CHARITY NEWSLETTER

- ISSUE 13 -

SEPTEMBER 2008

ROBINSON
REED
LAYTON
CHARTERED ACCOUNTANTS

Peat House Newham Road Truro Cornwall TR1 2DP

Telephone: 01872 276116 Telefax: 01872 222172 www.rrl-truro.co.uk

Introduction

Welcome to our Autumn Newsletter. The credit crunch and the following recession are both having a serious effect on the UK economy which also means the voluntary sector. In this issue we refer to a few common sense ideas which can help charities to survive this difficult period. There is also a brief update on the public benefit debate and a summary of the Charity Commission's new guidance on payments to trustees. Many charities we deal with are employers so I have asked our Tax Partner James Bailey to give some guidance on how to avoid problems complying with the various PAYE and benefit rules.

Finally, there is the usual round up of charity news and advance notice of our next seminar in November.

Richard Robinson
Charity Partner

Contents

Trustee expenses and payments

The Charity Commission has recently issued a revised booklet on this often misunderstood subject which replaces the previous guidance CC11. This up to date assistance now incorporates the changes included in the Charities Act 2006.

Trustee expenses

Trustees can be reimbursed expenses incurred by them in carrying out their duties. These can include:

- Travel to meetings
- Travel and subsistence whilst carrying out trustees' duties away from home.
- Telephone and broadband costs incurred in carrying out trustees' duties.
- Childcare costs whilst undertaking trustees' duties.
- Training materials in relation to carrying out trustees' duties.

The total amount paid of all trustees' expenses needs to be shown in the annual accounts together with the number of trustees who receive such payments.
Where a trustee is merely reimbursed for a payment they made on behalf of the charity this does not represent trustee expenses and does not have to be declared in the annual accounts.
It is recommended good practice to have an expenses policy so trustees clearly understand what they are able to claim.

Payment for Services and Materials supplied by trustees

As a result of the Charities Act 2006 which amended the rules in the 1993 Charities Act, charities can under certain circumstances pay their trustees for the provision of services and the supply of materials. These rules apply not only to trustees but people connected with them which includes:

- Spouse or civil partner
- Children and grandchildren
- Siblings
- Business partners
- An incorporated business in which the trustee has an interest of greater than 20%.

Provided the charity's governing document does not specifically exclude such payments to trustees, these can be made provided the following conditions are met:

- The payment must be in the best interests of the charity.
- The amount payable must be reasonable for the service or material provided.
- There must be a written agreement that sets out the amount to be paid.
- The trustee must not take part in any decision relating to the payment.
- The total number of trustees receiving such payments must be a minority of the trustee body.

A charitable company can change its objects to allow a payment of this type but a prohibition in the constitution of an unincorporated charity can only be removed with the Charity Commission's approval.

Other legitimate payments to trustees

The guidance also refers to other small payments that can usually be made to trustees without Charity Commission approval although the amount they receive may be subject to tax. These include:

- Compensation for loss of earnings which would allow an employed or self employed trustee to attend daytime meetings.
- A clothing allowance where the trustee has special duties
- An honorarium which is a small token sum to acknowledge a particular role the trustee has performed.
- Payment to a trustee for the use of their premises.

The Charity Commission would not have to authorise this type of payment if all trustees' payments including expenses total less than £1,000 per annum. This concession can be useful, for example, in allowing the charity to acknowledge retiring trustees' services by making a small gift.

Payment to a trustee for their duties as a trustee or as an employee

Payments to trustees under these circumstances are quite rare. Such payments must be in the best interests of the charity and must represent the most appropriate option after all other options have been considered. Payments can only be made if specifically authorised in the governing document or approved in advance by the Charity Commission or the courts. As mentioned previously, the potential conflict of interest needs to be addressed by the trustee board in the decision making process for this type of payment. It is recommended specific advice is obtained each time a payment of this type is contemplated.

Conclusion

Charities are distinctive because the people who control them are volunteers who give their time freely for the benefit of others. This principle remains but as set out above there are ways of ensuring that the best use can be made of their skills, and their ability to undertake these duties is not prejudiced by their personal financial situation.

