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Newsletter June 2018

Shining a spotlight on charitable expenditure

Business is attempting to come to terms with Brexit; in general, the forecasts are rather gloomy. It is therefore unsurprising that HM Revenue & Customs (HMRC) is anxious to ensure that everyone pays their 'fair' share of tax. HMRC has targeted the charity sector along with many other taxpayers.

Of relevance to charities will be the kind of queries being raised by HMRC. Broadly speaking, UK charities are exempt from tax on certain profits on condition they are solely applied for qualifying charitable purposes. The exemption covers investment income, capital gains and donations received.

HMRC will scrutinise the charity's application of funds to confirm that they meet the required conditions.

If it can be shown that the charity's expenditure did not meet the requirements, tax will be due on a corresponding amount of the charity's income.

HMRC focus on two common forms of expenditure to ascertain whether they qualify as being made for charitable purposes:

UK Charities Making Interest Bearing Loans

Charities often invest to realise an attractive income stream in the medium term and capital growth in the longer term. In general, UK law encourages this, but there are obviously rules and conditions.

Making a loan can be an investment, but a charity cannot simply decide to make a loan, even one with an attractive interest rate unless it has undertaken due diligence on the borrower and its anticipated ability to repay the loan and interest. The trustees are strongly advised to seek adequate security against any loans advanced and to obtain independent financial advice as to whether the loan advanced would be in the best interests of the charity.

It is necessary to document the decision-making process on making the loan; commonly in a Board Minute. There should be formal loan agreements and security documentation. The trustees are expected to monitor the borrower's repayments under the terms of the loan agreement.

A charity may seek to lend to its subsidiary. It could be argued that a charge over the subsidiary's asset is insufficient as the charity already owns its subsidiary. Whilst security would be sensible, HMRC expect that greater due diligence is taken by the trustees to satisfy themselves that the subsidiary's cashflow forecasts are reasonable.

UK Charities Making Donations To Overseas Institutions

Assuming that UK charities can simply make donations to overseas institutions and beneficiaries is dangerous. Whilst this can be done, it must be subject to proper steps being in place to ensure that the ultimate application of the funds is in a form that would qualify as charitable expenditure.

The legislation makes it clear that even if the overseas institution applies the donation received from the UK for charitable purposes, the payment by the UK charity is unallowable unless HMRC is satisfied – a fairly subjective test! – that the UK charity had proper steps in place to ensure that the overseas charity would apply the funds correctly.

HMRC acknowledges that the measures required for a large charity heavily involved with overseas work will differ to those for a smaller charity making modest overseas donations only every so often.

All overseas donations must be fully documented. The actions in place must

span the donation lifecycle starting with the donation request from the overseas charity, to the decision to make the donation, to documenting and ratifying the donation in a Board Minute, and communicating with the recipient to ensure the funds have indeed been applied for charitable objectives. Obtaining a receipt for the donation will not suffice. File notes and correspondence on the application of the funds should be maintained. Visits, telephone calls and meetings with the overseas charity should be undertaken and recorded.

In some cases, the overseas recipient should be asked to formally confirm the manner in which it will utilise the donation; this would be relevant if significant donations are made for a specific project.

Where a donation is made to fund an overseas charity which makes small grants and donations to those in poverty, as featured on a 'needy-list', the trustees should ask for a copy of the list and the criteria set for inclusion on the list.

Those making loan investments and overseas donations should ensure they obtain advice and keep proper records. It is very important that there is regular, contemporaneous and comprehensive recording of material decisions as they are taken. Board Minutes, file notes and diaries should be maintained accordingly. It is fundamental that all decisions are taken for the absolute benefit of the charity so that it may carry out its charitable objectives, and appropriate procedures and documentation must be the standard.

To discuss this or any related matter, please contact Barry Leigh barryleigh@cohenarnold.com or the Partner dealing with your charity's affairs.



Making Tax Digital: the story so far

The government is phasing in its landmark Making Tax Digital (MTD) regime, which will see taxpayers moving to a fully digital tax system over the coming years, beginning with MTD for VAT. Here, we outline some of the key areas to take into consideration.

Making Tax Digital: an overview

Making Tax Digital is a new government initiative with the stated aim of 'bringing the tax system into the 21st century'. The new regime will ultimately move taxpayers to a fully digital system, with businesses and individuals required to register, file, pay and update their information using a secure online tax account.

