October 2021.

Charities & Not for Profit newsletter

Could your charity benefit from creative sectors relief?

Creative sector tax reliefs can produce a real cash benefit for claimants, including charities within the charge to corporation tax.

HMRC's figures for 2020/21 show that £74m was paid out under Theatre Tax Relief, £11m for Orchestra Tax Relief and £16m for the Museums & Galleries Exhibition Relief.

Although incorporated charities which conduct charitable trades are exempt from corporation tax on the profits from those activities, the mechanism for these creative sector reliefs means that if a claim produces a tax loss, this loss can be surrendered in return for a payable credit.

Each relief has its own conditions to identify if an activity falls to be eligible to claim the relief. If a qualifying activity is identified, then it is necessary to determine which costs are eligible for the purposes of calculating the relief.

This requires good record keeping so costs can be allocated to each production or exhibition. In some cases, for profitable productions it may be necessary to use a trading subsidiary to undertake the production in order to benefit from the relief.

An example of the mechanism for a Theatre Tax Relief claim is noted below:

An incorporated charity produces a non-touring pantomime each year. The pantomime meets the conditions to be a qualifying production for the purposes of Theatre Tax Relief.

- The income from the production is £100,000.
- The total costs of the production are £80,000.
- Of the total cost, those qualifying for relief are £60,000.
- The extra deduction under the TTR relief is 80% x qualifying costs = £48,000.
- This gives a tax loss of £28,000.
- The credit percentage of 20% is applied to the lower of the loss and the extra deduction.
- The loss of £28,000 can be surrendered for a credit of £5,600.

The mechanism and rates for the different reliefs vary. The Museums and Galleries Exhibition Tax Relief will cease to be available from 1 April 2022, but Theatre Tax Relief and Orchestra Tax Relief have no end date at the moment.

There are other reliefs relating to film and television productions and video games, but these may be less relevant to charities. It is worth noting that one of the conditions for a production to qualify for a relief is that a certain level of expenditure needs to be "European expenditure".

This was changed from "EEA expenditure" since the UK has left the EEA, as well as the EU. "European expenditure" means expenditure on goods and services that are provided from within the EEA countries and the UK. Not all of the HMRC guidance has been updated to reflect this change.

If you think you could benefit from any of these reliefs, please speak to Judith Pederzolli in our Business Tax Team.

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Double defaulters!

The Charity Commission have completed their most recent review of those charities who have been in default of their filing obligations twice.

They have looked at charities who were in default of their obligations for two or more years out of the last five years.

The review covered the period April 2020 to March 2021 and found 25 charities with total income between them of £8 million who have now submitted their documents and a further 19 charities who have ceased to exist and so have been removed from the Register of Charities.

Before becoming part of the inquiry, the Commission issues a final warning to charities to say that they will be placed into the inquiry if they fail to submit outstanding documents within the Commission's deadline.

23 charities looking after income of £14 million, submitted their documentation at this stage.

The inquiry only has a remit to investigate the charity trustees' mismanagement and misconduct in relation to their failure to submit the required documents to the Commission and to remedy that situation.

The Charity Commission wish to remind Trustees that failure to submit annual documents to the Charity Commission may constitute a criminal offence and at the very least, they deem it to be mismanagement and/or misconduct in the administration of the charity. They believe that "Providing timely, accurate and informative information that will help funders, donors, beneficiaries and others to understand the charity and its work will encourage trust and confidence in it."

Whistleblowing review

Whistleblowing law (under Employment law as amended by the Public Disclosure Act) gives a framework whereby protection is given to employees who make a disclosure about suspected wrongdoing in charities, including crimes and regulatory breaches by their employer.

The Charity Commission is the regulatory body for the charity sector on matters relating to "the proper administration of charities and fund given, or held, for charitable purposes".

