



ICAS response to the HMRC discussion paper -
Approaches to preventing charities being set up to avoid tax

10 April 2014

About ICAS

The Institute of Chartered Accountants of Scotland (“ICAS”) is the oldest professional body of accountants. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General Comments

ICAS welcomes the opportunity to comment on the discussion paper on “Approaches to preventing charities being set up to avoid tax”. There is awareness that there has been abuse of the current system to exploit the reliefs made available to donors to charities and ICAS members appreciate the need to address this concern. However the tax avoidance issue is less to do with gift aid claimed by charities and more correctly categorised as higher rate taxpayers claiming relief for amounts which are not economically donated to charity.

As HMRC will be aware, many charities are already dedicating significant resources to administering and complying with their tax and regulatory requirements. It is important that the correct balance is arrived at between protecting the tax revenue base and imposing additional work for the charity sector. Our research indicates that 75% of English and Welsh charities have income of under £100,000¹ and 82% of Scottish charities are of a similar size².

The charity sector is regulated and any new measure should be mindful of the relatively small incidence of tax avoidance which perhaps results from this regulatory model. The report of the Public Accounts Committee on Gift Aid highlights losses of £170 million in 2011/12³. For this period charitable income for England and Wales only was £55.87billion – which suggests that there is proportionately a limited involvement across the sector.

HMRC also has significant powers under DOTAS and the GAAR which would cover the types of planning highlighted by the Cup Trust case and Delapage cases, and so the perception is that the current proposed approaches are aimed at providing an alternative route to challenge any tax avoidance without using the machinery of DOTAS disclosures or carrying out the investigatory procedures accompanying the GAAR; the understanding is that the provision would apply on an accounting period basis for any charity affected, although that should be confirmed.

At the moment the Taxes Acts set out four conditions for “a body of persons or trust” to be a charity for tax purposes. These are that the organisation:

- is established for charitable purposes only
- meets the jurisdiction condition
- meets the registration condition
- meets the management condition.

The registration condition requires that a charity is registered with any relevant regulator and ICAS believes that it is more appropriate for the relevant charity regulator to determine which organisations satisfy the conditions for charities at the registration stage, and be appropriately resourced to address any concerns raised at a later stage.

This would mean that HMRC could focus efforts on reviewing the actual activities of the organisation in relation to any involvement in tax avoidance and around protection of the valuable tax reliefs granted.

¹ See <https://www.charitycommission.gov.uk/about-charities/sector-facts-and-figures/>

² See http://www.oscr.org.uk/media/294663/2012-02-02_scottish_charities_2011_published.pdf section 3

³ See <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/835/835.pdf> - summary

In respect of the draft legislation put forward by HMRC, we do not consider that either version would necessarily address the issues that HMRC are seeking to tackle of identifying any charities established for tax avoidance motives. It is highly unlikely that any charity would disclose tax avoidance as one of the original motives for establishment. It does also not appear to affect the cases that have been identified of abuse of the system, which have involved genuine charities which were then, or also, used for tax avoidance purposes.

ICAS would support the introduction of legislation to tackle abusive tax avoidance in this area but the current drafts do not appear the most effective to tackle the problem described above; as an alternative approach, a focus on the actual activities of an organisation in any period, rather than the purposes as stated at the time it is established, might seem a better test. A “wholly or mainly” consideration of activities undertaken might be sensible to protect genuine cases.

Any new powers for HMRC to deny charitable status would need to be balanced with a right of appeal by the organisation to an independent body.