MTD for individuals: the Personal Tax Account

Digital tax accounts for individuals – Personal Tax Accounts (PTAs) – have already been created by HMRC. The accounts are pre-populated with information already held by HMRC. PTAs are set to be developed further and taxpayers will be able to report any additional sources of income through their digital account.

Individuals may wish to register for a personal tax account by visiting www.gov.uk/personal-tax-account. HMRC anticipates that, over time, many individuals with straightforward tax affairs may no longer need to complete a tax return.

MTD for businesses: the revised timescales

The new MTD initiative was originally set to be implemented between 2018 and 2020. However, in response to concerns raised by business and industry experts regarding the pace and scale of the changes, the government put forward a revised timescale for the introduction of Making Tax Digital for Business (MTDfB).

Under the revised timetable, starting from 1 April 2019 those businesses with a turnover above the VAT registration threshold (currently £85,000) will have to keep digital records for VAT purposes and provide their VAT return information to HMRC using MTD functional compatible software. The MTD requirement will remain even if turnover subsequently falls below the VAT registration threshold.

The government has confirmed that keeping digital records and making quarterly updates will not be made mandatory for taxes other than VAT before April 2020. Similarly, those businesses below the VAT registration threshold which have voluntarily registered for VAT can opt to join MTDfB. HMRC is live piloting MTD for VAT from April 2018 onwards.

MTD for VAT: legislation overview

In February 2018, the government published the Value Added Tax (Amendment) Regulations 2018, setting out the requirements for MTD for VAT. Here we consider some of the key areas outlined in the legislation.

Exemptions

The MTD requirements for VAT will take effect from 1 April 2019 and will apply to any VAT-registered business with a taxable turnover over the VAT registration threshold.

Exemptions will be available where HMRC is satisfied the business is run by a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or a business to which a qualifying insolvency procedure is applied, or for which HMRC is satisfied that it is not reasonably practicable to make a return using an electronic return system for reasons of disability, age, remoteness of location or any other reason.

There will be a right of appeal against the refusal of an exemption by HMRC.

Keeping digital records

HMRC stipulates that businesses within the scope of MTD must use functional compatible software to meet the new requirements. The VAT return will be calculated and submitted to HMRC via an Application Programming Interface (API). Submission can be from software, bridging software or API enabled spreadsheets. The transfer of data from the mandatory digital records through to receipt of information by HMRC, however, must be digital and manual transfer or transposition of data will not be permitted.

Functional compatible software is defined as a program or set of programs that can:

- record and preserve electronic records in an electronic form
- provide HMRC with information from the electronic records and returns in an electronic form, and by using the API platform
- receive information from HMRC using the API platform.

There are, however, still some areas in which HMRC need to provide further clarity. At the time of issuing draft guidance, HMRC stated that options for the digital transfer of information to HMRC will include XML import/export, macros or linked cells. Earlier guidance also suggests that adjustments such as partial exemption can be calculated separately outside the digital records, and transferred in digitally or manually, as long as the ultimate transfer of information to HMRC is digital. HMRC envisages that digital records will not have to be in one piece of software, provided that there is a digital link between the software used.

So, for example, a business may use one piece of accounting software to record sales and purchases, transferring the totals into a spreadsheet to calculate the VAT return. The information is then sent to a piece of bridging software to submit the VAT return to HMRC. In this example three pieces of software are involved. To qualify as functional compatible software, the links between them will have to be digital.

However, the detail on record keeping is not legislated, and therefore remains covered only by draft guidance. HMRC has said that it is 'engaging' with stakeholders with regard to the VAT Notice, so further clarification is to come.

HMRC anticipates that there will be a 'soft landing' period of a year, when penalties for record keeping will not be applied, giving businesses 'in certain circumstances extra time to update legacy systems to be fully compliant'.



Scope of digital records

Businesses will be required to submit summary totals of their digital records to HMRC at least every three months. In addition, with their first quarterly update they must provide certain 'designatory data', and any subsequent changes to this data must be included in their next quarterly update. The regulations will specify the information a business needs to keep and preserve digitally. The digital records must include:

- 'designatory data' including the business name, principal place of business and VAT registration number, together with information about which VAT accounting schemes they use;
- the VAT account, explained later; and
- information about supplies made and received.

