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Welcome

Welcome to the second edition of Charity News. This newsletter aims to provide you with information on developments in the sector and some insights we've gained from working with other organisations in the Charity sector.

You won't be surprised to see that in this edition we have included information on the impact of the Finance Bill 2010 on the Charity sector. A number of measures have been introduced that will have an effect on the sector including the extension of exemption to European charities and the high earner's tax relief restriction.

We also consider how collaboration in the not for profit sector may help charities to work more effectively in a recession, why VAT should not go overlooked by charities and take into consideration the investment powers and duties of charitable trustees.

To discuss any aspect of this newsletter please contact your regular PwC contact or contact me at teresa.harrington@ie.pwc.com.



Teresa Harrington

PwC Not for Profit leader, Ireland



Regulation of fundraising by charities through legislation and codes of practice

One of the most important areas covered by the Charities Act 2009 is fundraising by charities. Fundraising is a key activity of most charities and one that carries one of the highest risks of reputational damage if not properly monitored and controlled. The Act provides that:

- All charities seeking to operate or fundraise within the State must register with the Charity Regulator;
- Permits will be required for all public collections for the benefit of charities; and
- Charities will have to provide information on their fundraising activities in their annual accounts and annual reports.

The Government have provided within the Charities Act that non-statutory Codes of Practice would be developed to manage and oversee fundraising practices and procedures, with a reserved power with the Minister to introduce statutory regulation should the Codes of Practice be found ineffective.

The Department of Community, Rural and Gaeltacht Affairs entered into an agreement with Irish Charities Tax Research Limited to carry out research and make recommendations on how the operational aspects

and administrative aspects of fundraising by charities can be effectively regulated through codes of Good Practice.

Following this, in May 2008, The Statement of Guiding Principles for Fundraising arising from that research was launched at a series of seminars at various locations across the country. The Statement is not legally binding but it sets out best practice for fundraising. It will be important that the donor public are aware of the Statement and set their standard of giving and expectations of fundraising charities accordingly.

The Core Principles set out in the Statement of Guiding Principles for Fundraising are:

- Respect – respect for the rights, dignity and privacy of the charity supporters;
- Honesty – always act in an honest manner and be truthful in all dealings; and
- Openness – make information on purpose and activities freely available.

(The publication is available on the ICTR website at ictr.ie)

In January 2010 a seminar on fundraising was held in Dublin Castle by the Department of Community, Rural and Gaeltacht Affairs in partnership with ICTR to promote the Codes of Practice and the Guiding Principles. A similar event is being held in Cork on 26 March 2010.

Codes of practice are currently being developed and a toolkit is now available that aims to support charities in adhering to the Guiding Principles. A Monitoring Group will also shortly be established to ensure adherence to the Codes of Practice.

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Finance Bill 2010

Finance Bill 2010 was initiated on 4 February last. As usual, the bill introduces draft legislation in relation to a number of new measures as well as those announced in the Budget last December. While the Minister made no direct references to the not-for-profit sector in his Budget speech, the Finance Bill contains some provisions of direct relevance to the sector.

The most controversial measure is the proposal that charity trustees or directors will be personally liable for expenses incurred by the Revenue Commissioners relating to information verification. Another unwelcome change is the proposed amendment to the high earner's restriction, which is likely to have an adverse affect on fund raising. See opposite for more details.

Extension of exemption to European charities

The first issue arises in the context of anticipated new claims for tax exemption by charities established outside Ireland. Previously these exemptions were available only to charities established in Ireland. The Government was required to amend the law in this area in order to bring Ireland into line with EU law, following recent decisions of the European Court of Justice. The Finance Bill contains provisions to that effect, opening the door to charities established in the European Economic Area or European Free Trade Area. The charities will be able to claim exemption, and, in due course, status as "eligible" charities, for the purpose of collecting tax relieved donations.

