

Charities exempt from 'Making Tax Digital'

HM Revenue & Customs (HMRC) has announced further details about the requirements of Making Tax Digital (MTD) and how they will apply to charities when introduced in April 2018. Under MTD, almost all enterprises with an annual turnover of more than £10,000 will be required to send quarterly digital tax reports to HMRC. However, HMRC has confirmed that charities will be exempt from the requirements of MTD, although this exemption will not extend to their trading subsidiaries.

While the Charity Tax Group (CTG) has welcomed the decision to exempt charities, it has said that it will continue to campaign for a similar exemption for trading subsidiaries because charities often use a subsidiary to make its activities tax effective.

The CTG has also argued that the decision to only exempt charities will place an administrative burden on charity trustees. For example, if a subsidiary must comply with MTD

while the charity is exempt, then the charity will still have to operate two accounting systems. The CTG claims that this will create complexity and uncertainty, as well as making the exemption for charities ineffective if MTD still applies to their trading subsidiaries.

The CTG has also called for protections for smaller organisations, such as exempting trading subsidiaries with a small annual turnover.

In response to the CTG, HMRC has said that since many trading subsidiaries are required to pay VAT, they should fall within the scope of MTD. A spokesperson for HMRC said: *"Charities often establish trading subsidiaries to keep the trading activities separate from the charitable activities, and because profits are starting to exceed the small, trading profits exemption limit available to charities. This puts their business activities on a closer footing with non-charitable businesses."*

"While the proposal to exempt those trading companies that distribute all profits to charity (and therefore have no corporation tax liability) had some merit, they could still have substantive VAT obligations."

Nevertheless, the Chancellor announced in his 2017 Spring Budget that small businesses and landlords with a turnover below the VAT threshold will have until April 2019 before the requirements of MTD apply. Therefore, MTD will not apply to trading subsidiaries with a turnover of less than £85,000 until April 2019 at the earliest.

HMRC has also confirmed that it will take a 'soft landing' approach and that penalties for the late filing of quarterly reports will not apply until 12 months after the requirements of MTD first applied to an enterprise or organisation.

The CTG is also urging HMRC to provide greater support and guidance for charities that want to voluntarily opt in to MTD. In particular, this would help charities with trading subsidiaries that want to avoid the complexity of operating two accounting and reporting systems.

Read more about Making Tax Digital at: <http://bit.ly/2o1wMVL>



'fit and proper persons' guidance updated

The helpsheet and model declaration for 'managers', which includes trustees, officials or directors of Community Amateur Sports Clubs (CASCs), charities and other organisations that are entitled to UK charity tax relief, have been updated by HM Revenue & Customs (HMRC).

Managers of organisations such as charities and CASCs are required by law to pass a 'fit and proper persons' test to ensure that their organisation is not controlled by people who might misuse charity tax relief. Managers are required to declare that they will use their organisations' funds for charitable purposes, and to confirm that they have not been involved in any activities in the past that might

impact on whether or not HMRC will deem them to be a fit and proper person who can manage a charitable body.

When a charitable organisation appoints a new manager, cross-checks are carried out by HMRC to ensure that it does not hold any information which may indicate that the manager is not a fit and proper person for the role.

Examples of behaviour that might indicate when someone is not fit and proper include them having been involved in tax fraud or identity theft, being disqualified from acting as a charity trustee or company director, and having designed or promoted tax avoidance schemes. Anyone who is

involved in a questionable tax avoidance scheme could also be considered to be unfit. However, even if a manager is not deemed to be fit and proper, their charity may still be eligible for tax relief, as long as the manager has no control over the spending of the charity's funds and has no dealings with HMRC.

The guidance also provides details of the distinction between tax planning and tax avoidance, which financial commentators have welcomed as some feared that tax advisers who act as voluntary charity managers might also be affected by the rules.

There is more about the updated guidance at: <http://bit.ly/2otIGE6>

Charities vulnerable to cyberattack

Service provider Eduserv has warned that charities are especially vulnerable to cybersecurity threats and trustees must take immediate action to prevent and plan for a cyberattack. In particular, Eduserv claims that charities are increasingly targeted by cyber criminals because of the vast amount of personal and financial information they hold about their stakeholders and donors.