Businesses will also need to maintain digital records for the VAT account (the audit trail between primary accounting records and the VAT return). This should include details of the VAT payable portion and the VAT allowable portion.

The VAT payable portion is:

- total output tax due for the VAT return period
- total output tax on acquisitions from other EU member states
- total output tax on supplies received where the business is required to account for and pay on behalf of the supplier (reverse charge output tax).

The VAT allowable portion is:

- total input tax allowable for the VAT return period
- total input tax allowable on acquisitions from other EU member states.

The VAT account will also need to detail any adjustments made which will include correcting errors in calculating VAT payable in a previous period and other adjustments such as claiming bad debt relief and annual adjustments for partial exemption and retail schemes. Only the total for each type of adjustment will be required to be kept digitally and not details of the calculations underlying them.

Businesses will need to preserve digital records in functional compatible software for up to six years.

VAT returns

Businesses within the scope of MTD for VAT will be required to submit their VAT returns using their functional compatible software. Information will be pulled from the digital records to populate the VAT return. There will be a minimum of 9 boxes required to complete the return, although HMRC will permit businesses to include supplementary VAT information as part of a VAT return or voluntary update.

The government has confirmed that the submission deadlines for income tax and VAT will not be aligned, meaning there will be no changes to the statutory VAT return or payment dates.

Businesses submitting monthly or non-standard period returns will be able to continue to do so. The VAT annual accounting scheme will also be retained with the current conditions. Businesses making these types of returns will also be required to keep digital records and submit their VAT returns through functional compatible software.

Some businesses may choose to submit VAT information more frequently than their VAT return obligations require on a voluntary basis. Some businesses may choose to voluntarily provide further information by way of periodic updates and supplementary data.

Periodic updates

Businesses will be able to submit VAT information more frequently than their VAT return obligations require on a voluntary basis as a 'voluntary update'.

Supplementary data

HMRC believes that businesses and HMRC could benefit from the submission of supplementary data detailing how the figures in the return are arrived at. HMRC believes this additional data will help it target non-compliance. The software will allow for the voluntary submission of supplementary VAT data as part of a VAT return or a voluntary update. HMRC believes this will allow it to test with businesses the extent to which they and HMRC can benefit from such supplementary data.

How we can help

Whatever the size of your business, MTD will ultimately affect your firm and we can help you to prepare for the new system ahead of the start date of April 2019.

To discuss how the MTD reforms may affect you and your business, please contact us.

Is It All In Order As You Would Like To Think...?

If you are a trustee of a charity, you probably pat yourself on the back on the basis that you run your charity efficiently and effectively and ensure that you follow the objectives of the charity at all times.

You discuss matters with your fellow trustees regularly and you ensure that funds are not spent on frivolous expenditure as all amounts raised are directed solely to the cause for which your charity was formed.

Imagine therefore your consternation when you receive a letter from either the Charity Commission or HM Revenue and Customs in which they ask you and your fellow trustees to answer a number of questions.

Here in the office we have seen numerous letters from HM Revenue and Customs and the Charity Commission in which detailed and searching questions are asked concerning many of the activities that charities undertake. Rather than reproducing such an extensive letter here, we detail below a sample of questions received, concentrating on just a few areas.

Please bear in mind that the letters that we deal with go into greater detail and cover far more activities than those shown below:

1. Loans

- a. How does the charity decide who to give the loan to and what amount should be loaned?
- b. Describe the decision making process and all factors taken into consideration.
- c. State if there are any minimum or maximum amounts.
- d. State if there are any fixed amounts.
- e. Provide details of the typical circumstances in which the minimum/maximum/fixed amounts are used and advise of any exceptions.
- f. List all books and records that are maintained which document this process.
- g. Please provide relevant Loan Agreements.
- h. If no formal Loan Agreements are in place, please give reasons as to why this is the case.
- i. How does the charity physically make the loans? If there is more than one method, explain the different methods used. List all books and records that are maintained which document this process.
- j. What are the typical terms of the loans? Do the terms vary for any reason? If they do, please state all cases in which they may vary. List all books and records that are maintained which document this process.
- k. Explain what due diligence is done before and after the loan is made. If

the amount or level of due diligence varies, explain in what circumstances it varies. List all books and records that are maintained which documents this process.

