



Charity Briefing

Spring 2008 – web edition



The venture philanthropists

They have made their fortune, their family is financially secure and their business is almost taking care of itself – but what to do with those extra zeros on their bank balance?

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Opinion

Over the past three years, we have witnessed more changes in the definition of 'charitable' than in the previous 400!

Even though the different legal jurisdictions – 'Scotland' and 'England and Wales' – set about re-defining charitable at roughly the same time they have both reached broadly similar conclusions. One of the most valuable developments (see p6) is that all charities must now be able to demonstrate the public benefit they provide to ensure their ongoing charitable status.

No longer can some charities assume their status by default.

In terms of bringing more transparency and accountability to a sector which has grown into a £10 billion a year industry I see this as a very positive step.

I continue to be surprised to hear criticism of OSCR, where accusations of red-tape and bureaucracy have emanated from the media. Any increase in form filling is more than compensated for by the significant deregulation in accounting and auditing. In our online edition (p10) we look at the impact OSCR has made.

I do hope you enjoy this edition.



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Give and take

The rise of wealthy entrepreneurs who make their own fortune rather than inherit it has created a new breed of philanthropists who bring a business edge to their charitable activities, writes **Gary Atkinson**.

THEY'VE made their fortune, their family is financially secure and their business is almost taking care of itself – but what to do with those extra zeros on their bank balance?

For many successful businesspeople, the answer is to use their surplus money for good causes. In other words, become a philanthropist. This may conjure images of paternalistic Victorians dropping bags of money into the hands of the needy and trotting on. But this doesn't fit with how the wealthy give today.

Fifteen years ago, 75% of the Sunday Times Rich list inherited their wealth, while 25% were self-made. Today, those ratios are reversed.

"We are seeing a new type of donor with self-made 'new wealth' through business and they are bringing this business expertise and approach to their giving," says Susan Mackenzie, director of Philanthropy UK, part of the Association of Charitable Foundations, which provides advice to aspiring givers.

"A lot want a return on what they view as an investment (rather than a donation) and that return may not be financial, but social"

Although this may be a similar approach from some wealthy benefactors stretching back to Scots-born US steel industrialist Andrew Carnegie, who devoted much to his self-made fortune to benevolent causes, the new donor will be expecting recipients to act more like businesses in terms of planning and reporting. This new approach, coined "venture philanthropy", is an idea that is spreading. In Scotland, one of the highest-profile exponents giving it oxygen is Sir Tom Hunter, who set up the Hunter Foundation in 1998, and who recently pledged that he would invest £1bn in venture philanthropy through it.

And a new charity is due to be established that will evolve the concept even further, based on the example of people such as Sir Tom.

The Entrepreneurial Exchange is to embody the idea of entrepreneurial philanthropy in its new Foundation. CEO of the Exchange John Anderson CA explains: "We want to take venture philanthropy on to a new level to engage the individual giver. The person doesn't just invest their money and expect outcomes and a

measurement on those, they will add their time and energy and contacts to it as well."

But why do such entrepreneurs not only spend their cash, but also their time on good causes? Anderson believes it is partially due to a sense of duty as a wealth creator to give something back to the community. But it could also be down to another reason – because "it's fun for them, it gives them something exciting to do".

And he should know, rubbing shoulders with many of Scotland's philanthropists, such as Lord Irvine Laidlaw, who made his money creating the world's biggest conference organiser, and Kwik-fit owner Sir Tom Farmer, also current honorary president of the Entrepreneurial Exchange.

There are also benefits to entrepreneurs and their companies of generating positive PR. And, of course, entrepreneurs aren't alone when it comes to reaping this reward – big businesses are also big givers, not least banks, many of which have established their own foundations. But it isn't actually the banks that are driving the demand for a greater businesslike approach to supporting charities.

The shift in financing, from the wealthy, isn't without its strains on charities vying for cash. They now have to bid for the money through a process akin to applying for a bank loan –

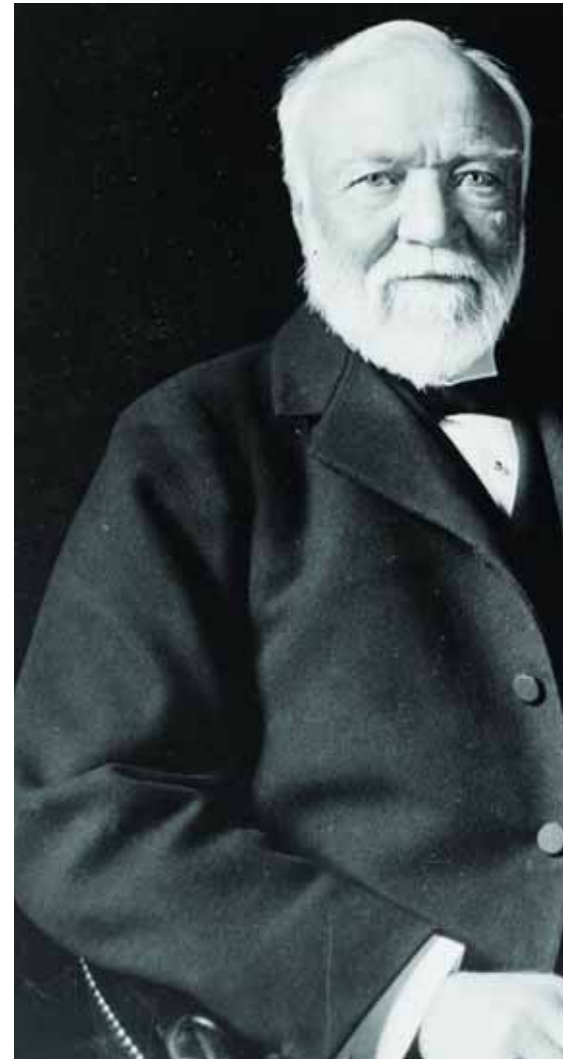
something many aren't used to.