Whistleblowing disclosures can come from charity employees, volunteers or trustees. In 2020-2021 there was a 74% increase in whistleblowing disclosures as compared to the previous year, with 431 issues being raised. The majority of reports came from employees, but in 2020/2021 there were 20% from trustees as compared to just 12% from this group previously. Concerns raised covered governance, safeguarding and financial management and sometimes multiple issues were highlighted.

Lotteries, prize draws & competitions

Complaints to the Fundraising Regulator (FR) about lotteries, prize draws and competitions increased in 2020/2021.

Lotteries are regulated by the Gambling Commission, however if there is a free entry route then the FR is the regulator.

"Lottery" fundraising covers raffles, sweepstakes and tombolas, which makes it one of the most common forms of raising funds. Lotteries cannot be run for private or commercial gain. A simple lottery has three factors:

- you have to pay to enter;
- there is at least one prize; and
- prizes are awarded solely based on chance.

Winning is all down to chance. Lotteries are regulated by the Gambling Commission. Some lotteries may need permission from the local council whereas others might require a licence from the Gambling Commission. Private lotteries at home or work do not require permission or a licence.

A licence is needed to run an online lottery and the Gambling Commission sets out rules on the number of entrants, who can enter and what information must be included on the ticket, depending on the category of lottery being applied for.

More information can be accessed here.

Sometimes companies run a "free draw" or a "prize competition" for high ticket items in partnership with charitable organisations. The company then gives a percentage of the ticket sales to charity. These are not deemed to be a lottery.

A free draw must be entirely free or there must be a free route, such as sending an entry through the post. A prize competition often requires a question to be answered correctly. These are not regulated and do not require permission or a licence, however you should check the Gambling Commission's website guidance to make sure that all requirements are properly adhered to.

Whatever fundraising method is used, it should always be legal, open, honest and respectful.

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Fraud Awareness Week

The Charity Commission's Fraud Awareness Week takes place during the week commencing Monday 18 October 2021.

This campaign is fronted by the Charity Commission and Fraud Advisory Panel in collaboration with charities, regulators, law enforcers and other bodies from around the world. The purpose is to raise awareness of fraud and cybercrime affecting the charity sector.

It is designed to be accessible to people from all walks of life, including trustees, volunteers, charity staff, charity advisers, regulators and the general public with a willingness to help and protect the charity sector.

The webpage is available **here**.

The Resources section includes a wealth of useful information, delivered in short, easy to read downloadable summaries. Help sheets are available covering 14 different fraud topics including legacy fraud, cyber security, qualification fraud, volunteer fundraising fraud and getting to know your volunteers.

There is also a link (in the Resources section under "E-learning") to a short 30-minute training exercise designed by the UK's National Cyber Security Centre.

Charity Commission public meeting

The Charity Commission held their annual public meeting on 30 September, delivered virtually. Helen Stephenson CBE (CEO) delivered a speech and then a panel of experts answered questions that had been submitted in advance.

There are 169,000 charities on the register in England & Wales now, with over 8,000 new applications received last year. These charities are run by over 700,000 trustees, employ over a million people and have combined income of over £84 billion.

The contact centre answered 60,000 calls, with 80% answered within 2 minutes.

431 whistleblowing reports were received, 4,308 serious incidents were reported, and the Commission used their regulatory powers on 2,209 occasions. £21 million was re-directed from inactive charities to voluntary organisations or community foundations.

Helen recognised that that after an all-time low in public trust three years ago, trust may now be recovering, but there is no room for complacency either by charities or by the Commission. The general public expect charities to:

- show that they make a positive difference;
- show that they spend a high proportion of funds on the end cause;
- live their values, not just in what they do but in the way they behave.

A full transcript of the speech is available **here**.

One of the Q&As related to diversity within charity trusteeships. It was noted that in the main, trustees are predominantly white, older and male.

Greater diversity in trustees brings different perspectives on ideas, thinking and decision-making. The Commission is keen to promote diversity within the sector and Helen suggested that one option might be to make all trustee positions available through an open recruitment process so that more people have a chance to get involved.

