

Website Annexe 4 – Fundraising – regulation and tax

Regulation

The regulation of fundraising is done partly through statutory regulations and agencies and partly through self regulation and standards.

Voluntary codes have been developed by the Institute of Fundraising (IoF) covering all the main types of fundraising. The Fundraising Standards Board (FRSB) administers these codes. To date 1300 charities (including all the major fundraising charities) have become members of the FRSB scheme, whereby they agree to comply with 'The Fundraising promise' and the IoF's codes of fundraising practice. Although this is currently a voluntary, self-regulatory system, under the Charities Act (2006), the Minister has a reserve power to make it statutory. The five year review of the Act is due to start by November 2011. Although it is unlikely that the Minister of the day will want to make the system statutory, charities could be required to register with the scheme, but the Board itself would continue to be run by the sector. The indications are that most larger charities would welcome this, because the lack of regulation at the moment leads to poor practice, which in turn reduces confidence in the sector as a whole. Meanwhile, the FRSB is encouraging more charities to join their scheme.

Although there is a considerable amount of regulation of the sector, most of the regulations charities have to comply with, such as health and safety and employment regulations, are part of a wider system of regulation affecting small businesses in general. However, the Government is committed to reducing the bureaucracy involved in running charities and has already announced a cross-departmental task force on this issue.

Statutory regulations and other measures include:

- Provisions in the Police, Factories, etc (Miscellaneous Provisions) Act (1916) for regulating street and house to house collections.
- Provisions in the Telecommunications (Data Protection and privacy) regulations (1999) and subsequent regulations, which enable households and companies to register under the Telephone Preference Service, which is an opt-out telephone list for preventing telemarketing calls to those who do not want to receive them.
- Provisions in the Gambling Act (2005) administered by the Gaming Board on behalf of DCMS for the regulation of raffles and lotteries
- Provisions in the Finance Act (2007), which regulate substantial donors (over £25k) to stop wealthy people and their relations benefiting from charities they donated to
- Provisions in the Finance Act (2010) which change some of the definitions of charities to reflect the fact that tax reliefs and exemptions are being extended to certain EU organisations
- Proposed introduction of music charges by the Intellectual Property Office, Dept for Business, Innovation and Skills, which will adversely affect small charities

The three main areas of current concern identified by the Commission are:

- The Substantial Donor provisions in the Finance Act (2007), which the previous government had agreed to amend and on which HMRC have a working party looking at how best to ensure the current legislation does not affect innocent charities and donors. This legislation, which most charities are unaware of, but would be very concerned if they knew about it, has the effect of giving credibility to the negative views held about many philanthropists
- The 'fit and proper persons' test introduced by the 2010 Finance Act, which allows HMRC to deny tax relief to a charity if it feels that a senior employee or trustee is a

- fraud risk. New guidance issued by HMRC now states that HMRC will assume that all employees and trustees of charities satisfy this test, unless it is shown evidence to the contrary
- Reducing the barriers and bureaucracy involved in running raffles/lotteries and enabling higher prizes to be paid. If charities working for the same cause or in the same area could run joint raffles with higher prizes, there is considerable potential for raising larger sums of money this way. However, it will be important to look at European experience to ensure that this would not have a negative effect on the National Lottery's income before proceeding with these changes.

Tax

The tax system affects the income and expenditure of charities in a number of ways:

- Fiscal incentives, such as Gift Aid, can affect individual and company decisions to give, as well as increasing the amount charities receive. Evidence suggests that people don't give because of tax breaks, but tax breaks will increase the amounts people give and may determine how their gift is made up¹
- Taxes, such as unrecoverable VAT, can reduce the amount of income charities receive
- Tax reliefs, such as corporation tax exemption and business rate relief, can reduce the amount charities have to pay, whilst impacting adversely on other CSOs, such as social enterprises, that are not eligible for them
- More generally, macro trends in taxation, such as the move from taxing income (which can incentivise giving) towards taxing consumption (which has no impact on giving, but adversely affects charities through increased VAT) could have a major impact on charities' income in the longer term, unless other measures are put in place to counteract this.

The complexity of some of the fiscal incentives is potentially a real barrier. For example, arrangements for claiming tax relief on donated goods, e.g. to charity shops, are extremely complex and not well understood, and are therefore unlikely at present to act as an incentive to giving. In the US, on the other hand, non-cash contributions, consisting of corporate stock, clothing, land and household items, which can simply be registered on individuals annual tax return, amounted to \$52.8bn in 2007, an increase of 13% on the previous year (= the largest source of income for charities in the US).

Gift Aid

Gift Aid has been an important source of, unrestricted, income to charities, particularly since 2001/02 when the minimum qualifying gift was removed and deeds of covenant rendered obsolete. The amount of tax relief to donors and charities increased from £362m in 2000/01 to £1.3bn in 200/10, of which £1bn went to charities (the balance going to donors). However, there are a number of concerns about the present Gift Aid system:

- It is a complicated system, involving 70,000 claims pa, which requires a lot of staff in HMRC (120 staff, although they also undertake other work on charities) and in charities (e.g. 10 in NSPPC) to administer. Some charities currently submit a claim every day of the year; HMRC now has the power to limit the number of claims that can be made in a year and it will be putting this into effect, because of the need to limit staff time spent on Gift Aid.

