

Budget June 2010 – Implications for churches and Christian charities

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June 2010 Budget – Implications for churches and charities

1 Introduction

The new Chancellor, George Osborne, delivered his first 'Emergency' Budget Speech on 22nd June 2010. This was always going to be an austerity Budget, focussing on cuts in Public Expenditure. As such, the tax measures are limited so far as churches and charities are concerned, but the impact of the announcements that were made could be significant both directly and through the personal impact on members and supporters.

This Paper attempts to go behind the headlines in order to uncover the opportunities and challenges for churches and other Christian charities.

Of particular significance:

- The announcement of the much expected increase in VAT.
- No indication that Gift Aid transitional relief will be extended beyond 5 April next year.
- The increases in National Insurance, which are to proceed albeit with limited protection for employers.
- Public expenditure cuts.

A very short Finance Bill supporting the Budget was published on 28 June 2010, and we have taken account of its provisions in this commentary. Unlike previous election years, there will be **three** rather than two Finance Bills this year, with the bulk of the measures announced in the Budget being enacted in a further Autumn Bill.

We have also taken this opportunity to comment further on the March 2010 Budget statement delivered by the previous Administration, where developments relevant to charities have occurred since then.

2 Budget measures – impact on charity income

Whilst giving to the church is likely to be motivated by factors beyond just the fiscal environment, trustees and leaders of Christian charities need to bear in mind the very real possibility of further squeezes on their charity's income, arising from a range of forthcoming measures introduced by both this and the last Government:

- The increase in the rate of VAT from 4 January 2011.
- The withdrawal of Gift Aid Transitional relief from 6 April 2011
- The increase in National Insurance from 6 April 2011
- The changes to tax credits, including the limitation of eligibility to families with household income below £40,000 from April 2011 – with further changes in the following year, and an increased withdrawal rate for 'higher' earners eligible for tax credits
- Public sector pay freezes. All civil servants will see their pay frozen for two years unless they are earning less than £21,000 p.a. Those on lower incomes will see a flat rise of £250 in each of the next two years.

- Pressure on jobs and financial security of members and supporters. The threat of redundancy, particularly in the public sector, but possibly having a ripple effect into the private sector, especially where employers have significant contracts with Government.

In addition, public expenditure cuts are likely to lead to cuts in grant funding to charities and the cancellation or re-negotiation of contracts.

Action Points:

Trustees need to weigh up the impact of these changes in the context of their charity's planned activities and expenditure, and especially capital expenditure plans. Appropriate risk management strategies should be adopted.

Those fortunate enough to be in stable employment and who are repaying a mortgage loan are likely to be temporarily better off as a result of the historically low interest rates. Therefore, there may still be giving capacity amongst church members. By communicating God inspired vision, it may be possible to increase giving from certain sections of the membership, although this exercise will require all due sensitivity.

3 Value Added Tax (VAT)

The standard rate of VAT will increase to 20% (from 17.5%) on 4 January 2011.

This was a very much expected increase that was likely to have been made by whichever Government was returned at the General Election. VAT is a tax governed by European Directives and this measure follows increases in rates across Europe. Even prior to these increases, the rate of VAT in the UK was one of the lowest of EU Member States. As an effective way of raising Government revenues, it was virtually certain that the UK would increase its standard rate; the only question being by how much?

Virtually all churches and most charities are unable to reclaim VAT or, if they are, quite a small proportion of the VAT that they incur on their expenses. For this reason, the increase is likely to hit charities hard – at a time when the Government is expecting those same charities to help deliver social welfare programmes and to contribute to the 'Big Society' agenda advocated by the Coalition Government.

The Charity Tax Group conducted a survey amongst 87 charities, from which it was able to estimate that the cost to charities of this increase will amount to £143 million. CTG is pressing the Government for relief against the additional costs created by this measure.

The good news

Whilst the standard rate is to be increased, the zero rates (some of which are important to charities) and the reduced rate of 5% (applicable, for example, to fuel supplies to charities) remain unchanged.