Gillian Donald, a charities specialist with Scott-Moncrieff, says: "I recently had one client who was applying for a grant from the Gates Foundation, one of the biggest in the world. After some heavy due diligence – crawling through their books for over a week – the Foundation required that they write a 100-

page business plan detailing inputs and outcomes. While for the sums involved this was appropriate, it took a huge investment of time and energy by the charity's senior team and there was always a risk that they could walk away with nothing. This is not how the sector is used to being funded and these venture philanthropists are creating a significant shift in the marketplace."

The high level of business professionalism that venture philanthropists expect of charities is also mirrored in the way that these benefactors give to good causes. Typically, they set up charitable trusts. A big benefit, says Simon MacIntosh, a

"This new approach, coined 'venture philanthropy', is an idea that is spreading."



partner specialising in trust tax and charities with Turcan Connell, is that a trust can ease pressure on donors, particularly those that receive a lot of appeals because they are known to be well off.

He says: "It is a good way of bringing structure to charitable giving, with trustees assessing applications on the donor's behalf and in line with their policy."

A trust can take advantages of many tax breaks. Similarly, with giving directly to an operational charity, a donor on the top rate of income tax and capital gains tax can get tax relief of £23.08 for every £100, while the trust that has charitable status can top up the £100 donation with gift aid from the government of £28.21. The actual cost to the donor is £76.92; the charity gets £128.21.

Charities are also exempt from corporation, capital gains and inheritance tax, and receive a mandatory 80% relief on business rates, although many local authorities top this up to 100%. Any donations are also exempt from capital gains and inheritance tax, but another way of giving is through share aid. "As a donor, you don't feel it in the pocket as much," says MacIntosh. That's because share aid has very similar tax breaks as for cash donations, allowing the entire value of shares given to the charity to be deducted from the donor's income tax liability.



Setting up and running a trust can be costly, however, given the legal mechanics of setting up a trust or foundation deed and business plan, getting them approved by the Office of the Scottish Charity Regulator, and dealing with the ongoing administration and complying with charity law and accounting regulations. For a trust to be cost effective, MacIntosh advises setting up a fund with no less than £250,000.

An alternative could be to outsource the running of your trust to an existing foundation.

The Scottish Community Foundation (SCF) provides this service. For as little as £20,000, a benefactor can set up their own trust fund within the SCF. This is added to the existing £5 million fund that is delivering average net investment returns of 9%, five of which goes to good causes and the rest to replenish the capital. More modest philanthropists can channel as little as £500 a year to their own trust that can be passed on, typically to small community-based causes.

Operations director of SCF Daljit Singh says that their expertise is in giving grants to where they can make a difference. As he points out: "It's easy to set up a charitable trust, but it is difficult to give money away and have the confidence that it is being used effectively." ■

This article first appeared in CA Magazine.

Charities references in documents

Gillian Donald looks at new requirements to disclose charitable status.

WITH effect from 31 March 2008, all charities will need to make reference to charitable status in certain documents. These requirements are set out in the panel. The documents covered are those set out below which are issued or signed on behalf of the charity:

- business letters and emails.
- adverts, notices, official publications.
- documents soliciting money or property.
- bills of exchange etc.
- bills rendered, invoices, receipts and letters of credit.
- accounts.
- educational or campaign documentation.
- conveyances regarding land.
- contractual documentation.

The Regulations are set out in statutory instrument 2007 No.203 (all 1½ pages can be found at www.opsi.gov.uk/legislation/scotland) but OSCR has just produced guidance: References to Charitable Status – A Guide to the Charities References in Documents (Scotland) Regulations 2007.

One of the key questions being asked is how to deal with the situation where your charity runs a number of 'centres', and those using the services will know the charity by the name of its centre, rather than the charity itself. For example the SM Endowment Trust runs a day centre in Edinburgh, known as the Bothwell Centre. In this case it would be acceptable to say "the Bothwell Centre is part of the SM Endowment Trust, a registered Scottish charity, number SCxxxxxx"

Another important issue addressed in guidance is what is meant by "issued or signed on behalf of the charity". Given that

Required references

- Registered name.
- Registered number.
- Any other name by which it is commonly known.
- Where the registered name does not include "charity" or "charitable", reference to this status as follows:
- charity
- charitable body
- registered charity
- charity registered in Scotland
- Scottish charity*
- Registered Scottish charity*

*only if established under the law of Scotland or managed or controlled – mainly in/from Scotland

the overriding aim is to make clear to the public that the organisation is a charity, these regulations apply to all documents that communicate the charity to the general public, it would be best to err on the side of caution and ensure all official communications have the necessary details. Note though, that OSCR will not require these details on cheques although they are technically a bill of exchange.

Many charities already comply with these requirements on their headed paper and emails as a matter of good practice but it is worth checking them before the next bulk order of stationery. And do remember that it is acceptable to type the details on to the documents – so don't throw away your existing supplies. ■

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Charitable alternative

Not happy with leaving your life savings to an insurance company's shareholders?

Andrew Cumming recommends the 'Alternatively Secured Pension' or ASP.