Provision of information

In anticipation of such claims, the draft legislation provides Revenue with the power to request such information as it requires, in support of the initial claims for exemption as well as for ongoing monitoring of activities. The Bill also makes provision for Revenue to engage external auditors in the

appropriate jurisdictions to help them verify the information provided.

External verification and associated costs

The controversy arises because the draft legislation goes on to provide that the cost incurred by Revenue for such verification is to be recovered as a debt due jointly and severally by the trustees/directors. The cost would be recovered from the charity itself only where it would not be practicable to recover it from the charity trustees or directors. If this provision were implemented, it would increase the difficulties charities face securing appropriate people to act as directors or trustees. Potential officers may request indemnification from these potential liabilities as a precondition of assuming any such role.

It appears to us that this position is an unintended consequence of importing into the tax legislation wording from the Charities Act that applies in a different context (i.e. where a charity has failed to meet its obligations). While the reality of the issue might arise only in very limited circumstances, the

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potential for it to arise is an unwelcome development. At the time of going to press, lobbying for change on the issue is ongoing.

High earner's restriction

This restriction operates by limiting the amount of defined tax reliefs, which can be availed of by an individual in order to ensure high earners pay an acceptable level of tax. Unfortunately, charitable

donations, from which donors derive no personal benefit (by contrast with the other restricted reliefs) are included in the list of reliefs restricted. If the reduced threshold proposals in the Finance Bill are enacted, any individual with income in excess of €125K and total reliefs exceeding €80K will potentially be affected, with knock-on implications for charity fundraising.

What's not in the Bill

None of the recommendations of the Commission on Taxation in respect of charitable donations (reduction of minimum qualifying amount, change of mechanism for relief, standard rating of relief, decoupling relief from high earner's restriction etc) were included.

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Managing in a downturn

Charity collaboration as a response to the recession

In the current climate, we consider that every Board of Trustees should think carefully about whether collaboration could present opportunities for their charity. Nothing is lost by talking to other charities and professional advisors about what could be achieved and such forward thinking might well place your charity ahead of the game as the impact of the recession becomes more apparent.

We do not underestimate the very real practical issues that collaborative working might present. However, the ultimate prize in terms of reduced costs and the various other benefits outlined above far outweigh and justify the management time, professional expense and potentially difficult decisions which might arise undertaking this process of collaboration.

Key learning points

- Early involvement of Board of Trustees
- Leadership is vital
- Management of the transition process
- Identification of synergies

Our experience in the Charity Sector indicates that there is an increased level of anxiety as to the scale, but in particular the duration, of the impact of the recession on income sources. At the end of 2008 the impact of the recession was only just starting to be felt, however throughout 2009 the impact was more widespread. We expect that charities will continue to face challenges well into 2010 and possibly beyond. The need for strong and strategic leadership will be essential for many charities and there is a need to consider a wide range of options to ensure that your charity remains robust and effective in delivering services to your beneficiaries in the long term.

Charities will have to take advantage of the opportunities presented by the recession. Addressing forecast movement uncertainties within the various income sources will be particularly challenging. In this brief article, we have concentrated on one issue which we consider needs to be on the agenda of every Board of Trustees: collaborative working and/or merger.

Collaboration and merger in the not-for-profit sector has remained at a relatively low level. However, the full impact of the recession will cause many Boards of Trustees to consider how to work more effectively to make less income go further.

What do we mean by collaborative working?

The following are some key questions that trustees need to ask:

1. Have we considered collaborating with other charities?
2. Have we considered collaboration or merger as part of our planning process?
3. What do we mean by collaborative working?

There are many ways in which charities could collaborate. At one end of the spectrum, a larger charity might provide, for example, finance, HR or other services to a smaller one for a share of an existing cost. Alternatively, charities may agree to “share” various overheads in order to maximise efficiency and create critical mass.

In theory, any group of charities could potentially share “back office” services such as finance and HR. However, the most likely candidates are those charities with something in common such as proximity, trustees, common funders or beneficiaries. Moving away from costs, certain services might be merged, for example, the effective deployment of scarce resources within fundraising activities might be combined in some sort of joint venture, or the delivery of similar services might be combined.