¹ Philanthropy in the 21st Century: a discussion paper by Lindsay Driscoll and Peter Grant for the Honorary Treasurers Forum, published by Cass Business School, City University

- CAF estimate that at least £750m is unclaimed every year, both by individuals eligible to claim tax relief (i.e. those on higher rate tax) and by charities (especially smaller ones), who are not aware of the scheme or do not have the systems to operate it
- Although the amounts given using Gift Aid have increased, there is no evidence that overall giving levels have increased as a result of Gift Aid. Evidence from US experience suggests that tax relief can influence giving levels over time, but there is very little UK evidence. An HMRC-sponsored study in 2009 found that increasing tax reliefs is a relatively inefficient way of encouraging people to give more. Increasing the amount of a Government 'match' claimed by charities has a greater incentive effect.
- The higher amounts people give, the more likely they are to claim Gift Aid
- If the basic rate of tax goes down, so does the amount of Gift Aid claimed by charities, unless transitional arrangements are put in place, as has happened for 2008-11
- If higher rates of tax go up, this increases the relief available to higher rate donors
- The arrangements for claiming tax relief on donated goods (which were never intended to be done through Gift Aid) are extremely complex and not well known or understood

Three different options are currently under discussion in a working group set up by HM Treasury with sector representatives; it is not yet known what the Government intend to do on this issue. The three options are:

- No significant changes to the Gift Aid system, but a simplification of its administration
- A composite rate; charities would get a higher rate of relief on all donations, but donors paying higher rates of income tax would no longer be able to claim personal tax relief
- A composite rate, but with an exemption for major donors

Key considerations which any option has to take into account are:

- The need to provide an incentive to people to give more
- The need for simplicity, fairness and sustainability
- Affordability and value for money
- The need to ensure that a revised system continues to be classified by the ONS as tax relief rather than government spending, which would not only add to the budget deficit, but would also be susceptible to government spending cuts.

Other tax issues

Although reforming Gift Aid is seen as an important issue by the sector, the following issues have also been raised with the Commission:

- The Lifetime Legacies Coalition is promoting Charitable Remainder Trusts whereby a donor can make an irrevocable gift to a charity during their lifetime, of shares, property or cash, while retaining the benefit of the income or use of the gift for the term of their life. The donor can claim relief from capital gains tax at the time of the gift and its value is not counted as part of their estate for the purposes of inheritance tax. The Coalition is also promoting the idea of Lead Trusts whereby a donor can donate the interest on capital to a charity during their lifetime, but not the capital on their death. The Coalition has not identified any evidence from the US that lifetime legacies increase giving, but they do provide charities with greater security regarding future income. HM Treasury has a working group looking at these proposals.
- Some of the Commission's interviewees highlighted that the arrangements for claiming tax relief on donated goods (which were never intended to be done through Gift Aid) are extremely complex and not well known or understood
- The Institute for Philanthropy is lobbying for tax relief for works of art donated to the donation

- Series of proposals in the Manifesto for Community Philanthropists published by the Community Foundation Network (2009) including Special Giving Zones to incentivise giving to target certain issues or deprived areas and preferential tax breaks for foundations that have a form of public ownership and promote engagement with beneficiaries
- Continuing concerns (heightened by the recent increase in VAT to 20%) represented by the Charity Tax Group about unrecoverable VAT on services purchased by charities (estimated at £1bn pa), resulting from the fact that charities are treated as the final consumer of services, even though their clients, who are not in a position to pay VAT, are the final consumers
- Concerns about the VAT implications when charities want to share support services as part of collaborative working arrangements has led the Charity Tax Group to try and convince HM Treasury and HMRC to implement Article 132(1) (F) of the Principal VAT Directive in UK VAT Law. This would provide VAT exemption for sharing staff, services or facilities with other charities or outsourcing non-core activities and would thus remove one of the current potential barriers to collaborative working (See separate Commission paper (to follow) on Effectiveness).
- The need for a tax system which promotes social entrepreneurialism and philanthropy, while maximising returns to the sector, as recommended by the Community Alliance Social Enterprise Coalition and ACEVO in their joint manifesto 'The Time is Now' (2010); a strong and clear package of tax incentives to encourage social investment, including strengthening, simplifying and extending the Community Interest Tax Relief system and improving the tax breaks in the Enterprise Investment Scheme and Venture Capital Trusts to give a higher return for organisations delivering social or environmental benefit. (see Social Enterprise Coalition manifesto 'No more business as usual' (2010) and the Commission's Paper 1 on Capitalisation and Social Investment and Paper 2 on Trading).