Update - Charities and Public Benefit

Since the article in our March 2008 Newsletter the Charity Commission has published further documents on this subject to add to the ones already issued. These are:

March 2008	Consultation on draft supplementary guidance on Public Benefit and the advancement of education.
March 2008	Consultation on draft supplementary guidance on Public Benefit and Fee charging.
March 2008	Analysis of law underpinning Public Benefit and the advancement of education.
September 2008	Consultation on draft supplementary guidance on Public Benefit and the advancement of Moral and Ethical Belief Systems.

The last of these consultations does not close until January 2009 so there is likely to be yet further guidance issued over the next 6 to 12 months.

One aspect that the Charity Commission has already made clear is that all charities will be required to explain how they meet the public benefit in their accounts commencing with the year to 31 March 2009.

The amount of detail that needs to be shown will depend on the size of the charity and the Charity Commission has intimated that further guidance will be issued concerning this which will include some examples.

Surviving the credit crunch

According to most commentators the UK and for that matter most of the world is in the throes of an economic recession. Charities will therefore be feeling the impact of this as well as every householder. Higher fuel costs and food prices result in reduced spare income and therefore less money to give to charities.

The one voluntary sector area which appears to be benefiting from the credit crunch is the charity shop which is finding more customers interested in its wide range of second hand clothes and household products.

What therefore can charities do to weather the storm, which hopefully will pass by in 12 to 18 months' time?

To state the obvious charities must aim to maximise income and minimise expenditure. Actions that can be taken include:

- Make sure a gift aid form is always completed for donations from individual taxpayers.
- Make gift aid claims regularly not just once a year.
- Manage the charity's bank balance to check the minimum amount is kept on current account and the maximum balance is held on deposit.
- Make sure the best interest rate is being obtained especially where part of the funds can be put on deposit for a longer period. Consider using specialist charity deposit accounts such as COIF.
- Where stock exchange investments are held seek advice from your broker. If investments do need to be sold plan this well in advance. Possibly realise the required funds in smaller disposals over an extended period in order to balance out any violent stock exchange fluctuations.
- Join a charity-buying group to obtain bulk discounts on stationery and other overhead costs.
- Ensure VAT zero rating is obtained on disability aids and advertising.

The other important thing for charities to do is to ensure they prepare a detailed annual budget which they can monitor month by month to ensure they are operating within their resources. Charities do not have to make a surplus but if in a difficult year they decide to use some of their reserves to enable them to maintain service levels this must be a positive decision taken by the trustees and should not be a surprise discovery when the year end accounts are prepared.

With the benefit of up to date accounting information the charity trustees can react to adverse budget variances and take decisions, albeit unpalatable ones to protect the charity's long term future.

Finally, if the situation shown by the management accounts is serious for the charity the trustees need to take decisive action. This may entail further reduction in costs and possibly employees for which the proper legal procedures must be observed. Other alternatives could be contacting the primary funders who rely on the services provided by the charity in case they would be prepared to provide further support.

Consideration could be given to merging with another charity that has similar aims on the basis that the combined activities could be undertaken by the continuing charity without a proportionate increase in its overheads. In the last resort trustees may have to consult an insolvency practitioner in order to obtain advice on how to deal with the charity's financial position. Continuing to operate whilst insolvent could place trustees at risk of prosecution and in certain cases they could incur personal liability for the charity's unpaid debts.

The credit crunch is likely to cause problems for the charity sector but by taking decisive action the trustees can secure and maintain their charity's ability to provide its much needed services to the community.

Charities as employers

If a Charity employs anyone to assist with its work it is treated just like any other employer for tax purposes, with one important exception. Unpaid volunteers are not treated as employees, even if they hold an office such as chairman or secretary of the Charity.
Provided that any payments to such people do no more than reimburse their expenses (including the expenses of travelling from their homes on work for the Charity, which would not normally be an allowable expense for an ordinary employee) then they will have no tax liability and HMRC do not need to be notified of these payments.