Action Points:

An increase in VAT potentially impacts both income and expenditure. For smaller charities, the primary impact is likely to be on expenditure.

3.1 Impact on expenditure

Where will additional costs fall for churches and Christian charities? It is easier in the context to deal with those costs that will not increase as a result of the VAT increase.

These are:

- Wages and salaries of employed staff (which are not subject to VAT)
- Building costs, where these relate to zero rated supplies (as these zero rates are retained)
- Qualifying advertisements and printed matter (where zero rating applies)
- Rent of premises for a 'qualifying charitable purpose'. Here, the supply by the landlord should be exempt from VAT. The landlord is barred from 'opting to tax' the supply. Churches that are paying VAT on rented premises should review their arrangements to ascertain whether these costs should, in fact, be exempted.

Most other costs will be subject to VAT. Budgets and cash flow forecasts should, therefore, be reviewed to see if there are any significant costs that will increase in line with the increase in VAT rate.

3.2 Impact on income

Where goods and services are supplied by charities that are VAT registered, systems need to be adjusted to charge the correct amount of VAT from 4 January. For all charities, contracts should be reviewed to see if supplies are made for a VAT inclusive sum in which case, budgeted income will need to be revised downwards.

Where contracts or supplies are made net of VAT, is the VAT increase likely to have a negative impact on demand? If so, appropriate adjustments to forecast income and cash flow should be made.

3.3 Advancing post January 2011 purchases or supplies to before 4 January 2011

The obvious planning point for this is to advance the supply or purchase goods or services that would have occurred after 4 January 2011 to before this date. The Government will, therefore, invoke anti forestalling provisions to counter this. However, these provisions are specific (see Paragraphs 3.5 to 3.6 below) and still allow for some degree of planning to avoid the impact of the rise.

For most churches and many charities, a 2.5% saving on the cost of goods or services can be achieved where:

- The supplier is not connected with the purchaser
- The amount involved is less than £100,000
- The amount paid (or pre-paid) is not financed by the supplier
- Any invoice in advance of the related supply is not invoiced more than six months before the date of supply.

Therefore, within these parameters, it is possible (i) for a supplier to raise an invoice in advance of 4 January for goods or services at the 'old' rate of VAT or, (ii) for the church or charity to pay for goods or services in advance of 4 January 2011 and achieve a VAT saving.

Proper care and consideration should be taken before entering into any of these arrangements. For example, if payments are to be made well in advance of supply, the paying charity should be satisfied that the supplier is bona fide, able to make the promised supply and is financially secure.

3.4 Anti-forestalling provisions (AFP) – in detail

The AFP potentially apply to **standard rated** supplies that take place on or after 22 June 2010. The effect is to make a supplementary charge of VAT at 2.5%. The supplementary charge is payable where:

- the supply spans 4 January 2011
- the customer is not entitled to recover all of the VAT on the supply (which is likely to be the case for churches and virtually all supplies to charities); and
- **at least one** of the relevant conditions laid down in paragraphs 3.5 or 3.6 is met.

AFP Conditions

- 3.5 A supply of goods or services (other than one covered by paragraph 3.6 below) spans the date of the VAT change where the supplier raises a VAT invoice or receives payment (or both) prior to the VAT rate change and the 'basic time of supply' takes place on or after 4 January 2011. This is because the raising of a VAT invoice or the making of a payment prior to the normal (or basic time) of supply for VAT purposes advances the time of supply to the date of invoice or payment. By doing either, the increase in rate of VAT could be artificially avoided.

The supplementary charge will apply where at least one of the following relevant conditions is met:

- the supplier and the customer are connected with each other at any time during the period from the date of the supply to 4 January 2011, **or**
- the relevant 'consideration' (payment etc.) for the supply and any related supply of goods or services amounts to more than £100,000, **or**
- the supplier or a person 'connected' with him finances a prepayment by the customer, **or**
- the supplier raises a VAT invoice where payment is not due until at least six months from the date of the invoice.