- l. Provide a narrative to explain how the funds have furthered the objective of the charity.

2. Minutes

To assist understanding of how the charity operates and how it is governed, provide copies of all Trustee Minutes for the period.

3. Bank Statements

To enable a better understanding of how the charity manages its finances, please provide statements for all bank accounts, mortgage accounts, credit cards and any other similar accounts operated by the charity during the year, including:-

Account number; sort code; name of bank or building society; opening and closing balance for each account and a narrative explaining what each account is used for.

4. UK grants and donations paid

Please provide:-

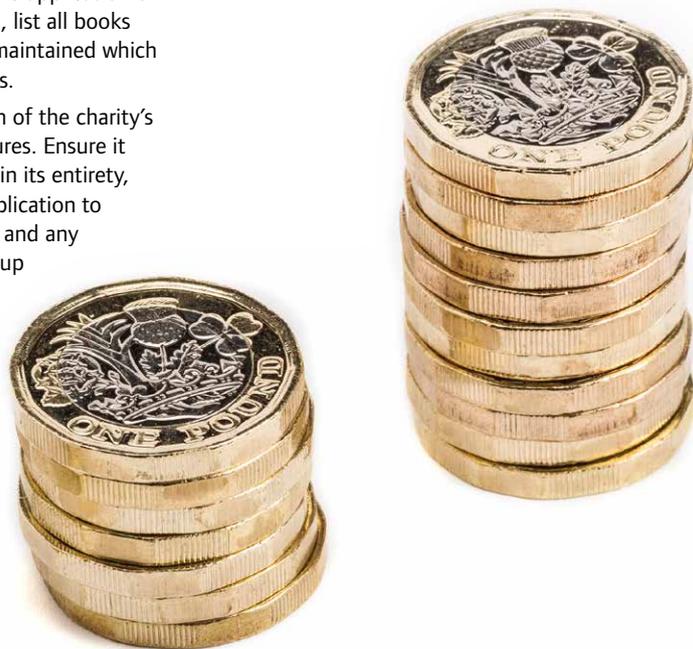
- a. The full name and address of each beneficiary.
- b. Details of why these payments were made and how they meet the charity's objectives and copies of all initial grant applications received by the charity.
- c. Details of any family or business connections the recipients have with the trustees or their families.
- d. Details of any actions or reviews carried out by the trustees following the payment of the grants to beneficiaries to ensure the charitable application of the funds. In addition, list all books and records that are maintained which document this process.
- e. A detailed explanation of the charity's grant making procedures. Ensure it covers the procedure in its entirety, from receipt of an application to payment of the grant and any verification or follow-up action thereafter. In addition, list all books and records that are maintained which document the process.
- f. What was the reason for each grant/donation?

- g. Please provide a summary of the review process carried out by the trustees in each case. This includes copies of any bank statements, means tests, business accounts, etc. received from the beneficiaries to substantiate their claims.
- h. A copy of the charity's grant making policy, together with the process for applying for a grant and the decision making procedures as to whom grant should be paid.

The questions above are but a sample from the many letters we have seen. Space does not allow us to include the further questions received in respect of donations to overseas charities, but suffice to say that those additional questions are even more detailed and challenging than those shown above. Similarly detailed questions have been included in connection with other aspects of a charity's activities such as for example, details of written policies in place and transactions with substantial donors.

As is apparent, running a charity effectively is a minefield and expert guidance is frequently required to ensure that sufficient records are maintained to ensure that if and when the dreaded letter arrives, the trustees can feel confident that they have sufficient paperwork/documentation in place to satisfy HMRC and/or Charity Commission requirements.

Should you wish for a "check-up" to ensure full compliance, please contact David Goldberg davidgoldberg@cohenarnold.com or the Partner who normally deals with your affairs.



Are you missing out on inheritance tax reliefs and exemptions?

Inheritance Tax is sometimes referred to as the “avoidable tax” as careful planning in advance can reduce IHT or at least serve to mitigate the overall tax burden.

Some of the main reliefs and exemptions are under-appreciated and under-utilised. We revise some of these in this article.

Broadly, IHT is charged at 40% or 36% on your estate on death and at 20% in respect of certain chargeable lifetime gifts (such as gifts to trusts and companies), to the extent that the lifetime gift or death estate exceeds your available nil rate band (currently £325,000).