THE compulsion to buy an annuity at age 75 had long been an issue for many individuals because it forced them to hand over their lifetime pension savings to an insurance company knowing that, should they die early, any surplus would be converted into profit for the company.

Then in April 2006 a new piece of legislation – the Alternatively Secured Pension or ASP – was introduced, which offers individuals the opportunity to maintain their pension funds after age 75. The principle behind ASP is that the pension remains invested and the individual can choose how much to draw as income each year, within government set limits. As the fund remains invested, it can grow to replace the income drawn and, potentially, leave a substantial fund on the owner's (and spouse's) death.

Significantly for many of those who have those who have become aware of the Alternatively Secured Pension, there is the option to designate a charity to which any remaining surplus goes, rather than swell the coffers of the taxman or the insurance company.

As the gift of the fund to charity occurs only on the death of the individual and his or her spouse, nominating a charity does not deprive the surviving spouse of income. There is also no impact on the estate outside the pension fund – this is essentially 'new' money able to be left to charity that was not available before April 2006.

Let's be clear, ASP may not be for everyone – indeed, it really only starts to look like an effective option for those with other sources of income outside their pension and with funds in excess of £250,000. Increasingly, however, there are more and more individuals who fall into this category, and for those that are able to use ASP, there are considerable advantages in being able to control the investment of the pension fund and provide benefits for a spouse on death without resorting to insurance.

So, how does the Alternatively Secured Pension work? On the death of the individual and their spouse, there are three options for the remaining funds:

1. The remaining funds are paid to nominated beneficiaries' pension funds subject to penal taxation, often 82%! This is made up of inheritance tax, an 'unauthorised payment charge', a surcharge for the size of the payment



and a further charge on the pension administrator for allowing the unauthorised payment!

- 2.** A Charity Lump Sum Death Benefit is paid, meaning that the entire sum is paid to a charity nominated by the member, or their surviving dependents, with no tax deduction.
- 3.** The pension provider can choose what to do with the remaining funds, assuming no other nomination is made.

Perhaps one of the reasons that there has been a slow realisation of what the ASP can offer stems, in part at least, from the penal tax charges described under option 1 above. Added to the negative criticism of pensions that has been prevalent

for some years now, and widely covered by the media, plus frequent changes in legislation, increasing red-tape and perpetual talk of a crisis, it might all combine to obscure the positive aspect of option 2 above – the ability to leave the whole pension fund to a chosen charity or charities.

"This is essentially 'new' money able to be left to charity that was not available before."

It seems highly likely that many individuals would prefer 100% of their pension surplus to go to charity rather than 18% to their children's pension funds and the rest to the government! To put it in figures, many people may well choose to benefit a charity by £250,000 rather than their children's pension funds by £45,000 and the taxman by £205,000.

Furthermore, should the final decision on what to do with the surplus be left to the discretion of the pension provider then they, too, have the option of passing the fund to charity. Again, from a 'good PR' point of view at least, it is likely to be seen as a more



publicly palatable option for the company than that of retaining it as profit for shareholders. ■

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'Just put it on expenses'

Famous last words – but with a serious edge, writes **Justine Riccomini**.

A recent survey found that approximately one fifth of employees in a large corporate entity were happy to admit that they regularly fiddled their expenses. How does your business measure up – and what is the effect on your bottom line?

If the above survey results are representative of the UK as a whole it means that up to six million Brits could be making spurious claims. In my experience as a former Tax Inspector and latterly as a tax professional, it is one of the most common things that HMRC find wrong with the records when undertaking an employer compliance review. So in effect, the employer is getting hit twice – once by his own employees and again by HMRC – who will charge anything they deem not to be a true business expense to tax and National Insurance. This bill will be presented to the employer, together with interest and penalties.

The main fault actually lies with the employer's policing of the claims being made. It doesn't matter how small or how large the business is – if the policing is not being carried out, employees who are that way inclined will eventually discover this weakness and the making claims for unauthorised items will become a habit, even in the most unlikely of places ... two Metropolitan police, for example, were recently arrested in an internal

crackdown for claiming for luxury items such as holidays, TVs and watches.

It is very important to analyse the expenses each month and ensure that all types of expenditure being incurred by employees, including those on a company credit card, are systematically reviewed. Employees and directors should be obliged to complete an expenses claims analysis and sign a declaration to say that they have only claimed business-related expenses. They should be regularly reminded that any claims made for non

“Up to six million Brits could be making spurious claims.”

business-related items amounts to gross misconduct. Sounds heavy-handed? Not when you consider that an employee, who was found to be over-claiming mileage expenses over a three-year period and was sacked, took her employer to a tribunal stating that the claims had been paid consistently by her employer without question and that this amounted to their consent. She won her case.

We all hear about MPs claiming huge amounts of expenses but many employers allow their employees to claim flat rate allowances that have been agreed up front with HMRC, letting the employer pay the expenses free of income tax and National Insurance. However, this can often lead to employees not keeping receipts for their expenditure, which means that they have no proof they have actually incurred any in the first place. Surely if

an employee is going to claim a lunch allowance he should be able to prove that he has actually had to purchase a lunch in the first place, instead of taking a packed lunch from home?

My advice to employers would be this: implement an expenses policy which stipulates exactly what employees can claim and under what circumstances – and ensure every employee has a copy. Make sure that any tax/NIC free payments are capable of receiving Revenue approval. And make sure that every single claim is checked before it is signed off and paid, rejecting any claims that do not comply. Review your policy at least once every two years to make sure it is current and publish any changes to all employees. And finally, create an expenses claim form which makes the employee conform to your requirements and give comprehensive, accurate detail. “Local mileage – 275 @ 40p”, for example, just won't do.