- 3.6 A further set of conditions applies to more complex arrangements and is included here for completeness. They apply to the supply of the grant of a right to receive goods or services at a discount or free of charge where the grant is supplied before the date of the VAT change, but the 'basic time of supply' of some or all of the goods or services takes place on or after that date. A right for this purpose includes an option or an interest deriving from a right (or option).

The supplementary charge will apply where at least one of the following relevant conditions is met:

- the grantor and the customer are connected with each other at any time during the period from the date of the supply to 4 January 2011, **or**
- the relevant consideration for the grant of the right and any related supply of goods or services amounts to more than £100,000, **or**
- the supplier or a person 'connected' with him finances the customer's payment for the grant of the right.

- 3.7 There are several exceptions to which the supplementary charge does not apply. In broad terms, these cover lease, hire or rental agreements where the invoice or payment covers a period of up to one year and follows normal commercial practice, where consideration exceeds £100,000 but is made in accordance with normal commercial

practice, or in relation to certain hire-purchase, conditional sale and credit sale agreements.

4 Insurance Premium Tax (IPT)

Like VAT, the standard rate of IPT will increase from 5% to 6% and the higher rate from 17.5% to 20%. The new rates apply to insurance premiums which fall to be regarded as received by insurers under taxable insurance contracts on or after 4 January 2011. Anti-avoidance rules will be put in place to prevent avoidance of tax in the period between the announcement of the increase and 4 January.

For most charities, this change will result in a modest increase in expenditure and most contracts for insurance will fall within the standard rather than higher rate.

5 Gift Aid

5.1 Ending of transitional relief on 5 April 2011

Transitional relief was introduced from 6 April 2008, to provide a three year period for charities to adjust to the gift aid impact of the fall in basic rate from 22% to 20% from 2008/09. It effectively restores the amount of relief to the charity to the position it enjoyed before the change.

This was a temporary relief and is due to end on 5 April 2011. Whilst the sector continues to campaign for this to be extended beyond 2011, no announcement to this effect was made in the June Budget.

Assuming that the relief is withdrawn as planned, the value of the tax relief through gift aid that charities will receive (assuming all other things are equal), **will fall by 11.4%**.

Example

A charity receives £7,800 per year in donations under the gift aid scheme. For tax years up to and including 2010/11, the charity will reclaim £1,950 in gift aid relief (or 25% of net donations) **plus** £250 in **transitional relief** from HMRC.

From 2011/12 onwards, the reclaim on the same level of donations is reduced to £1,950.

This represents an 11.4 % fall in tax revenues to the charity.

Action Point:

Churches and charities need to go into 2011 with their eyes open to the strong possibility of the withdrawal of this additional relief. Where gift aid tax relief is a significant element of the charity's income, appropriate steps should be taken to prepare for the decrease in income.

5.2 Gift Aid Forum

The Coalition Government is committed to continuing the work of the Gift Aid Forum set up by the previous Administration. The Forum, of which Stewardship is represented, is looking at ways of simplifying Gift Aid, encouraging charitable giving and increasing Gift Aid take up. It is due to report in the Autumn.

5.3 Substantial donors

The new Government has confirmed that it will act to address the problems created by the Substantial Donors legislation, introduced by Finance Act 2006. Draft replacement legislation, which will focus on countering artificial arrangements by a donor to extract value from a charity, is expected to be informally consulted upon by HMRC over the

next few weeks. Final draft legislation will then be published in the Autumn allowing for repeal of the existing rules, and introduction of the new rules in Finance Act 2011.

5.4 Personal allowances of individuals

The announcement of an increase of £1,000, from next April, in personal allowances for individuals who are basic rate taxpayers, is good news for those on lower incomes. Further increases are planned in later years.

However, higher rate taxpayers will not see this benefit. The threshold at which higher rate tax is to be paid is to be lowered to counter the effect of the increase. **This will bring many taxpayers into the higher rate bracket for the first time.** Further, this threshold is to be held at current levels until 2013/14. One presumes that if there are further 'special' increases in personal allowances, this means in reality that the higher rate tax threshold will actually fall further to limit the benefit of the increased allowance to basic rate taxpayers only.