Speaking at the Charity Finance Group's IT conference in March 2017, Chief Information Security Officer at Eduserv, James Mulhern, warned that there are long lasting consequences of being subject to a cyberattack. Mr Mulhern said: *"It's not just about you, it's about the people you serve - donors, supporters, VIPs, fundraisers and volunteers. If you spend more money on a chief executive than on security, somebody is going to be able to make a bad headline out of that."*

Eduserv has also advised charity trustees to introduce a cybersecurity plan to set out the steps an organisation can take to prevent, prepare for, respond to and

recover from an attack. Trustees are also advised to increase investment in cybersecurity measures, such as training for staff and volunteers. However, while half of all alerts issued by the Charity Commission for England and in Wales in 2016 were related to cybersecurity threats, many charities still lack basic skills and knowledge about how to respond to an attack.

Smaller charities, in particular, do not have the capacity or budget to invest in cybersecurity measures.

The Charity Commission has also urged charities that are victims of a cyberattack to report any incidents to the Commission and Action Fraud. Trustees are also advised to use the Charities Against Fraud website to access a range of guidance, case studies and advice to help trustees, staff and volunteers identify and tackle cyber-enabled fraud.

Read more about this issue at: <http://bit.ly/2nvK2k1>



in brief...

ICO warns charities about fundraising practices

The Information Commissioner's Office (ICO) has warned charities that they must not carry out wealth screening or data matching on donors unless they are provided with explicit, detailed information about these fundraising practices. The warning is included in a conference paper entitled 'Fundraising and regulatory compliance', which also makes it clear that charities must provide donors with information about each way their personal data will be used, including publically available data. The conference paper was released following ICO investigations that found that many charities, including the RSPCA and the British Heart Foundation, were raising funds in ways that 'seriously violate' the Data Protection Act. <http://bit.ly/2nvuehn>

Common Reporting Standard guidance updated

Guidance for the charity sector about the new Common Reporting Standard (CRS), which is in force from 31 May 2017, has been updated by HM Revenue & Customs (HMRC). The CRS is an international standard for the automatic exchange of information and is designed to prevent tax evasion. The Association of Charitable Foundations and other organisations had expressed concerns about bureaucratic requirements of the CRS and possible human rights issues if charities are required to report information about the recipients of grants, as this could place individuals at risk if it were shared with organisations in other jurisdictions. The new guidance clarifies the process by which charities can alert HMRC of human rights concerns and how details can be removed from shared information. <http://bit.ly/2o1m0yB>
<http://bit.ly/2nqrxvY>

New guide for charities in Scotland

The Office of the Scottish Charity Regulator (OSCR) has published new guidance about charity law in Scotland. The 'Being a Charity in Scotland' guide is aimed at charity trustees, professionals who advise charities, organisations seeking charitable status, and anyone aiming to set up a charity. It sets out the duties of trustees with regard to fundraising, providing information to the public and financial reporting. The guide also provides advice about how to run a charity, along with signposting to other organisations that can support trustees to meet their legal duties. In the guide, the OSCR also explains the charity test, which is a list of criteria an organisation must satisfy in order to be legally recognised as a charity in Scotland. <http://bit.ly/2oceOwF>

Concerns about proposed changes to annual return

The NCVO, the Charity Finance Group and the Association of Charitable Foundations have raised concerns over the Charity Commission's proposed changes to the annual return for 2017. The changes include updating fundamental information on a more regular basis than annually and making the annual return more targeted and proportionate. The three sector bodies claim that the proposed changes could put "further regulatory burden" on some charities and the Commission should consider how these would affect charities with limited resources. The proposals were put forward by the Charity Commission as part of a consultation that was published in December 2016. The Commission is considering responses and is expected to make an announcement regarding the annual return later in 2017. <http://bit.ly/2nqqJHo>