Other interesting areas that could be considered is fundraising, where similar charities are competing for an existing pot of funds, and communications, where shared investments in communication might provide an overall increased benefit, without necessarily diluting the message of any one charity.

Benefits of collaboration

How could charities benefit from collaborative working? In broad terms, the benefits can be summarised as follows:

- reduced costs arising from increased purchasing power and efficiencies;
- cost base savings (immediate cost savings as a result of the elimination of certain common cost bases e.g. finance, HR costs, etc.);
- improved quality of resource arising from a greater critical mass, for example, collaborating charities might be able to afford to employ more highly qualified individuals (finance, fundraising, communications etc) than individual charities;
- reduced risks arising from sharing investments in new services, contracting with third parties, or similar;
- a reduced need to hold reserves as a result of shared risk taking;
- greater access to professional advice such as legal, property, or accounting;
- a more coordinated approach to dealing with beneficiaries and contracting parties, leading to better delivery and cost savings; and
- more effective management of the charities’ affairs arising from the need to ensure that each individual charity’s interests are properly protected.

Hurdles to success

What are the obstacles which might prevent success?

The most frequent issues which prevent collaboration being considered are a perceived loss of independence in decision making or dilution of a brand. These, together with a lack of trust of the other organisations or a lack of faith in their competence, often dissuade charities from talking openly about how they might work together.

There are also very real issues around access to funders, with charities being concerned that they will get more “bites of the cherry” as individual organisations as opposed to a collective, which funders see as one organisation.

The process of establishing what changes are needed to achieve benefits can itself be time consuming and difficult and could prove terminal to the success of the process. By identifying the key benefits upfront and by being mindful of these benefits throughout the collaboration process, can help charities focus on performance improvement through benefits management.

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Finally, if the output of collaborating includes restructuring of personnel, some charities will find this difficult to implement and may prevent senior management engaging in the process, particularly if their roles may be called into question.

Support for Charities considering collaboration

We have found that the current business models implemented by many organisations are not well suited or flexible enough to respond to the challenges of collaboration or merger. The need to think “outside the box” in terms of strategic change has led many organisations to seek alternative sources of support to justify and rationalise what are sometimes difficult choices.

We are currently working with charity clients, and public sector clients, ranging from local authorities to central government agencies, in meeting the challenges of delivering significant business change. We are providing support to these entities through the development and delivery of bespoke models. This allows management to understand the impact of broad changes in the organisation in response to current and projected operational scenarios. This bespoke modelling will help management consider all of the benefits and potential pitfalls of collaboration with other entities.

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Investment powers and duties of Charitable Trustees

Many charities have funds not needed to fund their immediate charitable activities – and typically the trustees invest these funds in order to generate extra income to fund future activities. We have outlined below the key considerations in applying such investments.

Trustees must seek to strike the right balance for their particular charity between the two objectives of:

- providing an income to help the charity carry out its purposes effectively in the short term; and
- maintaining, and if possible, enhancing the value of invested funds.

It is important to note that while most trustees will have very wide powers of investment, in certain circumstances the powers of trustees emanate from the governing instrument which established the trust fund. This instrument can take the form of a deed of trust established by a donor during his or her lifetime or the provisions of the donor's will. In such cases the trustee can have little scope for discretion and is bound by the donor's directions. The law requires a higher

standard of care for trustees investing charitable funds than for the private management of personal funds.

To capture the points above, and to ensure an objective consideration of investment issues, we would recommend that charitable trustees decide on and develop an investment policy for their charity, record it clearly in writing, and keep it under regular review. Without an investment policy, trustees are likely to find it difficult to demonstrate that they are making good use of the charity's funds. It can also be difficult to assess whether investments made are successfully delivering value versus the objectives set for them. Developing a clear investment policy, and then monitoring this policy against actual performance and progress can be a very effective way of demonstrating due diligence.