Oh, I almost forgot ... if you have any problems or questions, call me for advice! ■



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Public benefit north & south

Gillian Donald examines the Charity law reforms.

Introduction

Charity law reform in Scotland – and in England and Wales – over the past three years has seen the most significant changes in the definition of ‘charitable’ than in the previous four hundred years.

The separate jurisdictions set about re-defining ‘charitable’ at roughly the same rates and came out with broadly similar definitions (see panel). And for the first time, there were no categories of charity which were assumed to be charitable by default; instead there is now an over-riding requirement to demonstrate public benefit to ensure ongoing charitable status.

So, both regulators have had to come up with an approach to determining how public benefit will be determined. Much has been written of the consultation process and outcomes south of the border, so this article looks at how the process has developed in Scotland, where the consultation period for our second generation of the guidance has just closed.

History

In Scotland, the Office of the Scottish Charity Regulator (OSCR) first addressed charitable status in April 2006 with its first formal guidance document, called “Meeting the Charity Test”, which was used as the basis for its pilot study of a number of different charities. OSCR has also assessed a number of new charities in the two years since the guidance was issued.

The results of the pilot study were published, along with directions to take remedial action to some of those involved in the pilot study. Lessons were learned from this study, and whilst there are no significant changes in how OSCR plans to assess public benefit, there have been some modifications to the guidance. The key aspects which have been developed significantly are as follows:

- How ‘charity’ ‘charitable’ or ‘charitable purpose’ are defined when considering whether the charity’s constitution allows it to apply or distribute its property for non-charitable purposes.
- Issues of Ministerial direction and control.
- Consideration of dis-benefit against public benefit provided.
- Consideration of possibly unduly restrictive conditions on accessing public benefit.

Differences in the charity test

The test is in two parts:

- 1 A body must have only charitable purposes (see table).
- 2 It must provide public benefit.

Charity law in England and Wales under the 2006 Act is similar but there are some key differences:

- The lists of charitable purposes in the two Acts are not identical.
- In Scotland, public benefit is assessed on the basis of how a body exercises its functions; in England and Wales the issue is whether a particular charitable purpose is for the public benefit.
- The position in England and Wales regarding Ministerial direction and control and advancement of political parties is different.
- The Charity Commission is issuing supplementary guidance on every charitable purpose.

How OSCR will consider charitable purposes

OSCR will consider whether a body’s purposes are charitable on the basis of how they are set out in its constitution.

The charity’s activities must be in pursuit of and fall within the purposes set out in the constitution. This means that if the charity is doing more than is stated in the charitable objectives it may be acting outside of its purposes, and these things would not be included in the assessment of its charitable status. For example if a private school has as its only charitable purpose to provide ‘education’ then the fact that it is offering its sports facilities to the local community or that its pupils may be doing charitable work within the community as volunteers will be irrelevant in assessing the level of public benefit it provides. It should however be able to include such things if it extended its charitable purposes to reflect its activities, something that needs OSCR’s advance permission.

Taking the OSCR argument to its logical conclusion suggests that, in the example above, the school’s trustees could be deemed to be acting in breach of trust, as suggested in the public benefit guidance issued by the Charity Commission.

Non-property distributing

Under Scots law, the body cannot be a charity if the constitution allows it to distribute or otherwise apply any of its property for a non-charitable purpose, whether on being wound up or at any other time. Normally the property would have to be transferred to another charitable body. It might be acceptable to transfer to another body that doesn’t have exclusively charitable purposes but in this case OSCR would seek a high level of ongoing assurance that the assets will be used for charitable purposes.

There can be an issue where an existing charity has chosen to include the terms ‘charitable’, ‘charitable purpose’ or ‘charity’ when referring to



how it will distribute property on winding-up. These must be defined in terms of the Scottish Act rather than UK tax legislation or an English Act since the Scottish Act is slightly different from the others and may result in the body failing the test. This is causing some problems with cross-border charities.

Ministerial control

In Scotland, charities must be independent of the direct control of Scottish or UK Government Ministers. There are two key words here: ‘direct’ and ‘control’. Direct is interpreted as an explicit power of direction for a Minister. Control is interpreted as meaning the ability to intervene actively in a body’s activities in order to ensure that those activities are carried out as the controller wishes.

OSCR’s experience to date has suggested some mechanisms that would cause problems if included in the constitution. Where these exist, OSCR will consider whether they allow the Minister to exercise substantive control of the body, in the sense of the loss or undermining of its continuing independence. This depends on a number of factors such as the relative importance to the body’s overall activities of what’s being controlled, whether the Minister’s role is reactive or proactive and whether their ability to control is absolute or can only be exercised in certain defined circumstances.

The guidance on this is very detailed, since when it was produced it included all of Scotland’s further education colleges. However, in early February the Scottish Parliament announced its intention to pass a Statutory Instrument, effectively exempting all the further education colleges from the sections of the Charity Act relating to Ministerial control.

of the border



Charitable purposes in Scotland

- Prevention of relief of poverty
- Advancement of education
- Advancement of religion
- Advancement of health
- Saving of lives
- Advancement of citizenship or community development
- Advancement of the arts, heritage, culture or science
- Advancement of public participation in sport
- Provision/organisation of recreational facilities
- Advancement of human rights, conflict resolution or reconciliation
- Promotion of religious or racial harmony
- Promotion of equality and diversity
- Advancement of environmental protection or improvement
- Relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage
- Advancement of animal welfare
- Other purposes analogous to the above

Public benefit

Both Scotland and England & Wales now have an overriding requirement to provide public benefit. The Charity Commission helpfully sets this out in its two succinct principles, which are then expanded on in the main body of its guidance. In Scotland OSCR will take an overview of an organisation's activities and have regard to all the aspects in reaching a decision. Its principles are as follows:

What is benefit?