If anyone else works for a Charity and is paid for it, then as an employer the Charity is required to operate the PAYE system and also to declare any benefits in kind the employee receives.
This in turn means that the charity could receive a visit from an 'Employer Compliance Officer' (ECO) who is a fairly junior HM Revenue & Customs official whose job is to monitor compliance with the PAYE regulations and the rules relating to benefits in kind.
This is not the place for a detailed examination of the PAYE regulations, but there are a number of common pitfalls that charities (and indeed any employer) should be aware of, as they are a happy hunting ground for ECO's.

Employed/Self Employed?

If a Charity uses the services of any individual and pays him on the basis that he is self employed rather than an employee of the charity, they need to be very sure that HMRC would agree with this proposition. In a case where the individual concerned should have been treated as an employee it will be the charity rather than the individual that is responsible for any additional tax and national insurance contributions that are due. The distinction between employment and self employment can be quite complex at the margin, but I think it is fair to say that in any situation where the employed/self employed status of the individual concerned was even discussed with them at the time their services were first used, this is a danger signal and it is worth taking advice. The salesmen at the Boat Show have a saying about yachts – 'if you want to know the price, you can't afford it'. I could modify this to say 'if you have to think about whether he's an employee or not, he probably is an employee'.

Accommodation

In some cases employees of charities are provided with accommodation, and in fewer cases this may not be a taxable benefit if it can be shown that certain conditions are satisfied. As a general principle, however, anyone who is provided with accommodation by his employer is liable to tax on this as a benefit in kind, and unfortunately it can be the case that the way the legislation requires the benefit to be calculated might mean that even though the employee is paying what both sides consider to be a market rent for his accommodation, there is nevertheless some tax liability.

Cars and mileage

Where an employee uses his own car he can be paid 40p per mile for the first 10,000 miles in any tax year travelled on the charity's business, and 25p per mile thereafter. These are the maximum rates for reimbursement, regardless of how expensive the vehicle is to run – and regardless of recent changes to the oil price.
One trap to watch out for here is that travel from your home to a 'permanent workplace' is not considered to be business mileage and so if this is reimbursed a tax liability will result.

Vans

I am assuming that no charities provide their employees with company cars any more, but in some cases they may have the use of a van owned by the charity. The taxable benefit chargeable on a van depends on what it is used for in addition to the charity's business. If in addition to using the van for business the employee is allowed to use it for his own private purposes, then he will be liable tax on a benefit deemed to be worth £3,000 per year, with a further £500 per year if fuel is provided for private use. The charity will also be liable to pay National Insurance contributions at a rate of 12.8% on these values.

These benefits are not charged if private use of the van is restricted to:

- Travel from home to work and back, and
- 'Insignificant' other private use.

A word of warning here – HMRC's idea of 'insignificant' is extremely restrictive and it is unsafe to assume that <u>any</u> private use apart from commuting would be considered 'insignificant'.

Conduct of Employer Compliance Reviews (ECR)

It should not be underestimated how much time can be taken up by such a review and how stressful it can be for those involved. According to statistics recently released by HMRC under the Freedom of Information Act the typical ECR takes 11 months, although I have known them go on for much longer than this particularly in a case where the Employer Compliance Officer has sought to impose incorrect tax charges and these have had to be resisted.
The ECO proposing to visit your charity will first write to you explaining their intentions and asking you to have various payroll records ready. It is wise to seek professional advice at this stage, as any problem areas can be discussed in advance so that you will know what to expect and which areas HMRC are most likely to challenge.

The visit will be a mixture of trawling through the records and asking questions. It is very important, particularly in a larger organisation, that somebody senior is on hand to deal with these questions. I have seen much trouble caused by a tendency to delegate dealing with the ECO to a junior payroll clerk, who may not be aware either of the significance of the questions he/she is being asked, or of the (perhaps inaccurate) answers being given. After the visit the ECO will prepare notes of the meeting and send these to you inviting you to sign them. My advice is never to agree to do this and not to agree that the notes are an accurate record of the meeting. HMRC's only motive for seeking this agreement is to provide a stick to beat you with and this leads on to a final point:

Charities as employers - continued

Despite HMRC's attempts to present themselves as being more user-friendly, and their policy of calling taxpayers 'customers', you should be under no illusions about the purpose of the ECR. It is to see if any additional tax can be extracted, either by spotting irregularities or by finding situations which can be interpreted to produce a tax charge. This may sound cynical, but I have dealt with a great many of these reviews and I have yet to deal with one where HMRC has not demanded an amount of tax significantly in excess of the amount they finally settled for.