Any investment policy should reflect the resources required by the charity to carry out its near term and long term activities; it should consider the level of acceptable investment risk and how to manage it and given the nature of charitable investments, the investment policy should capture the charity's stance on ethical investment (if any).

A clearly drafted investment policy will provide a framework. However when deciding on specific investments held or being entered into, there are further specific considerations that are relevant:

- Trustees should consider the suitability for their charity of any investment (including any ethical considerations which apply) and whether such investments are within their scope of authority.
- Trustees should consider the need for diversification. There is a potentially broad range of asset classes which are available for investment, such as commodities, infrastructure, currency and private equity and these asset classes can lower the volatility of a portfolio that may currently be significantly reliant on equity holdings to deliver excess returns.
- Trustees should periodically review the investments of the charity. The nature and frequency of these reviews is up to the trustees to decide, and reviews should be proportionate to the nature and size of the charity's investment portfolio. On this point, it is important that trustees receive information in a format which allows them to clearly understand how their investments are performing versus their objectives.

Trustees are not liable to make good a charity's loss simply because an investment made by them is unsuccessful. However, where loss is incurred not because of bad luck but results from decisions taken by trustees acting outside the scope of their authority, then they will be liable to make good the loss to the trust fund. A well thought through investment policy and investment decision making process provides protection against such issues.

Where you have or share responsibilities for investment of charitable funds, some questions that are worth reflecting on are:

- Do you have a precise understanding of the legal scope of your investment authority?

- Does your charity have a clear investment policy that determines how surplus assets are to be invested?
- Does this investment policy match and properly communicate your investment needs, in particular your charities income requirements, and longer term investment growth aims?
- Does the reporting information that you receive allow you to monitor performance versus the investment policy objectives?
- When were investment policy and the broader approach to investment matters last reviewed?
- If appropriate, how ethical are your investments and how well do they match your objectives?

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VAT – not to be underestimated?

Some points to consider on how to manage your VAT cost ...

1. “In Business” VAT test

Deciding whether or not your charity is “in business” is critical to determining the VAT status of any income generated and by consequence the entitlement to deduct VAT on costs associated with this income.

Such income could arise in the context of fund raising, trading or investment activities of your organisation.

As there are no special rules for charities the income that your charity or other not-for-profit organisation generates may be taxable (liable to VAT), exempt from

VAT or outside the scope of VAT (i.e. non-business activities) subject to the normal registration thresholds of €37,500 for services, €75,000 for goods.

For example, a freely given donation for which nothing is given in return is outside the scope of VAT but a donation given in return, for example, advertising may be considered a taxable activity and may lead to VAT obligations. You should have controls in place to monitor all supplies and determine if any VAT can be recovered in relation to these supplies. It is understood that Revenue currently consider the “in business” test on a case by case basis.

Given that VAT is a European tax consideration of the VAT status of any transaction, any developments at EU level must be taken into account including potential competition with private companies.

Charities should be aware of the various VAT rates applicable, for example, the range of zero rates available for charities in the care sector. Have you considered the various rates applied to your costs (e.g. training, publications) and the rates charged by you on the supply of goods and services?

Furthermore you should ensure you properly account for VAT on vatiable goods or services bought in from abroad.



2. VAT Recovery

Under Irish Legislation, a supplier can only recover VAT on their costs if they make VAT-taxable sales, i.e. charge VAT (including the zero rate) on their sales. If your charity receives both VAT-taxable and VAT-exempt income, the charity is what is called a partially exempt organisation. This broadly means it can reclaim the VAT incurred on the direct costs of making its VAT-taxable sales, cannot recover any VAT on the direct costs of making VAT-exempt sales, and can recover a proportion of the VAT incurred on its general costs using an apportionment method.

We recommend reviewing your VAT apportionment calculations annually to determine what is the best method i.e. revenues, people, occupancy?
Have you considered your recovery calculation lately?