Benefit can be tangible and/or intangible, direct and indirect. But there must be a link between the charitable purposes, the activities in furtherance of those purposes and the public benefit that arises from those activities: if the link is not clear, the benefit is not relevant.

Providing benefit

There is no minimum benefit that needs to be provided. OSCR will take a reasonable, fair and proportionate approach to assessing whether a charity actively provides benefits. Nor will OSCR use this as an opportunity to assess a charity's efficiency and effectiveness. Note, however, that if there are periods of apparent inactivity these need to be of limited duration and explained in the Annual Report, or the charity will fail the test of providing benefit.

Public/private benefit

Whilst there has to be a sufficient section of public that benefits, OSCR has stated that this will depend on the nature of the benefit to be provided, so there are no thresholds set.

Private benefit must be both necessary and incidental to the main activity. Issues may arise when the trustees are both members and beneficiaries of the charity, since they must be careful to avoid conflicts of interest. OSCR won't have an issue with this as long as it's not the case that all of the members are Trustees, in which

case the benefit would be entirely private and the charity would fail the test.

Disbenefit

In its initial guidance, OSCR didn't give any examples of disbenefit but have obviously identified some cases over the past 18 months. One example given is that a charity wants to introduce a bird of prey to a particular area of Scotland, in which case OSCR would need to consider independent evidence to establish the impact on the economic life of the community, the local environment, etc.

Unduly restrictive conditions

OSCR is at pains to stress that the existence of a restrictive condition is in itself a problem: to become an issue the restriction must become undue. In other words, be excessively restrictive, or restrictive in contradiction of general moral or legal standards, or not justifiable. Examples of this are as follows:

- **Restricted numbers of potential beneficiaries:** this would rarely cause a problem as long as the benefits were potentially available to anyone who falls within the acceptable criteria. Examples of an organisation working to conduct research into a very rare disease are given as still being an acceptable charitable purpose.
- **Charging fees:** doesn't bear any more weight than any other unduly restrictive condition. The fact that the charity provides benefits that will be charged for and provided mainly to people who can afford and choose to pay the charges does not necessarily mean that the organisation does not provide public benefit. The overall approach OSCR will take is as follows:
 - The scale of the fee will be weighed against the full scope of the benefits provided
 - Where a fee is charged which may affect the access to benefit OSCR will expect some kind

of facilitated access to be provided and will assess the cumulative impact of support, e.g. discounts, bursaries, fee waivers.

- The cost of providing the benefit is relevant to assessing whether any fee or charge is unduly restrictive – OSCR recognises that charities must be able to cover the cost of providing the benefit.
- Assessment of undue restriction needs to be proportionate – less evidence is required where the fees are small.
- Transparency of any arrangements for facilitated access is important irrespective of the scale of fees – OSCR wants to be able to find arrangements in place to facilitate access are well publicised. For private schools this may not always be the case and it might be worth recommending they set policies and publish them.

Summary

Whilst the two jurisdictions are similar, there are some subtle differences that will affect ongoing charitable status in each jurisdiction. We can expect each regulator to have a close interest in how the guidance plays out in practice in both jurisdictions, as it is in the interests of the public as a whole that the approaches are consistent



across the UK. Ensuring consistency in practice and outcome is desirable for the credibility of both regulator and the charity sector.

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Bearing burdens

Do new regulatory demands on Scotland's charities represent a sea of red tape, or an opportunity to simplify processes and free up funds? **Andrew Beach** finds out.

SCOTLAND'S charitable sector is a £10bn a year industry, which makes it all the more surprising that only in the past two years has it come under effective regulatory control.

In that time, the Office of the Scottish Charity Regulator (OSCR), armed with tough new legislative powers, has well and truly shaken things up, and many charities, trustees and professional advisers are still coming to terms with all the implications.

OSCR has already carried out a thorough spring clean, removing more than 8,000 'ceased' charities from the Scottish Charity Register and launching a rolling review that will eventually take in all 23,000-plus Scottish charities.

Charities must now pass a charity test and file annual reports and accounts to OSCR, while still meeting any other filing obligations to funders or other regulators. While some in the sector see a rising tide of red tape, others are sure the new regime offers huge opportunities to simplify processes and free up funds for charitable purposes.

The roles of trustees and advisers have come increasingly into the spotlight, with calls being raised to allow the payment of trustees. Some accountancy firms are finding it increasingly hard to profitably service small charities, and the legislation has opened the way for many more small charities to use independent examinations instead of full audits.

Many CAs are finding themselves at the centre of the changes brought about by this new regime, either as trustees or advisers, and that heavy involvement is reflected by the creation of a new ICAS Charities committee.

Christine Scott, ICAS assistant director, accounting and auditing, says charities are operating in a complex environment and feedback from ICAS members suggests that it is becoming more difficult to service charity clients, especially on a commercial basis.

"OSCR is clearly a positive development that was necessary to ensure public confidence in charities, but everyone is still on a learning curve," she says. ICAS and OSCR have been in ongoing dialogue since the regulator came into being in 2006, and Scott says the new ICAS Charities committee, whose creation has just

been approved by the ICAS council, will provide even more of a focus for exchanging views and information.