Trustee Week will be held on November 1st – 5th and more information is available **here**.

A further question was posed relating to a charity that needed to close for various reasons but was having difficulty finding a suitable partner to merge their assets with.

The Charity Commission have a "Revitalising Trusts" programme which helps charities who need assistance with finding new trustees, spending income on public benefit activities or identifying beneficiaries. This programme seeks to help charities to close or to revitalise, depending on what is the most appropriate course of action.

Trustees can contact the programme directly or in some circumstances, the programme will approach a charity if there has been no spending for the past 5 years or if spending has been less than 30% of income for the last 5 years.

More information is available here.

Fundraising Update

The Fundraising Regulator (FR) in its present form, is recognising its 5-year anniversary this year and has looked back on what has been achieved in that short time. Over the past few years, the regulator has:

- Overhauled and digitised the fundraising code.
- Supported 13,000 people to manage the fundraising communications they receive from charities through the launch of the Fundraising Preference Service (FPS).
- Helped 5,000 organisations show the public that they are committed to ethical fundraising. These organisations have registered with the Fundraising Regulator and in so doing demonstrate to the public that committed to honest and open fundraising practices.
- Completed 200 investigations into fundraising complaints against charities and third-party fundraisers, arising from 2,800 complaints.
- Dealt with 5,600 enquiries from charities and the public.
- Engaged nearly 3,000 smaller charities with their regulation and new registrations continue.

The Fundraising Regulator has published findings from a review of complaints arising in the year ended 31 March 2021. There are two strands to this report; firstly, where complaints have not been dealt with internally within charities, the FR step in to consider whether the organisation has complied with the Code of Fundraising Practice and secondly those charities which spend in excess of £5 million on fundraising per year and take part in the voluntary survey about how many complaints that they have received and the reasons for those.

All charities should record and monitor the complaints that they receive about fundraising matters.

The most complained about method of fundraising, for the third year running, was charity bags. Second was digital fundraising and third was addressed mail.

When looking at the larger fundraising organisations, online fundraising received the most complaints, followed by addressed mail and thirdly corporate fundraising.

Very few complaints related to the ongoing pandemic, but there were some concerns relating to face-to-face fundraising and the interaction with social distancing measures and improper use of PPE. Overall good fundraising practice continued despite the unprecedented situation.

For the first time in recent years, complaints about lottery, free draw and prize competition fundraising have entered the top 10 most complained about methods of fundraising. Please see our separate article “Lotteries, prize draws and competitions” which clarifies the responsibility and rules surrounding this method of fundraising. The main concerns related to whether the lotteries were being run fairly and in line with regulations.

Any complaints about fundraising practices should be taken seriously and the FR have the following 5 top tips:

1. Treat all contentious matters as formal complaints.
2. Have a clear and accessible complaints process.
3. Thoroughly investigate complaints. (Use an independent individual to do this.)
4. Make evidence-based decisions.
5. Learn from complaints.

Farewell to the Coronavirus Job Retention scheme - or is it?

It seems a very long time ago that we published our first article outlining the details of the Coronavirus Job Retention Scheme (CJRS) which was set to be in place initially for the three-month period from 1 March to 31 May 2020.

Numerous CJRS revisions and client queries later, the scheme has now ended. The final employer claims for September 2021 had to be submitted by 14 October 2021 and any amendments must be made by 28 October 2021.

Action needed by employers

As employers neared the end of the scheme they had to review the furlough arrangements and contractual terms for furloughed employees and make the decision to either bring the furloughed employees back to work on their original contractual, or newly agreed, terms and conditions, or terminate some employments, as necessary. In some cases, this was a major exercise for Human Resources staff as equality, discrimination and other employment laws applied in the usual way.

Employers could not claim CJRS grants from HMRC for any days an employee was serving a contractual or statutory notice period, including notice of retirement, resignation, or redundancy.

