

UK CHARITIES AND OVERSEAS DONATIONS

BACKGROUND

When considering overseas donations, there is an additional layer of diligence that UK charity trustees are required to comply with to ensure such payments qualify for tax relief. This is an area often overlooked by charities who make overseas donations and is therefore a common feature of HMRC charity enquiries.

It is not sufficient to merely be able to justify that an overseas donation was applied for charitable purpose. Trustees must also demonstrate that they have taken 'reasonable steps in the circumstances' to ensure that the charities donations will be applied for charitable purpose. ITA 2007 s.547 states;

"A payment made, or to be made, to a body situated outside the United Kingdom is non-charitable expenditure under section 543(1)(f) if-

- (a) it is incurred for charitable purposes only, but*
- (b) the trustees of the charitable trust have not taken such steps as the Commissioners for Her Majesty's Revenue and Customs consider are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes."*

This is essentially therefore a subjective test and comes down to what HMRC consider is reasonable in the circumstances, in their view. Trustees who do not retain evidence and documentation to be able to demonstrate the steps they have taken to ensure their donations will be applied for charitable purpose could, if challenged by HMRC, find themselves having tax relief on their overseas donations denied.

HMRC GUIDANCE

Part 9 in Annex ii of HMRC's detailed guidance notes for charities states;

"In general, a payment by a charity for its charitable purposes is charitable expenditure by the charity. However, where the payment's to an overseas body an additional condition must be met in order for the payment to be charitable expenditure for UK tax purposes"

"If that condition isn't met, the payment is treated as non-charitable expenditure by the charity for UK tax purposes"

"Trustees are required to carry out appropriate research in relation to the overseas body, followed by monitoring and evaluation, and to avoid or minimise risk to the charity's finances to meet their legal duty as trustees."

The charity trustees must be able to;

- describe the steps they take,*
- explain how those steps ensure charitable application of funds,*
- demonstrate that those steps were reasonable, and*
- produce evidence that the steps were, in fact, taken."*

Simply establishing that a payment made overseas is to an actual charity is not good enough and neither is just keeping a record that the payment was made. The trustees have to ensure that HMRC will consider the steps that they have taken are 'reasonable in the circumstances'.



WHAT TO DO

For all overseas donations, trustees should document and keep a record of all the steps they have taken to ensure the payments made will be applied for charitable purpose.

HMRC will have regard to things like the charity's knowledge of and previous relations and history with the overseas body and the charity's observance of its own internal financial, management and decision making procedures, and whether or not these were adequate.

But practically, creating, requesting and maintaining paperwork is essential and as a minimum, records of the following should be retained;

- funding requests
- reviews of available financial information such as accounts
- reviews of relevant governance documents of the overseas entity
- meeting/call notes where donations are discussed and agreed
- payment receipts from the charitable entity acknowledgements
- bank statements confirming receipt by the receiving entity
- agreements between the UK charity and overseas body

In addition to the above, where substantial funding is involved and/or where multiple donations are being made to the same overseas entity, the following should also be maintained;

- detailed plans outlining the project to be supported, including valuations
- copies of any funding applications
- detailed minutes of trustee meetings where the plans were considered and agreed
- a payment schedule and whether this was staged/in phases with the criteria for future agreed payments
- a formal agreement in respect of the project funding
- regular monitoring and reporting correspondence concerning the project and in particular, prior to the release of further agreed/staged payments

HOW WE CAN HELP

We can liaise with the charity trustees and undertake a review of their current procedures, policies and record keeping concerning overseas donations. The findings from this review can be reported back to the trustees with recommendations as relevant. The trustees can then implement and update their procedures in accordance with the findings from this review. The review and feedback to the trustees will also further serve as a protective measure should the charity be subject to a review by HMRC and the subject of overseas donations be looked at.



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