

Charities and Non-Profit Update



Substantial Donor Rules

The substantial donor rules have been replaced by wider ranging 'Tainted Charity Donation Provisions' primarily designed to block arrangements whereby third parties benefit from a charity's favourable tax status. Many organisations will need to consider the relevance to them on the new charitable incorporated organisations and independent schools are also affected as the application of the 'Public Benefit Requirement' becomes clearer.

Independent Schools

Charitable Incorporated Organisations

Tainted Charity Donations

The Finance Bill has published new legislation that replaces the existing Substantial Donor Rules. The substantial donors' rules applied to charities who carried out certain transactions with their largest donors. The substantial donor rules were established to tackle those who establish charities as part of arrangements to avoid tax rather than for charitable intent.

The new legislation provides simpler provisions known as "Tainted Charity Donations", which are effective from 1 April 2011. These new rules remove some of the administrative burden, whilst still targeting those donors whose main purpose in making a donation is to gain an advantage from the charity.

The main changes to the legislation are:

- There is a purpose test to establish whether a charitable donation is a 'tainted donation'.
- There are no longer any thresholds that apply to the size of the donation. The legislation covers all charitable

donations to the charity, regardless of the amounts involved.

- The previous rules imposed the tax charges on the charity rather than the donor. However, under the new legislation, both the donor and the charity will be jointly and severally liable for any income tax charge arising on a 'tainted donation.'

The Finance (No.3) Bill Explanatory Notes states that a tainted donation is one that meets all of the following conditions:

Condition A – the donor or a person connected with the donor enters into arrangements, and it is reasonable to assume that the donations and the arrangements would not have been made or entered into independently of each other.

Condition B – the donor or a person connected with the donor enters into the arrangements with the main purpose (or one of the main purposes) of obtaining a financial advantage directly or indirectly from the charity that received the donation (or a connected charity) for the donor or a person connected with the donor. Such a person is referred to as a "potentially advantaged person"; and

Condition C – the donor is not a qualifying company that is wholly-owned by a charity (or charities) or a relevant housing provider linked with the charity to which the donation is made. This provision means that wholly-owned trading companies of charities, which generally donate their profits to their parent charity

Charities and Non-Profit Update

each year, and relevant housing providers that often donate to linked charities within a housing group, will not be caught by the new rule.

Charitable Incorporated Organisations

After months of procrastination, finally there has been some movement in respect of Charitable Incorporated Organisations (CIOs).

The regulations for the legal framework for CIOs still need to be finalised by parliament, so the exact date of implementation is unknown. However, the implementation will be phased, allowing new organisations to register as CIOs first and existing charitable companies to convert towards the end of the implementation period.

The Charity Commission has published initial guidance on CIOs, which will allow interested parties to begin to consider whether the new structure will be appropriate for them. The guidance provides general information on the rules and benefits of a CIO, setting up and registering a CIO and running a CIO.

The purpose of the CIO is to combine the advantages of having a corporate structure (e.g. reduced risk of personal liability) without the burden of dual regulation (the Charities Act and Companies Act). They will be subject to the Charities Act and the Charities Commission only. CIOs will be required to register with the Charity Commission regardless of their level of income.

The Charity Commission has published two model constitutions for CIOs:

- Foundation model - for charities where the only voting members will be the charity trustees

- Association model - for charities with a wider membership, including voting

Independent Schools

In April 2008, the Charities Act 2006 introduced the "Public Benefit Requirement" stating that for an organisation with charitable aims to be recognised as a charity by the Charity Commission, it must be able to demonstrate that these aims are for the public benefit.

This has caused much controversy and debate for educational charities, especially independent schools.

Under the old charity law, a charity with aims to advance education was assumed to be for public benefit. However, the new requirements remove this assumption. Educational charities must now prove that they are for the public benefit.

Independent schools charging fees have found it very difficult to know if they are complying with the new public benefit test. In particular, they are finding it difficult to prove that they also provide benefit to students who cannot afford to pay fees. Indeed, the Charity Commission found that two out of five independent schools it assessed could not show that they were being administered for the public benefit.

This could have huge consequences for independent schools who cannot prove they are for the public benefit as it could have an impact on their charitable status and resulting tax reliefs.

The Independent Schools Council is now seeking a judicial review into the Charity Commission Public Benefit Requirements

Specific advice should be obtained before taking action, or refraining from taking action, on any of the subjects covered

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