Robinson Reed Layton
Charity Newsletter – Autumn 2011

ROBINSON REED LAYTON

CHARTERED ACCOUNTANTS and CHARTERED TAX ADVISERS

Introduction

Welcome to our second charity newsletter for 2011.

In this edition we summarise the proposed changes to the accounting framework for charities, and provide an update on charity sector issues, including taxation and VAT. Finally there is also a round up of other news relevant to the not for profit sector that we hope will be of interest.

Mark Williams
Charity Manager

Changes to accounting rules – an update

With the Charities Statement of Recommended Practice (SORP) having been issued in 1995, and then updated in 2000 and 2005, most of us had been expecting a revised SORP in 2010. However with the planned changes to accountancy rules in the UK and beyond it is likely that no new SORP will need to be complied with until around 2014.

The current position (and how it will affect charities) is as follows:

- The plan is to bring UK accounting standards in line with international financial reporting standards.
- Charity accounting will be integrated into the main accounting rules.
- A consultation was launched by the Accounting Standards Board (ASB) in March 2011, which outlines the plans:

Small charities (income less than £6.5m) will prepare accounts in accordance with the Financial Reporting Standards for Smaller Entities (FRSSE)

Charities with income over this will prepare accounts in accordance with the Financial Reporting Standards for Medium Sized Entities (FRSME).

These charities will also have an additional accounting standard called the Financial Reporting Standard for Public Benefit Entities (FRSPBE), which will be incorporated into the FRSME.

There will continue to be a Statement of Recommended Practice (SORP) that sits alongside the accounting standards.

There are some issues to be resolved within the above FRSPBE. Currently one of the proposals will be for charities to value all donated stock and include this in the accounts. This would be a significant task for those charities operating charity shops. There is also the question of valuing volunteer time and donated services. The ASB has said that it will look at these issues again.

The ASB plans for the new regime to come into force for accounting periods commencing in January 2014 (December 2014 year-ends) although many believe that this timetable is likely to slip. A SORP may be issued for consultation next year.

Charity Commission research into public benefit

The Charity Commission recently released a report that assessed how charities have coped with complying with the public benefit reporting requirement.

The requirement was introduced back in April 2008 and states that charities need to:

- Explain the activities carried out to further its purposes for the public benefit
- Confirm that the trustees have considered the Charity Commission's guidance on public benefit

The main weakness was found to be a difficulty in explaining what charities did to further their aims, with many not stating how the activities carried out led to a benefit for the beneficiaries of the charity.

Guidance for private schools to be re written

The long awaited ruling on public benefit and how this applies to private schools has recently been announced. The ruling will result in the Charity Commission re-writing some of its public benefit guidance. The verdict announced by the Upper Tribunal is summarised as follows:

- The tribunal has stated that it is up to the trustees to decide whether those who cannot afford private school fees should be able to benefit because they are operating the school. However there is a need for a benefit to the poor (i.e. those who cannot afford the fees), "*which is not de minimis or merely 'token'*".

- The document makes it clear that it is **not** always necessary to award bursaries to prove public benefit. Examples of when a private school would or would not be deemed to meet the public benefit requirement are given in the document.

- The ruling will provide schools and also charitable care homes with important guidance on how they can meet the public benefit requirement.

Further information can be found at
www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/pb_tribunal.aspx

Charities and Fraud

The National Fraud Authority Annual Fraud Indicator 2011 has indicated that on average charities lose 2.4% of their income due to fraud.

The Charity Commission has issued guidance on fraud in several documents in recent months including 'Protecting Charities from Harm', Internal Financial Controls for Charities (CC8), Charities and Risk Management (CC26) and Reporting Serious Incidents: Guidance for Trustees.

Details can be found at
www.charitycommission.gov.uk/Charity_requirements_guidance/ccpubs3.aspx.

New Charity Commission guidance

- New risk management guidance "Avoiding problems in running your charity" was published in June 2011.
- Charities and insurance (CC49) details the issues trustees should consider and how this fits in to the risk management process.
- Managing charity assets and resources: an overview for trustees (CC25) contains guidance aimed at helping trustees manage their charity's finances.
- Investment of charitable funds (CC14) contains updated guidance on investing funds and programme related investments.

Workplace pension reform

Although there are suggestions that there may be a delay due to the state of the economy, workplace pension reforms are due to be phased in from 2012, with the aim of encouraging employees to save for their retirement. Employers will have responsibilities in terms of making employer contributions as well as registering and administering the pension scheme.