We discuss here some of the more simple rules – please be in touch with your normal contact for further information.

Exemptions available for both lifetime gifts and on death

Gifts to certain persons are exempt and do not use up the nil rate band. The exemptions are as follows:

Gifts to a spouse or civil partner

Any gift made between spouses during lifetime or on death is free of IHT (but see the section on Domicile below, if you are not domiciled in the UK).

Gifts to charities

Outright gifts made to charities in the UK, EU, Norway and Iceland, or to charitable trusts from which only those charities may benefit, are exempt from IHT. To qualify, the charity (or charities) must be established in one of those jurisdictions and must be for recognised charitable purposes.

Exemptions available for lifetime gifts only

If none of the above exemptions apply, there are additional exemptions available for lifetime gifts. The exemptions are applied in the order in which they are discussed below, with “normal expenditure out of income” applied first and “annual” exemption” applied last.

Normal expenditure out of income

Lifetime gifts are exempt if they form part of your normal expenditure out of (after tax) income, provided that you are left with sufficient income to maintain your usual standard of living (and do not need to dip into capital).

A regular pattern of giving is required, for example meeting annual school fees for a grandchild, or paying the premiums on a life policy for another’s benefit.

Small gifts

Any number of gifts of up to £250 (to any one individual) during a tax year are exempt. The exemption is only available if the gifts to that individual for the tax year do not exceed £250 in total. For example, if you were to give your niece £200 and your granddaughter £300 during the tax year 2018/2019, only the gift to your niece would be exempt.

It is not possible to carry forward any unused portion to the next tax year.

Wedding or civil partnership gifts

Lifetime gifts on the occasion of a marriage are exempt up to certain limits. The amount of the limit depends on your relationship to the couple. The limits are as follows:

- Each parent can give £5,000.

- Each grandparent or great-grandparent can give £2,500.
- Either of the couple can give to each other £2,500.
- Any other person can give £1,000.

Annual exemption

Lifetime gifts (which do not fall into any other exemption) are exempt up to £3,000 a year. If the annual exemption is (wholly or partly) unused for a particular tax year, the unused portion may be carried forward for one tax year only.

Potentially exempt transfers

If there are no other exemptions available, an outright gift to an individual (called a “potentially exempt transfer”) might eventually fall out of charge. They are so called, because if you (the donor) survive for seven years from the date of the gift, the gift becomes fully exempt.

If you fail to survive for seven years, then the gift becomes chargeable and will use up all or part of your nil rate band. However, the longer you survive after making the gift (subject to surviving at least three years), the lower the IHT charge, under a relief known as taper relief.

Note that it is the IHT charge that is reduced, not the value of the gift (which reduces the nil rate band by the full amount).

Reduction in rate of tax

A lower rate of IHT applies to testators who die on or after 6 April 2012 and who leave 10% or more of their net estate to charity. The lower rate of IHT is 36%, instead of 40%.

Relief

If the gift (whether made during lifetime or on death) is of a special type of asset, relief may apply to reduce the amount of IHT payable, sometimes to nil.

The main type of relief is Business Property Relief:

Business property relief

Where the conditions are met, 100% relief is available for unquoted share-holdings and interests in a business (whether owned as a sole trade or in partnership) located anywhere in the world. 50% relief is available for shares in a quoted company (where you had control of the company) and also for assets, such as land and buildings, used by your partnership or company.

Generally, you must have owned the shares or the business for at least two years prior to the gift (whether made during lifetime or on death). Certain types of activities and investments are excluded from relief: relief is not available if the business or company’s activities consist mainly in dealing in securities, stocks or shares, land or buildings, or making or holding investments.