In addition, employers should:

- Review the calculation of their claims under the CJRS and ensure that any amendments are identified, and amendments made to HMRC by 28 October 2021;
- Ensure correct reporting to HMRC of amounts claimed and received under the scheme on their applicable tax return together with confirmation of amounts that they were entitled to claim; and
- Ensure that all records relating to the scheme including staff furlough documentation, payroll records, claim calculations and claims made are retained securely in case of HMRC enquiry.

So, is this really farewell to the CJRS?

It is estimated that over £1 billion has already been recovered by HMRC from employers voluntarily returning CJRS grants where either employers' businesses were less affected by the pandemic than expected or where calculation errors have been discovered.

In the Spring of 2021, the Treasury announced that it would provide HMRC with a further £100 million to tackle fraud with the CJRS. The resulting taskforce aims to have 1,250 HMRC staff investigating CJRS claims and has already launched more than 10,000 enquiries. As more than 1 million employers claimed under CJRS, there is still scope over the coming years for many more enquiries into the operation of the scheme. Therefore, it will be some years before we can say finally bid farewell to the CJRS.

PEM's Employment Taxes team advised many clients on the CJRS and their claims and this, coupled with our vast experience of handling HMRC enquiries, ensures that we are best placed to assist you with any enquiries you receive from HMRC. Alternatively, you may just want some reassurance as to how you operated the scheme before the final deadline for submitting amendments to HMRC. If you do have any queries on the CJRS, please contact us on employmenttax@pem.co.uk.

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Charity Commission Inquiry

A long-running inquiry into a Lincolnshire animal sanctuary has been concluded this year.

The findings included:

- Lack of oversight by Trustees of the day-to-day running of the charity by the Chair who had complete control of the charity's bank account.
- Total lack of financial controls and separation between the charity finances and those of the Chair.
- Failure to manage conflicts of interest (trustee board included 3 members of the same family).
- Inadequate financial records and failure to comply with their legal accounting responsibilities.

Between 2008 and 2020 over £10 million had been raised for the charity by a fundraising agency, however only £1.8 million of that found its way directly to the charity under the agreement in place. Potential donors had not been made aware of how much of their donation would go towards the charity's objective.

The charity was removed from the Register in June 2021 and £407,000 of funds were distributed to other charities in the local area delivering similar charitable objectives.

