



Response to HMRC's consultation on charities tax compliance

Introduction

HMRC issued a consultation¹ on 27 April on charity taxation rules to help tackle non-compliance and protect the integrity of the charity sector without changing the overall purpose of the reliefs.

The consultation covers four areas:

- preventing donors from obtaining a financial benefit from their donation
- preventing abuse of the charitable investment rules
- closing a gap in non-charitable expenditure rules
- sanctioning charities that do not meet their filing and payment.

The Healthcare Financial Management Association

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are

¹ HMRC, *Consultation: charities tax compliance*, April 2023



delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

The HFMA's NHS Charity Finance Group

The HFMA's NHS Charity Finance Group represents the financial management interests of those in the NHS charity healthcare community. The group supports the charitable funds community by providing practical guidance, networking and training opportunities.

This response has been drafted by that group so this response only addresses those points that might particularly affect NHS charities.

Overall comments

The abuses identified in the consultation are unlikely to occur in the context of the NHS because NHS charities act as grant-makers to linked NHS bodies. This is the case whether the trustee body comprises a corporate trustee or individual trustee appointments. However, although the abuses identified are unlikely to occur the remedies proposed will, in part, affect NHS charities and this is point of concern.

The HFMA supports the intention to protect the integrity of the charity sector but we recommend that HMRC look to collaborate more closely with the UK's charity regulators to tackle the issue since the consultation is only looking to deal with a small group of charities. Also, if the motive is private benefit would it not be better to target measures against tax payers and their professional advisers who are looking to abuse the tax rules rather than change the rules and thereby affect the whole charitable sector?

We note that guidance² already issued by one of the UK's charity regulators in respect of trustees and tax avoidance schemes, the Charity Commission for England and Wales, appears to address many of the concerns identified in the consultation. This policy specifically provides for the regulator to take action where trustees:

'...engage in tax arrangements which exploit tax legislation artificially, particularly where they serve private interests, as well as those of the charity'.

The Commission also refers to sharing information with HMRC on such schemes. Since this framework is already in place there appears to be an opportunity for closer regulator collaboration with HMRC to address the concerns raised.

Response

We have only answered those questions that we consider may impact on NHS charities – questions 1, 3, 4, 5, 7, 8 and 11.

Question 1: Do you foresee any unintended consequences on legitimate charities from introducing this rule?

There is no evidence in the consultation to indicate how many donations might be affected or how many cases and of what value HMRC has challenged to date either successfully or unsuccessfully.

The problem with setting limits is that monetary values can quickly become onerous due to inflation while percentage thresholds do not consider materiality. A combined approach would allow smaller donations to avoid being caught, but would add complexity.

In respect of corporate and philanthropic donors, we ask that any new rule makes it clear that certain non-cash benefits are not included in the test, for example the naming of a ward, building or facility. This is because the naming is not advertising, rather it is an acknowledgment of generosity.

² Charity Commission for England and Wales, *Charity tax reliefs: guidance on Charity Commission policy*, January 2015

Question 3: Do you foresee any unintended consequences on legitimate arrangements from changing the rules in this way?

Option 2- removing condition B

The definition of connected person is taken from tax law and is not the same as the definitions of related party found in the *Charities statement of recommended practice* (SORP) or accounting standards used in preparing the financial statements of NHS charities. Ideally the two might be better aligned. The consultation appears to broaden the definition of connection to any donation by any person to an NHS charity, based on the donation itself as the connection with any conditions attached by the donor as an indication of underlying intention to obtain private benefit. In our view this approach lacks proportionality, would be complex to administer and potentially punitive and so we cannot support it.

Option 3- amend condition B

Changing the wording could bring clarity over what is intended. Private benefit is a concept already found in charity law and so by changing the wording to financial benefit there is better alignment that should aid understanding.

However, we are concerned that by amending condition B, the smaller the donation the more likely that any benefit might catch the donor out, while making it easier for HMRC to act against the donor for their actions. We would prefer that there are some safeguards in place around the size of donation, and the benefit derived.

In terms of impact on NHS charities the risk of tainted donations is low. However, there may be scenarios where consultants make donations to the NHS charity and then they advise on the fund's use, or other schemes being considered for funding by the NHS charity. While it is down to the trustee(s) to administer the funds, if the donor is also a member of the corporate trustee this might be difficult to enforce.

Question 4: Do you believe proposed changes to the current wording would achieve our objectives or do you believe there will still be room for abuse?

It is not so much the wording of benefit that allows scope for continued abuse, but the reference to the donations 'main purpose' and HMRC demonstrating that purpose. The HFMA recommends consideration be given to a definition of main purpose based on accounting standards by using the phrase 'substance over form' (refer to standard FRS102 paragraph 2.8) instead. It would also be easier to administer if, when referring to 'financial benefit', the test was of an equivalent or offsetting amount of financial benefit to the donor.

Question 5: Are there any circumstances where a charity may need to make an investment under type 1 to 11 for reasons other than benefitting the charity?

The consultation explains that the purpose of the charitable investment rules is to enable charities to invest excess funds to yield a financial return, allowing them to advance the organisation's charitable aims without treating the investment as non-charitable expenditure which normally restricts a charity's tax exemptions. We would concur with this statement.

However, the consultation then says 'we have seen some instances where investments are being made through a charity to benefit others.'. There is no context of how many instances and how common they are. We are concerned that the changes proposed open the sector up for HMRC to challenge any investment decision.

The HFMA's Charity Finance Group has been unable to identify a scenario similar to the one given in the consultation that could happen in the context of NHS charities. However, it would be possible for NHS bodies (that are corporate trustees) asking the NHS charity to make an investment, such as

buildings, or other assets, that would benefit the NHS body and the charity's beneficiaries but not the charity itself. It is not clear whether this would fall under types 1 to 11.

Question 7: Do you agree that it is rational and proportionate to review ways to close the tax gap here? If not, please provide reasons why?

This scenario seems to be extremely esoteric. We are concerned that there is no evidence of the number of cases where this problem has arisen, and the sums involved.

We would suggest that some minimum threshold needs to be set, otherwise the cost of recovery could far exceed the tax recovered by HMRC.

Question 8: What are the barriers to some charities not filing tax returns when requested to?

As indicated in the consultation, we suspect the problem lies with a lack of awareness about the rules, and therefore education (as a first step) seems to be the best way forward, and only if this fails should this proposal be considered.

The HFMA offers its assistance to HMRC, as far as our limited resources permit, to facilitate this educational process via webinars, our annual NHS charitable funds conference or resources hosted on our website.

Question 11: How would it be best to educate the sector about any new rules ahead of their introduction?

Education of the sector is not a one-off event since there are constant changes in NHS board members (in the case of corporate trustees) and trustees, as well as changes in NHS finance staff. Therefore, there is a need for continuing education on the current rules and rule changes.

As in our response to question 8, we offer our assistance to facilitate training.

About the HFMA

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