pem.

April 2020.

Charities & Not for Profit newsletter

COVID-19 update

We have published two dedicated Coronavirus newsletters in the past month or so, but there continue to be new measures coming on-stream and new information to be disseminated. We hope the following information is of interest to you.

Gift aid update

Membership subscriptions to charities

HMRC are aware that some charities and CASCs have suspended the collection of membership subscriptions during the COVID-19 pandemic, but individuals may instead make donations to support the organisation through the current crisis.

HMRC has confirmed to the Charity Tax Group that gift aid may be claimed on these donations as long as "they are freely given, no benefits arise in consequence of that specific donation (either now or in the future) or, if provided, they fall within the legislative limits, and a Gift Aid Declaration is obtained.

In circumstances where clubs have reduced their subscription rate, any amounts freely donated over and above this reduced amount would also potentially be eligible for Gift Aid.

In all cases it must made clear to the members that the amounts voluntarily given by them are not subscriptions, carry no subscription rights and will be treated as donations on which the CASC or charity will claim Gift Aid. The personal tax implications of making a Gift Aid donation will also need to be explained to donors."

As a reminder, the current donor benefit thresholds are 25% of the donation for gifts of up to £100, then an additional 5% of the donation on the amount above £100, up to a maximum benefit of £2,500.

Waived theatre tickets

Following up on the article in our "Coronavirus update April 2020", available here. More information has been published. As previously advised, for the duration of the Coronavirus crisis, HMRC will allow Gift Aid to be claimed on any refund donated to a charity in lieu of tickets and this has now been formalised as follows:

"To help reduce administrative burdens on charities, if a charity event is cancelled due to Coronavirus (COVID-19), HMRC will accept that where a person due a refund decides to donate this to a charity, the requirements of S416 ITA07 are met provided:

- *the individual does not receive a benefit as a result of their donation.*
- *the individual agrees that the cost of their ticket becomes a donation.*
- *the individual completes a Gift Aid declaration.*
- *the charity keeps an audit trail, including a copy of the agreement from an individual agreeing to the donation of the cost of the ticket.*

The charity no longer has to physically refund the ticket price for the individual to re-donate."

To take advantage of this, a charity must:

- contact the individual who previously purchased the tickets of the cancelled event;
- explain that the individual is entitled to a refund but may wish to donate the cost of the ticket to the charity;
- make it clear that the individual does not have to donate the refund but if they choose to donate it, it's non-refundable;
- make sure the individual has enough tax to cover the donation;
- document the conversation with the individual and keep records of this; and
- ensure that there is a Gift Aid declaration in place for the individual

If an event has been postponed but not cancelled, then any tickets for that event are not eligible for this temporary change.

Furlough and volunteering

The Charity Tax Group advise the following: Published guidance sets out that although furloughed employees can take part in volunteer work or training, they cannot provide services to or generate revenue for, or on behalf of, their organisation. **Charities will therefore need to make a judgement call as to whether their own furloughed staff are in fact still providing services to them or generating revenue for or on behalf of them**. The key point to note is that the Job Retention Scheme is not intended to be a cash flow measure to help organisations – it is intended to provide support to employees and continuity of employment where employers would otherwise not be able to keep their employees on the payroll, and this applies to charities as much as to businesses.

It is not intended that organisations furlough staff, claiming the grant from government but then effectively redeploying staff as volunteers within their organisation.

Advice from the Charities SORP Committee

At the end of March 2020, the Charities SORP Committee issued advice (not mandatory) on the financial reporting implications that may arise from the COVID-19 crisis that would be relevant to any financial statements not yet approved and signed off. The full guidance can be accessed here. The Committee recognises that COVID-19 measures will impact on charities in many ways, be that on income, expenditure or commitments/activities and for financial statements not yet completed trustees should consider what information needs to be included to explain the potential impact of Coronavirus on their charity.

Trustees' Annual Report (TAR)

COVID-19 could impact on the TAR because of fundraising, changes to the staffing and volunteering situation and other changes outside their control, such as demand for their services and the value of their assets and liabilities due to economic factors affecting pensions and investments. Page 3 of the PDF SORP guidance gives a checklist of points that trustees could consider.

