

'Fit and proper persons' test - revised HM Revenue and Customs guidance.

HM Revenue and Customs (HMRC) has revised its guidance on its application of the 'fit and proper persons' test (visit <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm> for further information). At present this guidance only applies to charities claiming a repayment of tax under Gift Aid but is likely to be extended to other charity tax reliefs later in the year.

What has changed?

In summary, for tax purposes, charities must be able to demonstrate that they have taken steps to ensure that their managers are 'fit and proper persons'. 'Managers' include the charity's trustees, directors and any other official or employee having general control over the running of the charity or the application of its assets.

What does this mean for charities?

Existing charities will not need to provide anything to HMRC immediately, but will need to notify HMRC of future changes in certain individuals, such as the authorised official (ie the person authorised to deal with HMRC in relation to the charity's tax affairs) and nominees.

On the first occasion that an existing charity needs to notify HMRC of such a change, it should also provide HMRC with details of two to four 'responsible persons' (ie individuals with overall responsibility for running the charity). From that date, the responsible persons and the authorised official will be the only persons on whose authority HMRC will act.

How have these changes been received?

These new rules have received a considerable amount of negative press recently, much of which we believe to be unfounded.

One criticism is that the new rules place an additional administrative burden on charities. We think this unlikely as few charities would appoint an individual to a position of trust without giving some thought as to whether that person is fit and proper. HMRC is not asking charities to carry out additional checks, over and above those that should be undertaken in any event.

It has also been said that charities will lose their tax reliefs if they appoint somebody who is not a fit and proper person. This is not necessarily the case. HMRC is able to exercise discretion when deciding whether or not to withdraw entitlement to Gift Aid or other tax reliefs. It is unlikely that a charity will lose its entitlement to Gift Aid if, for example, it takes steps to ensure that its managers are fit and proper persons but, despite taking those steps, inadvertently appoints somebody who is not fit and proper and works with HMRC to address the situation.

Summary

The purpose of the fit and proper person test is to weed-out fraudsters who set up sham charities or infiltrate existing charities with a view to abusing the various charity tax reliefs. One would have thought that the vast majority of charities would wish to know if they had such an individual working for them, and would appreciate any assistance that HMRC is able to provide.

It is our view, therefore, that these new rules should be welcomed, and not feared.

Who should I contact for assistance?

If you would like to discuss how these changes may impact on you, please contact your usual tax specialist or the contact below:

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