Action Point:

For those that are only just within the higher rate tax bracket, including those that will be brought within it solely as a result of the reduction in threshold from April 2011, may consider increasing their gift aid donations in order to bring them back into the basic rate tax band.

Donations by higher rate taxpayers attract personal tax relief of 20% of the gross payment (in addition to the relief claimed by the receiving charity), and bringing taxable income down in this way could also have other benefits (such as bringing the donor back within eligibility for tax credits, which are to be removed for families earning more than £40,000).

6 National Insurance

The good news

In order to stimulate private sector growth in the regions, the Government is to introduce a three-year scheme to exempt new businesses outside of London, the South East and the Eastern Region from up to £5,000 of class 1 employer National Insurance payments, for **each** of their **first 10** employees hired in **their first year of business**. Subject to meeting the necessary legal requirements, the Government aims to have the scheme up and running by September 2010, but any qualifying new business set up from 22 June 2010 will also benefit.

This appears to offer a potential cut in employment costs of up to £50,000. We have not as yet seen the detail of the Scheme and so it remains to be seen if new charities setting up between 22 June 2010 and 2013 will be able to benefit from this initiative. However, for churches and charities based in the regions targeted, there will be a welcome boost to the local economy.

The bad news?

As announced by the outgoing Labour Government, the planned increases in National Insurance for employers, employees and the self employed will go ahead. The new rates¹ from April 2011 will be as follows (with existing rates in brackets):

¹ All of the weekly earnings thresholds quoted are the **current** thresholds. These will be revised for 2011/12. The revised thresholds have yet to be announced.

Employee rates (contracted in)

Weekly earnings up to	£110	0% (0%)
Weekly earnings between	£110 and £844	12% (11%)
Weekly earnings over	£844	2% (1%)

Employer rates (contracted in)

Weekly earnings up to	£110	0% (0%)
Weekly earnings over	£110	13.8% (12.8%)

Without knowing what the equivalent earnings thresholds will be for 2011/12, it is difficult to assess the impact of these changes. The Government has announced that the level at which **employers** start to pay National Insurance contributions will increase by £21 per week above inflation from April 2011. The revised threshold will be announced in the Autumn.

The combination of higher rates based on a higher starting point is intended to result in the cost of employing people to reduce for those on incomes lower than £20,000. However, for those earning over £20,000, the **additional cost** will broadly be 1% of all earnings over £131 per week (the existing threshold of £110 plus the promised rise above inflation of £21).

In summary, **employer** National Insurance costs in 2011/12 will broadly compare to 2010/11 as follows:

Employees earning up to:	£20,000 p.a.		0.0%
	£30,000 p.a.	About	+3.0%
	£50,000 p.a.	Between	+5-6%

According to the Treasury, employees earning up to £40,000 will be slightly better off in terms of total income tax and national insurance contributions in 2011/12 compared to the current year. Earners above this level will be paying more.

A similar increase of 1% in self employed (Class 4) National Insurance contributions will also be implemented.

Action Points:

Churches and charities that employ staff should consider how these changes will impact their own payroll costs and should plan accordingly.

Newly formed and proposed charities that are going to be employing staff in their first year should keep a keen eye on future announcements of the Regional National Insurance Exemption Scheme to see if their charity will qualify for this benefit.

Higher earning employees should consider whether they can increase their gift aid donations or make a gift of qualifying shares or property, in order to reduce their overall taxable income to reduce or eliminate the impact of otherwise increased tax and national insurance contributions.

7 Capital Gains Tax

With immediate effect (gains accruing on or after 23 June 2010), capital gains made by individuals will be charged at new rates of tax.

The gains made that are chargeable to tax will be added to the taxpayer's net income chargeable to tax. Gains within any unused part of the taxpayer's basic rate band of income tax will be charged to CGT at 18% (unchanged) but any part that falls within the higher rate band will be charged at a new increased rate of 28%.

As in 2009/10, each individual has an annual exempt amount of capital gains of £10,100.