With further new regulation pending in areas such as charity fundraising, and developments in the separate regulatory regimes in England and Wales, and Northern Ireland, Scott says there will be much for the new committee to consider: "We are looking for ICAS members to join the committee who have experience in the sector but who have perhaps not been so involved with the work of the Institute in the past."

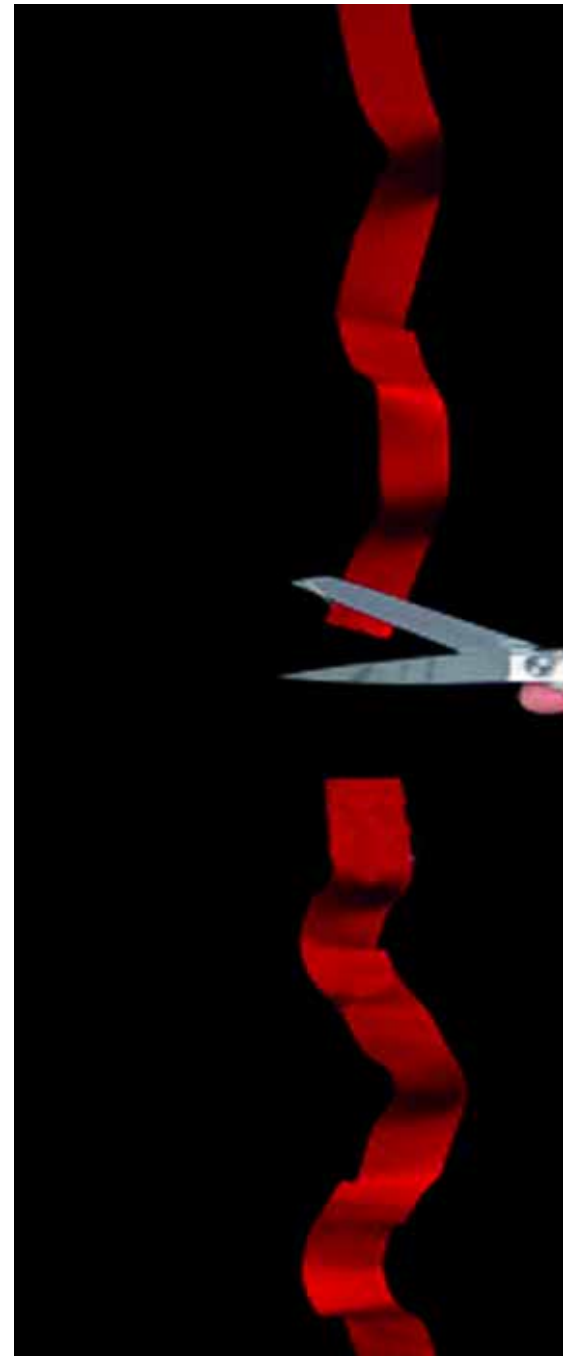
She says that while it is appropriate for charity law to be devolved, there may be a case for cross-border charities registered with OSCR which are already subject to rigorous rules and scrutiny under other regimes to receive a dispensation from meeting some of the regulatory requirements. "That would be enormously helpful without reducing the accountability of those charities," Scott says.

Marieke Dwarshuis, head of charities at OSCR, says the regulator welcomes the creation of the new ICAS committee and looks forward to working with it. She says that after OSCR's first full year of operations, its engagement with the charity sector has been very good. "We have been very aware that charities have had a lot to learn about the new regulatory regime and we have put a lot of energy into that. We can clearly see that the vast majority of charities are getting much better at understanding what the new requirements are that the Act places on them."

Kirsty Gray, head of monitoring and investigations at OSCR, says that the submission rates for annual returns and accounts had been encouraging, with about 75% of Scottish charities submitting by the deadline, and only 3% still outstanding six months after the deadline. Those 300 or so charities were 'named and shamed' on OSCR's website in October, and charities that have still not submitted accounts 12 months after the deadline can be taken off the register, or have OSCR appoint an accountant to the organisation, which its trustees would have to pay for.

Gray says: "In terms of quality of return, there is a fairly clear divide. There is quite a high deficiency rate among charities with less than

"OSCR has already carried out a thorough spring clean, removing more than 8,000 'ceased' charities."



£25,000 annual income. In particular, they seem to struggle with external scrutiny requirements and with providing a reasonable trustees' annual report attached to their accounts."

She says OSCR is addressing some of those issues by producing guidance, and last month it produced a receipts and payments work pack for small charities.

Dwarshuis says OSCR is firmly committed to taking a risk-based approach to its work, and its rolling review is concentrating first on classes of charities, such as independent schools, that the regulator believes may be at risk of failing the charity test.

"This is something we need to do to make the best use of our resources and not to spend our resources on activity where it is not actually needed. With the rolling review, we were very clear about prioritising those areas where we felt there was risk of organisations possibly not being



able to meet the charity test." New guidance on meeting the charity test is currently out for consultation, which will run until early April, and the regulator is holding a series of events in February to seek comments.

However, Dwarshuis emphasises that the new guidance is an update on the earlier guidance rather than a radical overhaul. Because OSCAR's charity test differs from the criteria HMRC uses to determine charitable taxation status, it is possible for an organisation to be considered a charity by one body but not the other. However, Dwarshuis is sanguine about this. "That was envisaged by the Scottish Parliament and it was decided that it was a desirable outcome – we would have a Scottish charity test and it is not the same as other tests." However, a memorandum of understanding between OSCAR and HMRC will come into force in the next few months, and she says this would allow the two

bodies to discuss issues that may arise, ensure they are aware of each others' policy and help keep divergence to a minimum.