Domicile

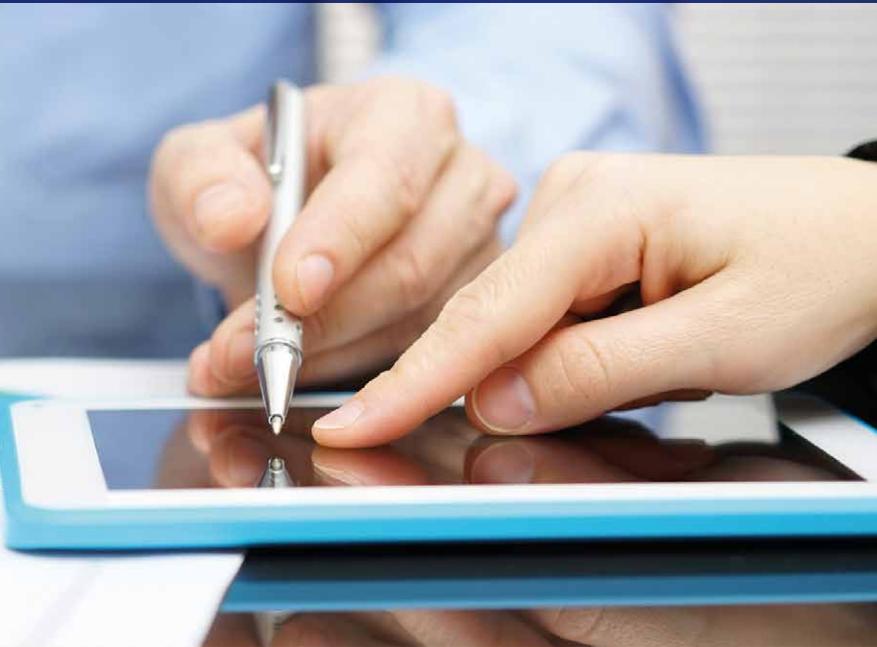
If you are not domiciled in the UK, your exposure to IHT may be reduced unless you elect to be treated as UK domiciled for inheritance tax.

(Some content from Practicallaw – Thompson Reuters)

To discuss this or any related matter, please contact Pinny Olsberg pinnyolsberg@cohenarnold.com or the Partner dealing with your taxation affairs.

Trusts and Estates

The deadlines for filing the first Trust and Estate registrations under HMRC's new Trust Registration Service [TRS] have now passed.



TRS is HMRC's new online system for Trustees and executors to register and provide details of Trusts and complex estates. This replaces the old paper forms. Trustees and executors are now obligated to annually update and confirm their details on the 'register'.

Much of this new requirement results from EU Money Laundering legislation. Failure to register can lead to penalties (see deadlines below).

Which Trusts need to use TRS

1. A UK Trust where, in any given tax year, there is a liability to pay any of the "relevant UK taxes"; or,
2. A non-UK Trust which receives UK source income or has UK assets on which the Trustees have incurred a liability, in any given tax year, to pay any of the "relevant UK taxes".

The "relevant UK taxes" are Income Tax, Capital Gains Tax, IHT, SDLT, SDRD or Land & Buildings Transactions Tax (Scotland). VAT and ATED are **not** included as relevant UK taxes.

In short, **a Trust only needs to register if it has incurred such a UK tax liability in any given tax year.** So for example, if a Trust did not have any liability to UK tax in 2016/17 there would be no need for it to register by the following 31st January.

Similarly, a bare Trust does not need to register as the trust is not liable to any tax but rather all tax liabilities fall directly on the beneficiaries. Even if a Trust has UK income that is liable to tax but as a result of a given tax relief does not have a liability in a given tax year, it would not need to need to update its details for that year.

The Trustees should look at this on a year by year basis. For example, if a Trust had a UK liability for 2016/17 and duly registered, but did not have a liability in 2017/18, there would be no need for it to update its details by 31st January 2019. However, HMRC are still "encouraging" Trustees to update the TRS for any changes.

An income in possession Trust or a Trust that has mandated its income to beneficiaries, such that the UK tax liabilities on the income is reported directly

by the beneficiaries and not the Trust, does not have to register.

Charitable Trusts where there is no liability to UK taxation (i.e. all funds have been applied for charitable purposes) do not need to be registered.

Deadlines

1. Trust already registered for SA – 31st January after the end of the tax year.
2. Trust not registered for SA:
 - a. 5th October after the end of the tax year - for Trusts that have incurred an Income Tax or CGT liability for the first time.
 - b. 31st January after the end of the tax year - for Trusts that have incurred an IHT or Stamp Duty liability.

Information Required by TRS

Trusts

1. Details of Trusts assets including:
 - Addresses of UK properties (only those directly held by the Trust not if held by via a company)
 - Markets valuation on the date that the assets were settled
2. The settlor – name, date of birth, NINO (if available), if NINO not available details of passport or ID card and address.
3. The Trustees - details required as in 2 above.
4. Any person exercising effective control over the Trust - details required as in 2 above.
5. The beneficiaries or class of beneficiaries - details required as in 2 above. Where there is a large class of beneficiaries, it is sufficient to provide a description of the class of beneficiaries.