Accounting considerations

- "True and fair". The trustees are responsible for ensuring that the accounts present a true and fair view, and this might be affected by the Coronavirus crisis.
- Post balance sheet events (PBSE). PBSE that need to be adjusted in the accounts are those events occurring after the year-end but before the accounts are approved which provide evidence of conditions existing at the year-end date affecting the accounts. For example, the recoverability of debtors or value of stock for re-sale may be affected, or the charity may no longer be a going concern if the predominant source of income has been severely impacted. In addition, non-adjusting events would require a disclosure note in the accounts, for example about a material loss in the value of investments.
- When considering going concern, the trustees need to consider all available information at the approval date, such as budgets and forecasts and any other forms of financial assistance available to the charity.
- If accounts are not to be prepared on the going concern basis then assets may be valued based on the amount that will be recovered or realised on disposal, and liabilities measured at the likely value upon crystallisation.
- The valuation of assets in a defined benefit pension may be adversely affected by changes in the financial market and any potential implications should be identified.

External scrutiny

Trustees must consider the potential impact of the Coronavirus crisis on the charity's ability to fulfil its obligations with regard to the financial statements and arrangements for external scrutiny and the SORP Committee recognise that it may be necessary for trustees to provide alternative means of verification of evidence which may be more complicated or time-consuming than usual.

If there is any doubt over the welfare of beneficiaries or the charity's ability to continue, reference should be made to the charity regulator (Charity Commission in England & Wales).

If the financial statements will not be submitted before the filing date, then reference should be made to the relevant charity regulator.

The SORP Committee states that a disagreement about the going concern status of a charity between trustees and the auditor is not a reason to delay filing of the financial statements.

Reporting matters of material significance

The charity regulators across the UK have jointly updated the guidance to auditors and independent examiners on reporting matters of material significance to include a section on "Reporting at times of national emergency".

The matters of material significance are unchanged, being dishonesty/fraud, internal controls/governance/money-laundering/criminal activity, support of terrorism, risk to charity beneficiaries, breach of law or charity's trust, breach of an order made by the regulator, modified or qualified audit opinion or independent examiner's report and conflicts of interest/related party transactions.

The addition to the guidance is as follows:

Reporting at times of national emergency

The charity regulators recognise that at times of national emergency the normal conduct of an external audit or an independent examination may be disrupted. In times of national emergency, unless the legal duty to report is relaxed by Government, the auditor or examiner must still report matters of material significance; however where a modified opinion, an emphasis of matter, or a matter identified by the independent examiner is solely due to the exceptional circumstances of the national emergency affecting the conduct of the audit or the independent examination then this is not considered to be reportable as a matter of material significance to the charity regulator.

This is because remedying this situation is not in the power of the auditor or examiner, the preparer of the charity's accounts, or the charity regulator.

Examples of such exceptional circumstances are:

- *travel restrictions prevent the auditor or examiner from verifying the existence of physical assets such as stock*
- *access restrictions prevent the auditor or examiner from reviewing accounting records and/ or from obtaining the assurances required*
- *limitations of scope are identified due to the control measures imposed to deal with a national emergency*

Risk of fraud

ESFA Update

The Education and Skills Funding Agency (ESFA) published guidance earlier this month for academies, school, local authorities and further education providers on the topic of fraud, which can be accessed here.

They reported that ActionFraud saw a 400% increase in reports of fraud during March 2020 arising from the Coronavirus crisis. In these uncertain times increased pressure on businesses can allow internal controls and management oversight to be reduced and fraudsters are taking the opportunity to cash in.

The ESFA advises organisations to:

- Maintain effective governance and financial management/oversight and remind staff that they still need to comply with internal controls.
- Ensure that they maintain rigorous internal controls and make policies and procedures clear to all staff.
- Maintain and promote strong anti-fraud controls, review internal control and fraud risks and make sure that staff are aware of the protocol in the event of a suspected fraud.
- Undertake an internal audit to monitor and ensure efficient operation of internal controls and segregation of duties.

Charity Commission alert on fraud

On 17 April 2020 the Charity Commission (CC) published an alert warning of an increased risk of COVID-19 related fraud and cybercrime against charities. The full article can be found here.

The CC is aware that the Police have reported an increase in scams and is concerned that all charities, especially those providing vital services in the local community may be targeted by fraudsters. The CC urges all charities to be aware of the main types of fraud, as follows:

- Procurement fraud. E.g. fraudulent sales of life saving personal protective equipment (PPE), where payment has been made but no equipment has been delivered. You must always carry out due diligence before purchasing from an unknown entity or person.
- Mandate or Chief Executive Officer fraud. E.g. being asked to make payments to a new account. You should always make separate checks to ensure that the change is valid.
- Phishing emails. E.g. unsolicited emails or phone calls that are asking for financial information. Never click on links or attachments in unexpected or suspicious emails.
- Advanced fee fraud. E.g. unsolicited offers of goods, services or financial support. You should always be suspicious if an upfront payment is requested.