There are also a number of specific VAT reliefs available to charities e.g. VAT on donated medical equipment etc. See Revenue information leaflet (CHY 10) for further details.

3. Strategic importance of VAT to your organisation

A systematic approach to VAT is of utmost importance. Implementing VAT planning and structuring techniques can potentially make savings where it matters to your organisation. VAT should be considered in all areas of your organisation from the day to day running to your overall business plan, for example the implication of VAT grouping or cost sharing groups or the restructuring of business processes. Particular attention should be given to property transactions as these may give rise to VAT savings.

Do you know the amount and the breakdown of trapped VAT incurred each year?

Have you considered how this might be reduced?

A strategic approach to VAT may increase the vital funds needed in your organisation.

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Community Matters

Part of our ethos at PricewaterhouseCoopers is to support the local and global communities in which we operate and to have a strong sense of social responsibility in everything we do. To further enhance our Corporate Responsibility programme, the firm has developed the following two initiatives:

- People Giving Scheme
- Sponsor Your Charity

People Giving Scheme

The PwC People Giving Scheme, launched in April 2007, allows the employees of the firm to make monthly contributions to a selected number of charities chosen by our people. On an annual basis, PwC Ireland appeal to the staff for nominations of Irish registered charities that provide ongoing support to local and international projects. Once the suggestions are gathered and collated, the PwC staff are asked to vote for their preference from a selection of 20 charities. The five charities with the most votes are then included in the PwC People Giving Scheme for the coming year.

Employees are then given the opportunity to donate monthly contributions to the charities via the People Giving Scheme database. In order to keep the process as fair as possible, the current year's charities are not eligible to be nominated in consecutive years.

Since the launch of the scheme our people have donated €211,000 to 15 different charities, including: Irish Cancer Society, The Marie Keating Foundation, Cystic Fibrosis Association of Ireland, Focus Ireland and Irish Heart Foundation.

Our 2010 charities chosen by our people are Irish Hospice Foundation, Irish Cancer Society, St Vincent de Paul, ActionAid Ireland and Down Syndrome Ireland.

Sponsor Your Charity

PwC is committed to supporting the effort and contributions our people make to charity organisations. To recognise this, PwC offer sponsorship to employees who are involved in fund raising or are supporting a charitable event or project.



Pictured at the recent presentation to the charities included in the 2009 People Giving Scheme are (left to right): Aidan Stacey, Head of Fundraising, Irish Heart Foundation; Linda O'Keeffe, PwC, representing Cystic Fibrosis Association of Ireland; Rónán Murphy, Senior Partner, PwC; Joyce Loughnane, CEO, Focus Ireland; Patrick Quinn, Head of Development, Simon Community; Carmel O'Connor, HR Leader, PwC; Sue Lawlor, PR and Communications Manager, Temple Street Children's Hospital and Evelyn Kelly, Head of Corporate Responsibility, PwC.

Of further interest



Finance Bill 2010

The Finance Bill 2010 was released on Thursday 4th February. This newsletter details the highlights of the Finance Bill, including:

- The introduction of Transfer Pricing legislation;
- Amendments to the R&D tax credit and IP regime;
- Introduction of the Carbon Tax; and
- Introduction of anti-avoidance provisions.

[Click here for further information.](#)



World Watch

World Watch is a regular Governance and Corporate Reporting newsletter. It contains opinion articles, case studies and worldwide news on the many initiatives to improve corporate reporting.

[Click here for further information.](#)



13th Annual Global CEO Survey

In this publication we hear how CEO's are responding to today's business challenges brought on by the recession, the concerns they have and how they are positioning themselves for the future.

[Click here for further information.](#)



Managing tomorrow's people

How will the actions of companies in this current environment determine their readiness for the upturn and ability to compete successfully in the future? This publication looks back from 2020, telling the story of how three fictitious organisations emerged from the current crisis, specifically in terms of their people strategy.

[Click here for further information.](#)

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