HMRC have provided quite detailed and helpful guidance as to what to disclose where some of the above details are not available.

Estates

TRS is only necessary for "complex estates" i.e. those that do not meet the conditions for using the "informal payment procedures" for Trusts and estates. Information required is:

- Estate – name and title of estate
- Personal representatives – similar details to those mentioned above
- Deceased – details as above

There is no requirement to give details as to the beneficiaries of an estate.

Charitable Trusts

As mentioned above, these do not normally need to be registered as there is unlikely to be any liability to UK tax. In the event that a charity does have a UK tax liability, it has an obligation to register.

To discuss this or any related matter, please contact Baruch Brenig baruchbrenig@cohenarnold.com or Asher Sternlicht ashersternlicht@cohenarnold.com

The new code governing charities – is your organisation up to date?

The new Charity Governance Code was published recently, and sets out a range of new governance-related standards and measures which charities should aim to comply with.

Background

The Charity Governance Code replaces the Code of Good Governance, and has been developed by a steering group of charity umbrella bodies comprised of the Association of Chairs; Acevo; ICSA: The Governance Institute; NCVO; the Small Charities Coalition; and the Wales Council for Voluntary Action, and with an independent chair, Rosie Chapman.

Over 200 charities, individuals and related organisations also responded to consultation on the draft Code. The Code of Good Governance was last updated in 2010, and the Charity Governance Code builds upon the foundations set out in the Code of Good Governance, whilst containing a range of new and updated requirements and standards.

A new website has been created to launch the Code, which can be found at www.charitygovernancecode.org/en

Structure of the Code

The Code is not in itself a legal or regulatory requirement, but is based on a foundation of trustees' basic legal and regulatory requirements. To underline the importance of this new Code, the Charity Commission has withdrawn its guidance on governance ('The Hallmarks of an Effective Charity (CC10)'), and instead is referring organisations to the Code. As such, the Charity Commission will be expecting trustees to be familiar with the new Code and applying it to their charity.

The Code is deliberately drafted to be aspirational, and acknowledges explicitly that not all charities will be able to achieve all of the standards set out in the Code. It is designed to be a tool for continuous improvement for charities, setting out best practice and measures which charities should be striving towards.

There are two versions of the Code – one for larger organisations, and one for smaller organisations.

The Code adopts an "apply or explain" approach – in other words, charities should either apply the recommended practice set out in the Code, or explain why they have not followed a particular practice and explain what they have done instead. Charities are encouraged to publish a brief statement in their annual report explaining their use of the Code.

The Code is divided into principles – it sets out a relevant principle, then explains how this principle should be complied with in practice. The relevant principles are: organisational purpose; leadership; integrity; decision-making, risk and control; board effectiveness; diversity; and openness and accountability.

The Code is drafted in a clear and user-friendly style, is easy to navigate and will be a useful tool to help charity trustees to be clearer on what is expected from them.

Key changes introduced by the Code

The new Code introduces a range of more stringent measures for trustees. Some of the key changes from the previous position include:

- An explicit statement that generally, trustees should not serve for terms of longer than 9 years (unless exceptional circumstances apply);
- A wider focus on ensuring that the board has the right mix of skills, knowledge and experience to deliver the charity's purposes effectively, and an explicit statement that a board should typically consist of 5 – 12 individuals;
- A requirement that the board should review its own performance and that of individual trustees each year, with an external evaluation by a third party every 3 years;
- A greater focus on diversity, with the board taking part periodically in diversity training, and making a positive effort to remove obstacles to people being trustees. The board should see diversity as an integral part of its board reviews;
- A greater focus on openness and transparency;
- A greater role for the Chair to provide leadership to the board and take responsibility for ensuring that the board has appropriate priorities and structures in place; and
- An explicit requirement that trustees should consider the benefits and risks of partnership working, merger or dissolution if other organisations are fulfilling similar charitable purposes more effectively.

Next steps

Trustees of all charities should be aware of the Code, and should begin considering how it applies to their charity, and any key governance changes required to ensure compliance.