You should ensure that your computer internet and virus security is up to date.

The National Cyber Security Centre (NCSC) has issued the following guidance which can be found here. This gives information on the steps that an organisation should take when introducing and encouraging greater use of home working. A summary is available as an infographic here.

Social distancing in the workplace

The Department for Business, Energy & Industrial Strategy issued guidance earlier this month on the topic of social distancing in the workplace during COVID-19.

The guidance includes examples of different sectors and how social distancing conditions should be met. At all times a safe distance of at least 2 metres should be maintained between individuals. The guidance can be found here.

Funding opportunities and issues

The 2.6 Challenge

The 2.6 Challenge aims to raise £67m by the end of April to "save the UK's charities". This campaign has been brought by the organisers of mass-participation events, such as the London Marathon, which had been due to take place on 26 April. Last year the marathon raised £66.4m for charity. The general public are being asked to run, walk or do another physical activity (always in compliance with social distancing) on 26 April to raise funds for a charity of their choice.

Organisers have created a toolkit for charities to use to promote their ideas to their supporters. Funds can be raised for a specific charity or donations can be made to a central fund managed by CAF.

This will then be allocated to all participating charities in accordance with the amount of funds they each raised individually.

More information is available here.

Barclays

Barclays Bank has this month launched a £100m Community Aid Package through The Barclays Foundation, with the aim of assisting charities working to support vulnerable people impacted by COVID-19 and to alleviate social and economic hardship caused by the crisis.

More information is available here.

Direct debit donations

A charity payment company has advised that there were almost 25% fewer new direct debit donations set up in March 2020 than in March 2019 and the cancellation rate in March 2020 was over 40% higher than in the same month last year.

Views from Charitable Foundations

The Association of Charitable Foundations (ACF) has just carried out a survey of foundations in the current COVID-19 crisis. 56 foundations responded, with the following findings:

- 9 out of 10 foundations said they would be more flexible around reporting and payment schedules.
- Many foundations have signed the COVID-19 Funders pledge.
- Just under 2/3 of foundations said they were looking to establish a new fund or to realign existing grant programmes to give support on Coronavirus related projects.
- Some foundations said they were open to converting restricted funds to unrestricted funds.
- Some are open to making advance payments to ease cashflow.
- 75% would be interested in pooling resources or combining processes with other foundations.

Tax filing obligations for charities

Charities are not exempt from direct tax - there are just exemptions that apply to specific sources of income that charities receive and to capital gains made on disposals. This means that HMRC are still entitled to ask a charity to submit a self-assessment tax return. Charities must complete a tax return if:

- The charity has income or gains which are not exempt;
- The charity is asked to do so by HMRC, even if there is no tax to pay;

Exempt income

When certain conditions are met, the following sources of income are tax-exempt for charities:

- Gifts and similar payments
- Profits derived from land
- Dividends
- Distributions from REITs
- Loan relationship profits
- Intangible fixed asset gains
- Certain trading profits
- Certain lotteries

There are however several restrictions that can apply to a charity's spending which may limit the amount of income that can be claimed as exempt.

Exempt Capital Gains

Capital gains (such as on the disposal of investments or tangible fixed assets) are also exempt from tax provided that the proceeds from the disposals are applied for charitable purposes.

Charities which are limited companies or unincorporated associations

Charities under this category must file a self-assessment corporation tax return if they receive a notice to file from HMRC (or, as noted above, have taxable income). Such notices may be received every year, although in some cases HMRC mark a charity as "exempt" for a few years, so a return is not required for those periods and a notice will not be issued.

Taxable income is declared on the CT600 main return and the exempt income and gains are submitted on the CT600E supplementary pages. The CT600 can be submitted as nil if the charity has received no taxable income.

HMRC requires corporation tax returns, computations and accounts to be submitted online in iXBRL format. They no longer accept paper or PDF submissions, except for smaller charities, which can still submit PDF accounts alongside their iXBRL corporation tax returns, so long as the combined income for the charity and their wholly owned subsidiaries does not exceed £6.5m (please note: subsidiary companies cannot file PDF accounts).

In addition, some body corporate charities which do not prepare accounts under the Companies Act (e.g. those formed under Royal Charter) are also allowed to submit PDF accounts.

The filing deadline for corporation tax returns is 12 months from the end of the accounting period. Any corporation tax due must be paid within 9 months of the end of the accounting period.