For most taxpayers, the 'basic rate band' for 2010/11 is £37,400.

Gains qualifying for entrepreneurs' relief are now taxed at a rate of 10 per cent (effectively maintaining the current effect of the previous rules). The lifetime limit for gains qualifying for this relief is increased from £2 million to £5 million.

Gains to which entrepreneurs' relief is claimed are set against any unused amount of the basic rate band *before* other gains.

Transitional rules

For the tax year 2010/11 only, gains arising before 23 June 2010 are charged at the single 18 per cent rate that applied before that date, and are not taken into account in calculating the amount of any unused income tax basic rate band.

Planning Points

In arriving at the amount of net income before capital gains are taken into account, the taxpayer can deduct various reliefs. These include gifts of qualifying shares and property to charity as well as gift aid donations. Therefore, if the effect of these gifts is to reduce income to a level whereby gains made will all be taxed at 18%, an additional tax relief of 10% is achieved. Gifts of qualifying shares or property will, in any event, be free of capital gains tax under the relevant charity reliefs.

Examples

Bill has taxable income, after personal allowances, of £22,400, all taxable at the basic rate. He has a few of his own shares and a portfolio of shares that he inherited some time ago. He decides that he needs to sell some of these shares, but is considering supporting his church in some way as well. He calculates that selling the shares he wishes to will give him chargeable capital gains (after deducting his annual exempt amount of £10,100) of £25,000. His tax position for 2010/11 will then be:

			£
Income			22,400
Capital gains			25,000
Total income and gains			47,400
Tax liability:			
Income tax	£22,400 at 20%	£4,480	
Capital gains tax	£15,000 at 18%	£2,700	
	£10,000 at 28% ²	£2,800	
Total tax liability			9,980

² All of Bill's basic rate band of £37,400 is used up by his income and the first £15,000 of capital gain. Therefore, the balance of the gain of £10,000 is charged at the higher capital gains tax rate of 28%.

1. Gift of qualifying shares

Bill still has enough shares to make a generous gift to his church building fund and decides that he will give them shares worth £10,000. In doing so, his 2010/11 tax liability is reduced as follows:

			£
Income			22,400
Income tax relief for gift of qualifying shares (market value deduction)			-10,000
			12,400
Capital gains			25,000
Total income and gains			37,400
Tax liability:			
Income tax	£12,400 at 20%	£2,480	
Capital gains tax	£25,000 at 18%	£4,500	
Total tax liability			6,980

So, by giving £10,000 worth of shares to the church, he has saved £3,000 (30%) on his personal tax bill. In addition, the disposal of the shares to the church is not subject to any capital gains tax as it is a gift to charity.

Note here that the gift of the shares reduces Bill's income for tax purposes. This is not the case for gifts under gift aid. The interaction of gift aid with capital gains tax is illustrated in the next example.

2. Using gift aid

As an alternative to giving shares, Bill could make a gift aid payment to charity, either out of his income or out of the proceeds on the sale of shares. The gift aid payment will help to reduce his capital gains tax bill. The following assumes a net gift aid payment of £8,000 which equates to a gross payment of £10,000 (£10,000 less basic rate tax at 20% = £8,000 net):

			£
Income			22,400
Capital gains			25,000
Total income and gains			47,400
Tax liability:			
Income tax	£22,400 at 20%	£4,480	
Capital gains tax	£25,000 at 18% ³	£4,500	
Total tax liability			8,980

³ The impact of the gross gift aid payment of £10,000 is that Bill's 'basic rate limit' is increased by the value of the gross gift from £37,400 to £47,400. So now, **all** of the capital gains are taxed at the lower capital gains tax rate of 18%.

So, by making the gift aid payment of £8,000 net, Bill achieves a capital gains tax saving of £1,000. In addition, the recipient charity can reclaim gift aid relief of £2,000. The total tax relief of £3,000 - which is the same as in the previous example - is shared between Bill (£1,000) and the charity (£2,000).