Gray adds that OSCAR works closely with other charity regulators in the UK on matters of mutual interest. "That is very much an ongoing area of work and we currently have a cross-border reference group looking at the monitoring of charities with cross border operations. However, we all have to accept that we work in three different jurisdictions."

She says: "Often OSCAR gets wrapped up in the great red tape debate, but actually we are a very small part of that, and our regulation is not particularly burdensome."

Gillian Donald, head of charities at Scott-Moncrieff, agrees that OSCAR is being unfairly accused of adding to the red tape. "People always talk about how much more regulation OSCAR brought in, but in fact it relaxed the accounting and auditing rules for small charities and hardly anyone has taken advantage of it."

Under OSCAR, most charities with an annual income of less than £500,000 no longer need an audit and can submit an independent examination instead. However, Donald says few charities were taking this opportunity, and she says some of the responsibility lies with the attitude of funders and other regulatory authorities, many of which still require full audits.

"Although a local authority has a responsibility to ensure its funds are used correctly, now that we have a regulator taking on that oversight function, an audit may no longer be required. That will require a change in approach from local authorities and other funders, but they must be aware of the implications of requiring an audit, which can be twice the price of an independent examination. That was the whole point of OSCAR – to enforce regulations, but to do so proportionately, to make it easier for charities financially. Given that 90% of charities no longer need an audit, that could free up a huge amount of money into the sector – if there was a change of attitude from funders."

She says that OSCAR was starting to "flex its muscles", becoming more questioning of charities. "They are applying an intelligent approach which I think is really helpful because

it is going to raise the standard of annual reporting and give the sector confidence.

"These are good steps. It's not an overburdening or a heavyhanded approach, it's not micromanagement but it is saying, 'we have an interest', and I think that is helpful," Donald says.

Anne Swarbrick, head of charities at law firm Anderson Strathern, says she had some concerns about OSCAR's procedures, such as naming and shaming. "That does bite disproportionately on smaller charities, and if you are looking for the 'bad boys' you aren't going to find them on a monitoring return anyway."

She adds there were also concerns about how long OSCAR was taking to make decisions on anything that was "not standard". "To an extent that is inevitable with a new organisation with a new staff and a new Act but one feels that it could be done better. "At the moment OSCAR is very process driven – it's about registration, it's about sending in your monitoring returns. The question now is, what is the next stage, and I would hope it develops away from being quite so rigid about process."

Isobel d'Inverno, head of the charities group at law firm MacRoberts, says some difficulties were emerging for some very large, cross-border charities which have to register in both Scotland and England. "In one case, OSCAR says the charity would have to change its memorandum in a particular way to register in Scotland,

while the Charities Commission says if they made the change they could not remain a charity in England and Wales. The fact that you have two different legal codes operating makes it inevitable there will be issues. For a large charity, with widespread and diverse operations, it is quite difficult to follow English law and practices as well as OSCAR.

"It is a bit of a challenge, but the idea is to try to grow a stronger Third Sector, and it probably is helping to do that, although I think it is probably frightening some people to death." ■

This article first appeared in CA Magazine. Subsequent to which, we are delighted that Gillian Donald has been appointed as the first convener on the ICAS Charities Committee.

"Given that 90% of charities no longer need an audit, that could free up a huge amount of money into the sector."

Are you on track for the end of the year?

With the tax year end approaching, which coincides with many year ends, we thought you might welcome a reminder of what needs to be done ahead of the year end.

By **Justine Riccomini**



AS employers amongst you will know, the twelve weeks between 5 April and 6 July, leading up to the end of the tax year are fraught with activity especially when trying to track down all the information needed. Many of those tasks to be completed by the end of the tax year include:

Accounting requirements

If you have a trading subsidiary, its Board should agree the expected level of gift aid payment to make to the charity. The charity should agree any transfers to/(from) designated funds ahead of the year end. These decisions should be documented to meet the requirements of the Financial Reporting Standard 21.

Form P35

This is probably the first thing you need to concentrate on but, at the same time, you should be collecting details for the expenses and benefits paid to employees so you can complete Forms P11D by the 6 July deadline.

Other returns

Take care not to forget to also pay attention to other returns – Form 42 for shares and securities, CIS36 for Construction Industry Scheme (CIS) and returns of termination payments made in the year that exceed £30k and consist of cash and benefits.

PAYE and CIS

Do not forget that months 12, 1 and 2 of both PAYE and CIS remittances will also be due soon. Also, CIS returns are now due by 19th of each month if you are a contractor or subcontractor in the construction industry.

PSA

You should now be considering whether you require a PAYE Settlement Agreement (PSA). This is a must for all employers needing to bear the cost of benefits provided to their employees of an irregular nature – such as staff entertaining, vans, awards and vouchers. These need to be agreed and set up by 6 July to qualify for exclusion from Form P11D.

Class1A NIC

Just as you thought all tasks had been dealt with, do not forget to make payment of your Class1A NIC by 19 July at the very latest.