Charitable Trusts

Charitable trusts submit self-assessment income tax returns. As with corporation tax returns, taxable income, if any, is declared on the SA900 main form and the exempt income is submitted on the SA907 supplementary pages.

Following the end of the tax year, the return must be filed by either 31 October if on paper or by 31 January if submitting online. Any income tax due must be paid by 31 January after the end of the tax year.

Penalties

Any return that is filed late – even if there is no tax to pay – will result in an automatic £100 penalty from HMRC. Any tax that is not paid by the due date will be subject to interest.

New information sharing agreement

The Charity Commission and the Association of Chartered Certified Accountants (ACCA) have signed a new information sharing agreement.

The agreement allows the Charity Commission to report concerns about the quality of accountancy services provided by ACCA members.

The agreement follows the Charity Commission's benchmarking project in 2019 (External Scrutiny Benchmark), which identified deficiencies in the work performed by some independent examiners and external auditors.

It is hoped that the agreement will drive improvements in the quality of the accountancy services provided by the profession. Similar agreements with other accountancy bodies are likely.

Charity Commision releases first thematic review of compaints

Set out in the Charity Commission's 2018 to 2023 strategy is a commitment to ensure that no complaints are ignored, however small. To fulfil this commitment, the Charity Commission has published a review of the complaints received between April and June 2019 that did not result in direct regulatory action.

The main findings were:

- People who complain are usually people you know. Complainants are typically close to the charity in some way (supporter, volunteer, staff, trustees, etc.). Complaints are made about charities of all sizes; even the smallest charities are not immune.
- Be accountable – it's worth making the effort to explain and to listen properly. There is evidence that charities fail to address the concerns of stakeholders affected by their activities. Charities should do more to solicit the views of stakeholders and demonstrate how those views have been considered in the decision-making process. Empathy and transparency are key to achieving accountability. Transparency also extends to the annual report and accounts. To inspire more public trust and confidence, detailed coverage of a charity's activities should be included in the annual report. Avoid boilerplate, generic reporting.
- Don't take your status as a charity, or the public's support, for granted. Charities inspire passion in people. However, a passion to achieve charitable aims does not justify unethical behaviour. A particularly strong theme is a deficiency in identifying, addressing and reporting on conflicts of interest. If a trustee has a conflict between his/her duty to the charity and some other duty or personal interest, this must be declared and addressed. Transparency is essential.
- How you do something is as important as what you do. The Charity Commission accepts that things can (and do) go wrong. No charity is perfect. What matters is being able to demonstrate that the charity did what it reasonably could in the circumstances. This always means having the controls and procedures in place to deal with foreseeable problems and acting lawfully.

Charities reported over 100 data breaches in the final quarter of 2019

According to the Information Commissioner's Office (ICO), charities reported 102 data breaches between October and December 2019, representing 3.6% of the total breaches reported.

The five most significant reasons for reporting a breach to the ICO were as follows:

1. Other non cyber incident (31)
2. Loss/theft of paperwork or data left in insecure location (19)
3. Phishing (12)
4. Loss/theft of device containing personal data (10)
5. Unauthorised access (7)

Under the General Data Protection Act (GDPR), which came into force in May 2018, charities are required to report personal data breaches to the ICO within 72 hours of identification. If the breach is likely to have an adverse effect on an individual's "rights and freedoms", a charity must also inform that individual "without undue delay".

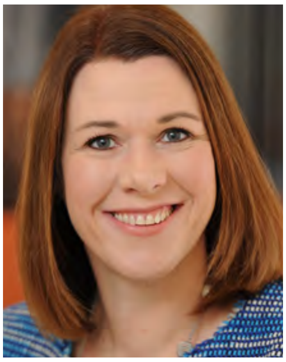
In all cases, a record must be kept of any identified breaches.

Links to further advice

Additional information and guidance can be found from the following sources:

- PEM Knowledge Hub
- NCVO Practical Support
- CFG coronavirus guide
- Charity Tax Group coronavirus information
- COVID-19 funders
- GOV.UK

Judith Coplowe
jcoplowe@pem.co.uk



Kelly Bretherick
kbretherick@pem.co.uk

Jayne Rowe
jrowe@pem.co.uk

Judith Pederzolli
jpederzolli@pem.co.uk

Michael Hewett
mhewett@pem.co.uk

Gemma Baratte
gbaratte@pem.co.uk

Caroline Fagence
cfagence@pem.co.uk

PEM
Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk

pem.co.uk