Draft changes to social investment tax relief published

Details of changes to social investment tax relief (SITR) that apply to investments made in social enterprises on or after 6 April 2017 have been published by HM Revenue & Customs (HMRC). The changes include increasing the amount of money that a social enterprise can raise from individual investors under SITR by raising the lifetime qualifying investment limit to £1.5 million and allowing a social enterprise a period of up to seven years after its first commercial sale in which to raise investment. Other changes include reducing the number of full time employees that a qualifying social enterprise can have to under 250, and extending the list of excluded activities under SITR to include a variety of low-risk activities. Anti-abuse measures are also being introduced. <http://bit.ly/2nvzAZX>
<http://bit.ly/2o1p2D8>

GASDS easier to use from April 2017

The Gift Aid Small Donations Scheme (GASDS) has been amended in order to make it easier for charities to use and will take effect for the 2017/18 and subsequent tax years. The amended GASDS will cover cash donations and donations made by contactless payment. It will no longer be necessary for charities to have been claiming Gift Aid for at least two years in order to use the scheme. However, the requirement that charities claim £1 of Gift Aid for every £10 of GASDS payments has been retained. This has led to criticisms that the amendments do not go far enough. <http://bit.ly/2nciq0d>



cabinet office publishes new grant standards

The Cabinet Office has published a new set of standards for government grants. The standards, which will be adopted by all government departments, will ensure that government grants awarded to charities are properly agreed and spent. In particular, the standards will improve transparency and manage risks in the grant making process.

The standards will require all departments to introduce a robust approval process for grants of more than £100,000, and all grants awarded will have to be reviewed annually to ensure recipients are spending the funding on activity

specified in the grant agreement. A Grants Advice Panel will be set up to consider any high risk grants or increases in funding to existing grant schemes. The standards will also replace the anti-advocacy clause, which was widely criticised by organisations in the charity sector when it was proposed by the Cabinet Office in 2016. The clause would have restricted organisations that receive publicly funded grants from lobbying government departments for more funding or changes to regulations. Under the new standards, grant agreements must set out what is and is not eligible expenditure, which means in most cases grants cannot be used to fund lobbying activity. However, activity such as giving evidence to a select committee or responding to government consultations will be permitted.

Commenting on the decision to replace the anti-advocacy clause, Chief Executive of the NCVO Stuart Etherington, said: *"The original clause was counterproductive and would have meant grant-funded charities would be unable to provide crucial insights that improve legislation, regulation and public services. This fundamental flaw has been recognised by the Government and its new guidance is crystal clear in saying that activities such as raising issues with ministers and civil servants, responding to consultations and contributing to the general policy debate are not only permitted but actively welcomed."*

Read more about the standards at: <http://bit.ly/2otPZLZ> And: <http://bit.ly/2o1maWE>

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fundraising Regulator publishes new guidance on consent

Charities should go above and beyond their legal duties in relation to donor consent when fundraising, according to new guidance from the Fundraising Regulator. The 53 page 'Fundraising and personal information: Consent, purpose and transparency' guidance document warns that charities focusing on the legal requirements regarding donor consent only are "missing the point". Instead, they should be "aspiring to best practice rather than simply compliance".

The Fundraising Regulator has also published six case studies that provide practical examples of how charities are changing their fundraising practices in order to meet legal and best practice standards. There is also a consent self-assessment tool that provides a starting point for charities to assess whether they are doing enough to comply with the law. The aim of the new guidance is to help charities better understand their current duties regarding donor consent under the Data Protection Act (DPA) and their duties in the future under the General Data

Protection Regulation (GDPR), which will replace the DPA in early 2018. The Regulator will refresh the guidance once the Information Commissioner's Office (ICO) finalises its own guidance on consent under the GDPR. It will also be consulting on how to include key elements of the guidance into the Fundraising Code of Practice later in 2017.

The Fundraising Regulator's guidance recommends that charities start to obtain "GDPR standard consent" from donors in advance of the GDPR coming into force. It suggests they use methods that record a donor's "unambiguous agreement to the use of their personal information for each different direct marketing purpose". Consent should cover each method used by the charity to collect personal information. Opt-in methods are clearly identified as the "clearest, safest, most future proof way of collecting and demonstrating consent."

Read more about the new guidance at: <http://bit.ly/2nqEZjw>