new guidance is effective for periods beginning on or after 1 January 2019 but may be adopted early.

- The guidance states that Gift Aid payments must now be recognised in the subsidiary accounts only when paid, unless there is a deed of covenant in place.
- If gift aid payments are declared after the year end, they will no longer be accrued for on the balance sheet of the subsidiary, however, if payment of the donations are made within nine months of the year end then tax relief will still apply.
- Although payments of profit by subsidiary companies to the parent company are made as donations under Gift Aid (and will continue to be donations for tax purposes), FRS102 has clarified previous company law guidance that these donations be shown as a distribution (dividend) in the subsidiary's accounts.
- As the payments will now be classified as distributions they will be recognised in the subsidiary's accounts as a movement in equity rather than as an expense.

Fundraising charities: additional reporting requirements

The Fundraising Regulator and the Charity Commission are seeking to raise awareness of the new reporting requirements in the Charities (Protection and Social Investment) Act 2016. The Act, which came into force on 1st November 2016, applies to charities reporting in 2018. Typically, this would be charities with a December 2017 or March 2018 reporting year end.

The Charities Act 2016 introduced two new reporting duties for charities. Charities' annual report should now include information about agreements between charities, professional fundraisers and commercial participators and also on compliance with voluntary regulation.

The 2016 Act requirements are mandatory for larger charities whose accounts are subject to audit under section 144 of the Charities Act 2011. Other charities who choose to have their accounts audited or independently examined, and are within the scheme of voluntary regulation, are also recommended to apply this guidance.

Charities must include a statement about the following in their trustees' annual report including:

- The charity's approach to fundraising activity, and in particular whether a professional fundraiser and/or commercial participator was used.
- Details of any voluntary fundraising schemes or standards which the charity (or anyone fundraising on its behalf has agreed to), detailing whether the charity has signed up to the regulation scheme established by the Fundraising Regulator.
- Any failure to comply with a scheme or standard cited.
- Whether and how the charity monitored fundraising activities carried out on its behalf.
- How many complaints the charity or anyone acting on its behalf has received about fundraising for the charity.
- What safeguards the charity has in place to protect vulnerable people and others from unreasonable intrusion on their privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity.

Please see the attached link to see how The British Heart Foundation has complied with the reporting duties of the Act. Please visit www.bhf.org.uk/informationsupport/publications/policy-documents/annual-report-2017

If you would like to discuss this subject in relation to your own circumstances, please do get in touch.

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Tax on charities – surely not?

Unfortunately, yes. Tax continues to be a challenge for the charity sector, and VAT is no exception. The VAT regime can be a mixed experience for charities.

There are beneficial rules on advertising spend (potentially zero-rated), fund raising events (exempt if qualifying) & sales of donated goods (zero-rated) amongst others, but significant challenges remain.

Charities can operate alone or with trading subsidiaries. It is important that the chosen structure & activities of the relevant entities be reviewed carefully to determine firstly whether these activities are classified as non-business, business but exempt for VAT, or business and taxable for VAT. This can be a complex matter and is a first step in determining any liabilities to register for VAT (or even whether voluntary VAT registration would be sensible), as well as correctly identifying VAT due on sales and, most interestingly, VAT recovery on costs.

Complexities abound for charities, and frequently arise where a property is being built or otherwise acquired, particularly where there is a mixture of uses. The high values involved, the usage to which the asset is put and the interaction between charity and property VAT rules create considerable food for thought. Advice is best sought in such cases.

In addition to the usual challenges, HMRC are adding a new one in the form of Making Tax Digital (MTD) with its requirements for the use of new qualifying software to submit VAT return information, as well as processing, transferring and storing VAT data electronically. For many smaller charities, this could result in the need to source new software and incur time and advisory costs in getting processes right. HMRC have promised a "light touch" approach for a year starting from the MTD implementation in April 2019, but have also just announced the new penalty regime for it.

There is much to consider with MTD and now is a sensible time for those in the sector to plan ahead, if they have not already done so. It may be that outsourcing the VAT function to third party agents is an attractive alternative.

Elsewhere, HMRC have updated their guidance on the cost sharing exemption groups (CSEG), restricting its application to certain sectors. There are ongoing discussions with government regarding extending reliefs for charities as part of the Treasury Select Committee VAT inquiry, and VAT case law continues to develop, not always favourably, in the sector.

If you would like to discuss this subject in relation to your own circumstances, please do get in touch.

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