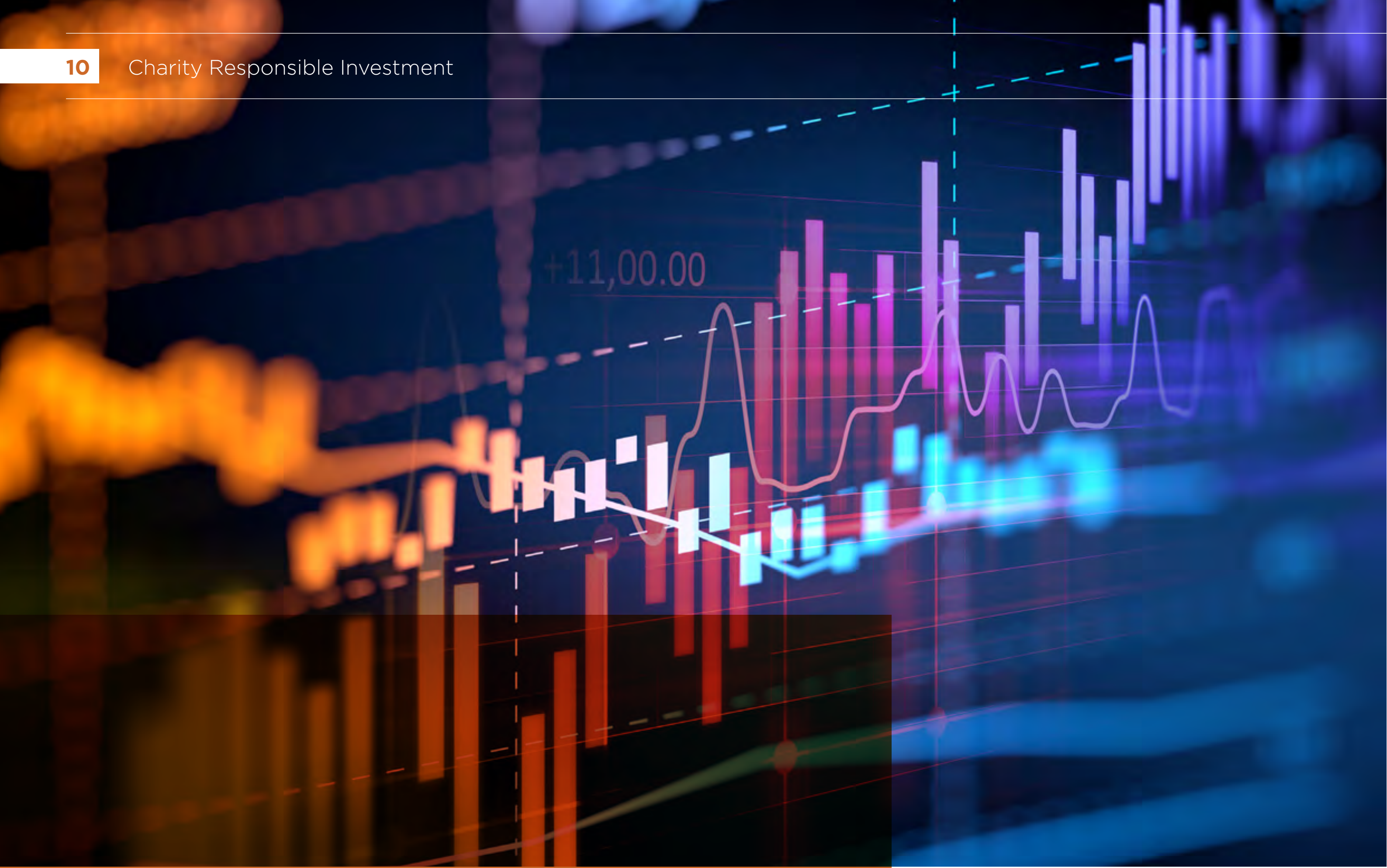
The Chair has been disqualified from acting as a trustee for 15 years and one other for 10 years.

The Commission says that this case has lessons for the wider charity sector, as follows:

- An effective trustee body acts in the best interests of the charity and its beneficiaries and should have systems and policies in place to exercise its responsibilities properly with clear and robust reporting procedures and lines of accountability.
- Trustees are jointly and severally responsible for the management of the charity.
- All trustees must contribute to the management of the charity and make sure it is managed in accordance with its governing document.
- Charity trustees must manage their charity's resources responsibly, reasonably and honestly.
- Charity trustees are responsible for making decisions about how their charity is run and in doing so they should follow the basic 7 principles:

  1. act within their powers;
  2. act in good faith and only in the interests of the charity;
  3. make sure they are sufficiently informed;
  4. take account of all relevant factors;
  5. ignore irrelevant factors;
  6. manage conflicts of interest; and
  7. make decisions that a reasonable trustee board can be expected to make.

Conflicts of interest become more likely the fewer trustees there are, if the trustees are closely related or if the charity deals with organisations that the trustees have interests in. It is important that trustees identify these greater risk areas and put in place policies and procedures to manage any conflicts.



Charity Responsible Investment

As touched upon in our previous newsletters, a consultation has been underway on revised guidance about adopting a responsible ("ethical") approach to investing charity funds.

Some trustees felt that their charities were being deterred from following a responsible investment strategy by Charity Commission guidance, which suggested that a trustee's overriding legal duty was to maximise the financial returns when making investments, regardless of any other consideration.

This consultation has now closed.

A High Court case is in progress relating to responsible investments and the Commission will wait until the conclusion of that matter before issuing updated guidance.

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