Gift Aid – Higher rate and additional rate taxpayers

Taxpayers who are liable to the higher and additional rates of tax (40% and 50% respectively) will not be able to reduce the rate of tax applying to their capital gains (28%) by making gifts of shares or gift aid payments, unless the magnitude of the gift is sufficient to take them out of higher/additional rate tax and into basic rate tax.

8 Update on previous announcements on Gift Aid

There have been developments behind the scenes on a number of matters announced by the previous Government, most of which concern their March 2010 Budget. Since these reforms are of significant importance to the Sector, we have covered the latest developments in some detail here.

8.1 Administrative reforms

Various administrative reforms are in the course of being introduced with the objective of strengthening HMRC's policing of the gift aid system, following the extension of tax reliefs to charities throughout the EU.

8.2 New Forms:

The introduction of 3 new forms was announced in the March Budget:

- **The R68 Gift Aid Claim Form.** This is to be replaced by R68(i). This is described as an "intelligent" form that automatically works out the period of claim and the amounts claimed as you enter the figures. It ensures the figures are correct before you print out the form and send it to HMRC.

The form replaces the current "R68", "R68 Gift Aid Schedule" and "R68 Other Income" and will be available to download from the internet.

This form is not yet available and does not herald the introduction of online filing. It will still be processed manually by HMRC in hard copy, but is designed to reduce or even eliminate user errors.

- **HMRC Variations form (Form ChV1).** This is the form now used to notify changes of address, bank account details or details of the nominated official who completes the R68(i).
- **HMRC Charity Application Form (Form ChA1).** Charities that want to (newly) register for Gift Aid need to complete this form, bearing in mind the new (Finance Act) definition of charity for tax reliefs (see further below).

Sector representatives have been in discussion with HMRC over the new definition of 'charity' and in particular the 'fit and proper' regime. As a result, applicants completing new Form ChA1 should disregard the guidance on that form which requires the details of all 'managers' (see Paragraph 8.4.3 below) in the charity. This information is **not now required**. It is now only necessary to notify the authorised official, nominees, agent and between two and four responsible persons. A revised, shorter, replacement form is expected to be issued by HMRC very shortly.

8.3 In-year gift aid repayment claims

Reforms are to be made to the ability of charities to make gift aid repayment claims during a tax year. We understand that this is an efficiency and cost saving move. It does not mean that in-year repayment claims will not be possible, but that they will be individually restricted by value and volume. Apparently, HMRC receive a large number of very small claims from individual charities during the course of a single year.

Sector discussions with HMRC on how this will be implemented in practice continue. At present, no specific limitations have been settled on.

8.4 Finance Act 2010: New definition of charity

These provisions were introduced fairly quickly with very limited consultation, following the extension of UK tax reliefs to charities throughout the EU. As a result, certain aspects remain controversial.

To be eligible for tax reliefs, a charity will now have to meet a new HMRC definition of 'charity'⁴. The new definition applies to all donations made by individuals to charities on or after 6 April 2010. For other tax reliefs⁵, the new definition will be implemented as soon as existing statutory definitions are amended.

To fall within the new definition, a charitable entity has to meet **all four** of the following tests. It must be:

- established for charitable purposes only
- based in a 'relevant territory' and be subject to the control of a relevant court
- managed by 'fit and proper persons'
- registered with any charity regulator

We comment further on each of these tests below.

8.4.1 Established for charitable purposes only

This is an England and Wales test of charitable purpose. Section 80 Charities Act 2006 applies this test for tax purposes throughout the UK, notwithstanding that Charities and Trustee Investment (Scotland) Act 2005 and Charities Act (Northern Ireland) 2008 apply slightly different tests of what is, or is not, a charitable purpose. This is because tax matters are not devolved to the Scottish and Northern Ireland administrations.

It remains to be seen how this works out in practice for Scottish, Northern Irish and other European charities. Scottish and Irish charities, whose purposes refer to their domestic charity legislation, may technically be outside of UK charity tax relief. HMRC tell us that this will affect relatively few charities, but any that are concerned should seek appropriate professional advice.