James Bailey, *Tax Partner*

Other Charity News

VAT on temporary workers

The government recently announced a tax hike that will effect charities. The issue relates to the charging of VAT for temporary staff. Up until now an agency would only charge VAT on its commission. However from April 2009 VAT will be charged on the salary in full. This will be a blow to many charities that are not VAT registered or who are only able to recover a proportion of VAT under the partial exemption scheme.

Heritage assets

A new exposure draft – FRED 42 was published in June 2008, and will effect many charities including museums and galleries. These charities are likely to need to disclose a great deal of information about their historic assets, regardless of whether these are included on the balance sheet.

The information to be disclosed will include the following:

1. understanding of the asset values being reported.
2. policy for managing heritage assets

Where it is difficult for a value to be obtained for historic assets then these assets do not need to be valued on the balance sheet however disclosure of their existence will still be required. Comments on this exposure draft can be made until 10 October 2008.

Corporate Manslaughter and Corporate Homicide Act 2007

On 6 April 2008 the act came into force, creating a new criminal offence of corporate manslaughter for organisations causing death through gross negligence. This act covers charitable companies but not unincorporated charities.

It is therefore vital for all organisations to maintain risk registers, and to regularly review these for health and safety issues to ensure compliance.

Independent examination requirements for charities

For accounting periods commencing on 1 April 2008 both charitable companies and unincorporated charities will come under the same external scrutiny thresholds. All charities will require an independent examination if their income exceeds £10,000 and is less than £500,000; the audit threshold.

In response to this change the Charity Commission has produced updated guidance on independent examinations, this document is available from the Charity Commission website.

Charity SORP 2005

The Charity SORP has been updated to reflect recent changes following the introduction of the Charities Act 2006. This can be downloaded from the Charity Commission website.

Delayed incorporation rules

The new Charitable Incorporated organisation draft rules have been delayed. It is now unlikely that the draft rules will be available until the end of the year. It is therefore also unlikely that this new form of organisation will be available for use until late into 2009.

New land tax

The Community Infrastructure Levy, requires any organisation that obtains planning permission to develop land to pay a tax based on the value of the land. This will affect charities, for example who wish to expand their premises.

The Charity tax group, the Charities' Property Association, the Churches' Legislation Advisory Service, and the NCVO are campaigning for a charity exemption from the levy.

Advance Announcement

Robinson Reed Layton Charity Seminar

2 pm on 21 November 2008

National Maritime Museum, Falmouth

This year we are at a new venue.

Our guest speakers will be looking at the very important area of risk management and representatives from Jacksons Insurance and Risk Management and specialist insurers Ecclesiastical Insurance Group will be giving practical advice on how to assess and manage the risks that impact on the voluntary sector.

In addition to this, Robinson Reed Layton will be providing advice on a wide range of tax, accounting and governance issues including updates on the continuing roll out of provisions in the Companies and Charities Acts and an examination of the tax pitfalls for charities that have employees.

Full details will be issued next month.

Charity Contacts

If you would like further information regarding any of the issues raised in this newsletter please contact a member of our Charity Team:

Richard Robinson	- Partner
email:	- richard.robinson@rrl-truro.co.uk
Graham Boulton	- Partner
email:	- graham.boulton@rrl-truro.co.uk
James Bailey	- Tax Partner
email:	- james.bailey@rrl-truro.co.uk
Mark Williams	- Manager
email:	- mark.williams@rrl-truro.co.uk
Graham Ratcliffe	- Senior
email:	- graham.ratcliffe@rrl-truro.co.uk
Tracy Lewis	- Audit Senior
email:	- tracy.lewis@rrl-truro.co.uk

ROBINSON REED LAYTON

CHARTERED ACCOUNTANTS

If you do not have internet access but would like a copy of any documents referred to in this newsletter please contact one of the charity team