Charities will need to start budgeting as there will be a cost implication, in terms of employer contributions, updating payroll systems and also administration time. Small charities will need to be ready by their 'staging date' which depending on PAYE codes will be between March 2014 and February 2016 for small charities.

Further information can be found on the Pension Regulator website
(www.thepensionsregulator.gov.uk/employers.aspx).

Agency workers

The Agency Workers regulations 2010 came into force on 1 October 2011. Agency workers have certain rights from this date as comparable permanent employees, after a twelve-week qualifying period.

Charities trustees and staff should read the new rules in full but some key points are as follows:

- Regulations do not apply retrospectively. Qualifying periods only apply from 1 October 2011.
- Discussions need to be had with employment agencies.

- Obtain HR advice where necessary if there is a gap between terms and conditions for agency workers and employees.
- A breach of the regulations could lead to tribunal claims therefore it is important to be aware of the rules to reduce the risk of non-compliance.

Further information can be found at www.bis.gov.uk.

Gift aid

HMRC have confirmed that gift aid will be moving online during 2012/2013. Gift aid registrations and claims will be submitted online and funding has been allocated to enable HMRC to build a suitable IT system.

They have also recently renewed guidance on gift aid audits. The main points are:

- HMRC will issue the charity subject to audit a questionnaire prior to the audit and will then read this to determine if the audit can be carried out by correspondence or if a visit is required.
- If the audit is to be by correspondence then HMRC will select a sample of donations and ask for the relevant documentation to be forwarded to them.
- The last full tax year will be checked for unincorporated charities, or the last full accounting year for limited companies.

VAT – Reed Employment Case

A VAT tribunal recently considered whether the employment agency needed to charge VAT on the full price of temporary staff it bills, or if VAT is only due on the commission element. The tribunal ruled that VAT should only be charged on the commission, which will be welcome news for charities that cannot recover input VAT incurred in full.

However HM Revenue and Customs has issued guidance stating that agencies should charge VAT on the full amount. Therefore it is likely that there will need to be more appeals before agencies will be in a position to offer refunds to customers.

VAT – Commercial waste collection service by local authorities

HMRC has recently undertaken a review of the VAT treatment of local waste services and has concluded that the service is outside the scope of VAT, whereas previously this service has been treated as subject to VAT at the standard rate. Charities that are unable to recover input VAT in full should contact their local authority and request a refund of VAT for the past four years, and also ensure that VAT is no longer being charged on current invoices.

VAT – Charities sharing services

HMRC has launched a consultation on a VAT exemption that would help charities share resources. Where charities set up a trading subsidiary to share services then that subsidiary will currently need to charge VAT when recharging costs. This 'artificial' charge often cannot be recovered. European legislation would create a VAT cost sharing exemption allowing charities exemption from such charges. There is hope that this will be announced in a future Finance Bill.

Round up

- The Charitable Incorporated Organisation (CIO) was due to launch in Spring 2011. Currently no revised launch date has been announced. There are now concerns that this legal form will not be suitable for larger charities that require borrowing because there will be no mechanism for securing loans.
- The Charity Commission has published guidance within its "Protecting Charities from Harm" compliance toolkit on the Bribery Act which came into force in July. The Ministry of Justice has confirmed that the act does apply to charities. Charities must ensure they have procedures that make it clear that corruption is not permitted within the organisation or in other organisations that they transact with.
- HM Revenue & Customs has issued guidance on Gift Aid and Payroll Giving for School charities.
- The Payments Council has announced that it has cancelled its target to abolish cheques by 2018 and that they will remain *"for as long as customers need them"*. This news has been welcomed by the sector due to worries that charity donations would drop as a consequence.
- The Charity Commission has published new guidance on the registration of exempt and excepted charities. The threshold for excepted charities needing to register with the regulator should be announced after the forthcoming review of the Charities Act 2006.

Round up (continued)

- There are plans in place to make it compulsory for charities to submit their annual returns online. To assist charities there is guidance on the Charity Commission website in the form of video tutorials.
- Some of our charity clients have installed or are considering installing solar panels to benefit from feed in tariff income. HMRC have taken the view that all such income generated is taxable in a charity, however it is important to remember that charities can generate trading income of £50,000 or 25% of gross income, whichever is the lower, without a tax charge arising. Alternatively income could be generated in a trading subsidiary if a group structure is already in existence.
- Big Society Capital is the official name for the Big Society Bank. The bank will provide funds to banks such as CAF and Charity Bank who in turn will provide capital to not for profit organisations.

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If you do not have internet access but would like a copy of any documents referred to in this newsletter please contact one of the charity team