

United Kingdom - England & Wales

Charity formation and legal framework

A charitable trust can be set up by the simple expedient of making a gift or a legacy that the recipient takes 'on trust', to administer for an officially recognised 'public benefit' purpose. Charities set up in England and Wales must have purposes which are all exclusively charitable, as defined by the thirteen descriptions contained in the 2006 Charities Act. A charitable association can be set up by two or more persons (natural or corporate) who agree to work together for a charitable purpose. Such an association can remain 'unincorporated', or it can be given its own legal personality as a limited-liability company. Charitable companies are subject to dual regulation under both charity and company law. However, a new vehicle for charitable activity, the charitable incorporated organisation (or CIO) which would be regulated solely under charity law, should be available from spring 2011 (although the implementation date has consistently been pushed back since early 2008). The minimum income threshold for a registered charity in the UK is £5,000 per annum.

Governance, compliance and regulation issues

Regulation for charities registered in England and Wales is undertaken by the Charity Commission, which is essentially a non-ministerial department of the government that answers directly to the UK Parliament, rather than the executive branch. The Commission imposes a high standard of public accountability and compliance on larger charities in the UK. A 'lighter touch' regime aims to impose less of an administrative burden on smaller charities and encourage self-regulation within the non-profit sector. Charities with an annual income exceeding £500,000 or gross assets of over £2.8 million need to adhere to rigorous professional auditing standards. The Commission now requires a fully executed written constitution in support of applications for registration. The 2006 Act removed the presumption that organisations which relieve poverty, advance education or religion automatically benefit the public; the public benefit of all charitable purposes must now be proven for a new charity to be registered by the Charity Commission.

Taxation

Charities established in England and Wales are exempt from tax on most income and gains from investments, estates, land and property so long as that income or gain is used for charitable purposes; interest payments from banks and building societies, for example, are paid in gross. Income used either wholly or partly for non-charitable purposes ('non-qualifying expenditure') may render the charity liable for tax, but only on that sum.

The Finance Act 2010 introduced provisions requiring charities to satisfy Her Majesty's Revenue and Customs (HMRC) that they are managed by 'fit and proper' persons before tax relief will be applied. This applies to a potentially broader class of 'managers' than solely the trustees, and 'fit and proper' is not defined, which has led to criticisms that charities may not be able to be sure of their tax whether or not successfully registered with the Charity Commission. HMRC has claimed this is not what is intended. Guidance is available on HMRC's website.

Donor reliefs

Through 'Gift Aid', UK charities are able to increase the value of a monetary donation by reclaiming tax paid by the donor, as HMRC treats donations as if the donor had already deducted the basic rate tax from them. Gift Aid can be claimed by a charity for up to six years in arrears, once a declaration is signed. Higher rate taxpayers are also able to claim back the higher rates of relief on their payments.

Gifts of shares and property are eligible for a full capital gains tax relief for individuals, exemption from stamp duty, and the possibility of income tax relief on 'qualifying investments' (which include quoted shares and securities, land and buildings). Companies can also benefit from share relief, via a deduction against their corporation tax with no carry forward. This also applies not only to outright gifts to a charity but also to sales of shares at an undervalue, although incidental costs can only be claimed on the former.

Legislation is to be introduced from April 2011 to deny tax relief on donations in instances where the main purpose or one of the purposes of the donation is to receive an advantage for the donor or a connected person from the donation (known as 'tainted donations'). This is designed to replace the current 'substantial donor' anti-avoidance legislation, which had been criticised as being too wide and catching transactions with no tax motive.

Cross-border giving

In the *Persche* case of January 2009, the European Court of Justice ruled that the national legislation of EU member states cannot automatically deny tax reliefs on gifts to charities outside a nation's borders (as had been the case in the UK). If a donor can show the relevant tax authority that their gift qualifies for the relevant tax relief (i.e. that the recipient would qualify as a charity under the donor's jurisdiction), the relief should be applied. This ruling has been given legislative effect by the Finance Act 2010.

In the Charities Aid Foundation (CAF) the UK possesses a member of the Transnational Giving Europe network (TGE), which allows donors to receive the same tax relief when giving to overseas charities as apply on donations to national charitable organisations within the UK. By the same token, international donors can obtain tax relief in their home country when making gifts to UK charities, facilitating and encouraging cross-border giving across Europe by making it more tax-efficient. Through CAF America, a subsidiary of CAF that is registered in the US as a tax-exempt 501(C)3 public charity, American donors are able to receive a number of tax benefits when giving to charities in the UK. As a dual qualified charitable structure, CAF America is also able to offer dual tax relief for both UK and US taxation purposes to US taxpayers resident in the UK (since the US taxes on the basis of citizenship, US citizens who are resident overseas are still liable from the perspective of the USA's Internal Revenue Service).

UK summaries vetted by Jonathan Brinsden of Bircham Dyson Bell

JonathanBrinsden@bdb-law.co.uk

www.bdb-law.co.uk

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Philanthropy Impact (incorporates EAPG, Philanthropy UK and the Philanthropy Advisors Forum). It was launched on 3 December 2012.