For further information and advice on this and employer services generally, in the first instance please contact:

Justine Riccomini,
Head of
Employment Tax

justine.riccomini@scott-moncrieff.com



Key dates

19 April

- PAYE/NIC/CIS remittances for month 12

19 May

- P14, P35, P38A and CIS 36 returns due

4 July

- Taxed Award Scheme returns due

6 July

- Forms 42 returns due (shares and securities)
- Termination payments returns due
- P11D returns due (copy to employee)
- Agree PSA contract by today

19 July

- Pay Class 1A NIC by today

19 October

- Payment of any agreed PSA contract



Lennartz mechanism

The cash flow benefits of using the ruling maybe coming to an end, writes **Scott Craig**.

NORMALLY VAT incurred on expenditure is only recoverable to the extent that it is used in the course or furtherance of a business – as most charities are well aware VAT incurred on non-business expenditure is blocked from recovery.

The introduction of the Lennartz mechanism provided an opportunity to recover VAT incurred on assets used for business and non-business purposes up front and account for output tax on the non-business element across the economic life of the asset (effectively repaying the VAT on the non-business element over that period). Lennartz accounting can offer significant cash flow benefits, especially for construction projects.

Changes to the Lennartz accounting rules came into effect from 1 November. Under the new rules charities that incur VAT on goods that will be used for both business and non-business purposes can choose one of the following options:

- Treat them as a wholly non-business asset. In this case no VAT is deductible.
- Treat them as part business and part non-business. In this case only the VAT that relates to the business activity can be recovered.
- Treat them as a wholly business asset. In this case VAT is deductible in full (subject to any partial exemption restrictions). VAT is then

“Lennartz accounting still provides what is effectively an interest free loan from HMRC.”

accounted for each quarter to reflect the non-business use of the asset. The new rules have amended the adjustment period for Lennartz assets in line with the capital goods scheme adjustment periods – ten years for land and property and five years for all other capital goods. This change has lessened the cash flow benefits of Lennartz by shortening the repayment period. However Lennartz accounting still provides what is effectively an interest free loan from HMRC. More recently the European Commission has issued proposals to remove the cash flow

benefits of Lennartz accounting altogether and simply recover only the VAT attributable to business use at the outset, with a possible adjustment over future years in line with the Capital Goods Scheme.

If there are any charities that could benefit from Lennartz on forthcoming construction projects, they may wish to consider confirming their proposals with HMRC before these proposals are implemented, in the event that existing arrangement would be allowed to run their course after new rules come into place.

If you feel that your charity could benefit from Lennartz accounting on capital works, please speak to one of the Scott-Moncrieff VAT

team who have experience in confirming Lennartz arrangements with HMRC. ■



Scott Craig
VAT Partner,
Scott-Moncrieff.

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Charity Forum 2008

Following the success of Charity Insights, we are hosting further sessions, which will explore the key issues discussed on the day in more depth.

Apr 29 2008 - Glasgow
Apr 30 2008 - Edinburgh
Competitive Tending, Pitch to Win

Gareth Magee, Corporate Finance Partner, Scott-Moncrieff and **Craig McArthur**, Senior Marketing Manager, Scott-Moncrieff.

More than ever, charities are finding themselves sandwiched between burdensome regulation and an increasingly competitive funding environment.

Many charities are now also finding that annual grants are being replaced by commercial

contracts, awarded through an increasingly competitive tendering process. Progressively, charities are finding themselves pitching for these contracts against private sector organisations and to succeed must approach these tenders in an increasingly professional and commercial manner.

This session will look at how to increase your chances of winning competitive pitches.



Gareth Magee



Craig McArthur

Jun 19 2008 - Glasgow
Jun 20 2008 - Edinburgh
The Benefits of Joint Working and Collaboration, Adopting Legal Models

Campbell McLundie, Corporate and Consulting Partner, Scott-Moncrieff and **Stephen Phillips**, Burness.

Joint working and collaboration are being looked at by increasing numbers of not for profit organisations as a result of ever increasing funding pressures and changes in public procurement as a result of the McLelland Report. Options include collaborative tender bids, joint ventures, Public Social Partnerships and potential shared support services. This

session highlights the reasons behind this growing interest in joint working, some of the benefits to be gained and the issues that need to be considered when developing such an approach.

Stephen Phillips, who heads the Charities and Third Sector Unit at Burness LLP, will explore some of the more innovative legal models which charities and other voluntary sector organisations are increasingly adopting, in an effort to respond to the new environment.



Campbell McLundie

Sept 11 2008 - Glasgow
Sept 12 2008 - Edinburgh
Tax Issues Arising from Diversification and Change

Scott Craig, VAT Partner, Scott Moncrieff

Increased scrutiny over the operation and control of charities and not-for-profit organisations has resulted in a number of practical and legal changes to the

tax position of charities. Changes to funding arrangements, corporate structures and activities results in tax issues and opportunities for organisations that have previously been exempt from most taxes.



Stephen Phillips



Scott-Craig

If you would like to attend any of these sessions, please register by completing our online booking form or by emailing kelly.drew@scott-moncrieff.com.

Times: Events run from 3.00pm for 3.30pm to 5.00pm. Including a Q & A session where attendees will have an opportunity to put their own questions to the speakers.

Venues: Glasgow – Scott-Moncrieff, 25 Bothwell Street, G2 6NL
Edinburgh – Scott-Moncrieff, 17 Melville Street, EH3 7PH

Booking: There is no charge for attendance but numbers are limited and places will be allocated on a first come basis.

Scott-Moncrieff (www.scott-moncrieff.com), one of Scotland's leading independent professional services firms, provides industry-focused audit, tax, business advisory and corporate consulting services for commercial, public, not-for-profit and private clients.

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