If you have any questions on the Code or how it applies to your charity, please contact David Goldberg davidgoldberg@cohenarnold.com or the Partner dealing with your charity's affairs.



Accountants' probate powers: administering clients' estates

Dealing with grief is always challenging. Applying for probate and administering the Estate of the deceased can be somewhat overwhelming.

Historically, the application for probate was a reserved activity carried out exclusively by solicitors and estate practitioners. However, since 2014, licensed members of the Institute of Chartered Accountants in England & Wales (ICAEW) have been allowed to do so.

Indeed, accountants are frequently in a better position to advise and act in Probate matters, as they have intimate knowledge of their client's financial affairs.

Application for Probate

The purpose of a probate application is to authorise the Personal Representatives [PRs] to deal with the deceased's Estate.

Who acts as PR depends on whether there is a Will specifying an executor(s) who is willing and able to act. Otherwise the PRs will be the closest family member(s), or their representatives, who apply to the Probate Court.

Once the appointment is approved by the Probate Court, the PR will:

- collect the assets of the Estate
- settle its liabilities
- distribute the net Estate to the rightful beneficiaries.

Does one always need probate or letters of administration?

Where the assets of an Estate include property such as a flat or house, an application for probate or letters of administration is normally required. If however, the property is passing to a surviving spouse or civil partner and the property was held in joint names (see further below) and the quantum of other assets including bank accounts and personal possessions such as furniture and jewellery is relatively small, it may be possible to deal with the Estate without an application for probate.

Division of Estate - Valid Will v Intestacy

Where there is a valid Will in place, the division of the Estate follows the provisions of such Will. Where there is no such Will in place, or the Will fails to deal with all the assets of the Estate, such division is dictated by the laws of intestacy.

In cases of intestacy, where the deceased has left issue, the surviving spouse or Civil Partner [CP] is entitled to the personal chattels of the deceased, a fixed legacy of £250,000 and half the residue. The balance is divided amongst the issue. If there is no surviving issue, the surviving spouse or CP is entitled to the entire Estate.

It follows that the making of a valid Will is of paramount importance for any person who wishes to ensure that his/her assets are distributed after their death in accordance with their wishes. A Will is often used to record other directions or requests such as their desired place of burial or cremation or a memorial to be set up for the deceased.

Inheritance Tax (IHT)

An IHT Return is usually required to be submitted by the PRs to HMRC detailing the assets and liabilities of the Estate. This will frequently necessitate valuations of assets and negotiation with HMRC.

Probate will only be granted if the executor or administrator can demonstrate that a valid IHT Return has been submitted to HMRC and the relevant IHT paid.

IHT is a tax levied (currently at 40%) on the assets of an Estate that are in excess of the Nil Rate Band [NRB]. This currently stands at £325,000 for each individual but can be lower if certain chargeable transfers were made by the deceased prior to his/her death.

Assets left to a spouse or civil partner or charity are exempt from IHT. Indeed, it is common practice for married couples or CPs to

bequeath all the assets of the first partner to die to the remaining partner so that there is no IHT payable on the first death. Where the first spouse or CP does not utilise his NRB, it is normally possible to transfer the unutilised NRB to the remaining spouse or CP so that there is an effective double NRB (£650,000) on the second death.

Deeds of Variation [DoV]

Sometimes the beneficiaries may wish for the Estate to be distributed in a different manner to that dictated by the Will or – more commonly – the laws of intestacy.

A DoV is the method by which one or more of the beneficiaries of an Estate give up their entitlement or a part of it in favour of other persons. Dispositions made by a DoV within two years of the deceased's death are generally treated for IHT and CGT purposes as if it had been made by the deceased and can be used, under the right circumstances, to substantially reduce IHT and / or CGT.

Jointly owned property

Many couples jointly own their home but there are two different legal methods of such ownership (which have a profound effect on the disposition of the asset):

- Beneficial joint tenants – the surviving partner automatically inherits the deceased partner's share of the property under the survivorship rules **regardless of what is stated in the Will.**
- Tenants in common – the surviving partner does not automatically inherit the deceased's share and the deceased's interest in the property is dealt with according to the Will or the rules of intestacy.

Our fully trained probate team have many years of experience in helping individuals and families. We provide expert guidance and advice covering all matters in an efficient and sensitive manner with particular attention to the areas of personal and family taxation.

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