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## CLAS CIRCULAR 2008/16 (17 September 2008)

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It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

## CHARITIES AND CHARITY LAW

### Charities Acts: consultation on reporting and financial thresholds

Members may recall that the Office of the Third Sector and the Charity Commission undertook a consultation on reporting and accounting thresholds, principally aimed at small charities. Some of the charities affected are religious; and we made a submission on behalf of CMC/CLAS in February.

The response to the consultation appeared at the end of August and the following are the principal conclusions that are likely to be of interest to members:

- **Requirement to prepare accounts:** there was overwhelming agreement from respondents that there should be no change to the requirement for charities to prepare accounts and make them available on request: *no change*.
- **Requirement for registered charities with income over £10,000 to send annual accounts and Trustees Annual Report to the Commission:** *the Government proposes to raise both the annual accounts and the TAR submission thresholds to £25,000.*
- **Proposed relaxation of TAR threshold for small charities:** in view of the strong opposition to the proposal, *this has been dropped.*
- **Threshold for the requirement to prepare accruals accounts:** *to be raised from £100,000 to £250,000.*
- **£10,000 minimum threshold for external examination of accounts:** in view of the somewhat mixed response, *the Government 'continues to recommend' increasing the threshold for external scrutiny of accounts to £25,000.*
- **Income threshold for audit:** opinions were divided, and *the Government intends to keep the income threshold for obligatory audit at £500,000 'for the time being'.*
- **The £2.8 million asset threshold:** *the Government will raise the lower income trigger to £250,000 in line with the proposed increase in the threshold for preparing accruals accounts and increase the asset element to £3.26m to remain in line with the threshold for companies that are not charities.*
- **The £250,000 threshold for appointing a qualified examiner:** a large majority of respondents were against the change, and *the lower income threshold of £250,000 is to remain unchanged.*
- **The requirement for registered charities with income over £10,000 to state on certain documents that they are registered:** most respondents were against any change; *the present threshold is to be retained.*

- **The £5,000 registration threshold:** the majority of respondents agreed that the present registration threshold should remain: *no change*, but it will be reassessed as part of the five-year review of the Act in 2011.
- **The £10,000 threshold for submitting an Annual Return:** this received a mixed response: *the existing threshold of £10,000 will be retained*.
- **Annual returns as opposed to biennial reporting:** the overwhelming consensus was in favour of annual reporting: *no change*.
- **Thresholds for spending capital, transferring property and modifying powers:** all respondents to the question supported retaining the *status quo* until the impact is assessed as part of the five-year review: *no change*, but the thresholds should be assessed as part of the five-year review.

**OTS has announced that its recommendations for changes in various financial thresholds for charities arising from the recent consultation will be introduced in secondary legislation by the end of the 2008/09 financial year.** The intention is that the changes (which will affect small religious charities along with secular ones) should take effect from the beginning of financial year 2009/10.

[Sources: *Cabinet Office/OTS* – 29 August & 16 September 2008]

### **Companies (Trading Disclosures) Regulations 2008**

It has just been drawn to our attention that the Companies (Trading Disclosures) Regulations come into force on 1 October 2008. Under the Regulations (which are pretty tortuous), a company is required to display its company name at its registered office and at any location at which it keeps available for inspection any company record which it is required to make available under the Companies Acts.

Thus far, we assume, all charitable companies will be doing that anyway. In addition, however:

#### **“Registered name to appear in communications**

- 6.—(1) Every company shall disclose its registered name on—
- (a) its business letters, notices and other official publications;
  - (b) its bills of exchange, promissory notes, endorsements and order forms;
  - (c) cheques purporting to be signed by or on behalf of the company;
  - (d) orders for money, goods or services purporting to be signed by or on behalf of the company;
  - (e) its bills of parcels, invoices and other demands for payment, receipts and letters of credit;

- (f) its applications for licences to carry on a trade or activity; and
- (g) all other forms of its business correspondence and documentation.

(2) Every company shall disclose its registered name on its websites.

**Further particulars to appear in business letters, order forms and websites**

7.—(1) Every company shall disclose the particulars set out in paragraph (2) on—

- (a) its business letters;
- (b) its order forms; and
- (c) its websites.

(2) The particulars are—

- (a) the part of the United Kingdom in which the company is registered;
- (b) the company's registered number;
- (c) the address of the company's registered office;
- (d) in the case of a limited company exempt from the obligation to use the word "limited" as part of its registered name under section 30 of the Companies Act 1985 or article 40 of the Companies (Northern) Ireland Order 1986, the fact that it is a limited company;
- (e) in the case of a community interest company which is not a public company, the fact that it is a limited company; and
- (f) in the case of an investment company within the meaning of section 833 of the Act, the fact that it is such a company.

(3) If, in the case of a company having a share capital, there is a disclosure as to the amount of share capital on—

- (a) its business letters;
- (b) its order forms; or
- (c) its websites,

that disclosure must be to paid up share capital.

**Disclosure of names of directors**

8.—(1) Where a company's business letter includes the name of any director of that company, other than in the text or as a signatory, the letter must disclose the name of every director of that company.

(2) In paragraph (1), "name" has the following meanings—

(a) in the case of a director who is an individual, "name" has the meaning given in section 163(2) of the Act; and

(b) in the case of a director who is a body corporate or a firm that is a legal person under the law by which it is governed, "name" means corporate name or firm name."

**All these provisions apply to limited companies operated by charities**, as when, for example, a charity operates a trading subsidiary set up under the Companies Acts – maybe to run a café or a bookshop. Perhaps the most onerous obligation is Regulation 8: it appears to mean, in effect, that if individual directors have personalised stationery, each individual's business correspondence must list the names of all the other directors – which will need to be watched very carefully in the case of charitable companies that have frequent changes of director, because all the stationery will need to be changed every time the membership of the Board changes.

**Failure to comply is an offence punishable by a Level 3 fine.**

[Source: *OPSI* – 24 February 2008]

## TAXATION

### **HMRC Charity Helpline: change of opening hours**

From 15 September, HMRC's Charities and Charities & Community Amateur Sports Clubs telephone helpline will be open from 8.00 am to 5.00 pm, Monday to Friday: 0845 302 0203.

[Source: *HMRC What's New for Charities* – 15 September 2008]