Non UK charities will need to show that, if they were actually based in England or Wales, they would meet the definition of a charity under the law of England and Wales. It is not clear how this will work out in practice.

⁴ The Charities Act definition of 'charity' remains. The new definition which incorporates parts of the Charities Act definition only applies for tax purposes.

⁵ That is tax reliefs relating to income tax, capital gains tax, corporation tax, VAT, inheritance tax, and stamp duties.

8.4.2 Based in a 'relevant territory' and be subject to the control of a relevant court

A relevant court is one with jurisdiction for charities under the law of that relevant territory. A relevant territory is a member state of the EU plus Norway and Iceland (who are members of the EEA but are not within the EU).

8.4.3 Managed by 'fit and proper persons' (The Management Condition)

This is by far the most controversial aspect of the new legislation. For some commentators, this could become as controversial as the substantial donors legislation and there have been calls to repeal it.

The 'Management Condition' requires that all of the charity's 'managers' must be fit and proper persons if the charity is to remain eligible for tax reliefs.

In the last few months, HMRC have worked hard with the sector to find an agreeable way of making the legislation work for charities, whilst achieving the objectives of the legislation – namely to protect the exchequer from abuse of charity tax reliefs. To this end, their Guidance on these rules has been revised several times since March and further revisions may follow. The Guidance issued at the time of the Budget has been superseded reflecting the recognition by HMRC that the test should apply more narrowly than as originally announced. The most recent Guidance, which also includes commentary on the use of new forms ChA1 and ChV1 (see Paragraph 8.1 above), was published on 9 July 2010 and can be found at:

<http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>

For further detail on the 'fit and proper persons test' and on Stewardship's objections to the way that it was to be applied, see our Briefing Paper on the March 2010 Budget.

Action Point:

Trustees of all existing and new charities need to be fully aware of these rules and remind themselves of them from time to time to take all reasonable steps towards ensuring that they are only managed by 'fit and proper' persons and that correct and timely notifications are made to HMRC as necessary.

8.4.4 Registered with any charity regulator

This test requires that the charity is registered with any charity regulator in their home country, with which the law requires an organisation to register.

The new definition raises a very interesting point for churches in the UK that technically should be registered with the Charity Commission or OSCR but are not, as it means that these churches are not be eligible for tax reliefs from 6 April 2010.

Potentially, there are a large number of churches in this position, because they mistakenly have thought that, as places of worship, they do not need to be registered.

Because of the importance of this point, we immediately raised the issue with the Charity Policy Team at HMRC, following the publication of Finance Act 2010.

The problem?

Put simply, being a registered place of worship does not mean that a church does not have to **also** register with the Charity Commission. The Places of Worship Registration Act 1855 refers to the building or property trust of the church. It does not apply to the working (day to day) funds of the church itself. These funds are regarded as a separate charitable trust that has to be registered with the appropriate charity regulator:

Following Charities Act 2006, all English and Welsh churches should be registered with the Charity Commission unless:

- Their annual gross income is less than £5,000, or
- Their gross annual income is less than £100,000 and they are associated with one of the specified historic Christian denominations. **This does not include all denominations.**

For further detail, please refer to our Briefing Paper 'Churches and registration under Charities Act 2006', available from the resources area of our website.

<http://www.stewardship.org.uk/smartweb/resources/resources>

In Scotland, **all** charities must register with OSCR. A similar regime of registration of all charities in Northern Ireland is in process.

HMRC approach

HMRC have advised us, having taken the advice of their solicitors, that a church that has previously relied on registration as a registered place of worship as a reason *not* to register with the Charity Commission, but starts the process of registering with the Commission can be regarded as satisfying the Finance Act 2010 registration condition from the time that they start that process – and will therefore be able to continue claiming tax reliefs.

For churches that have not started that process, HMRC will review the matter on a case by case basis. They have no power under the Act to overlook the registration requirement, but have confirmed that they will take a pragmatic approach. They are not looking to disqualify churches from charity tax reliefs. But they cannot ignore the law. If a church has conducted a review of their need to register and has *reasonably* concluded that they did not need to, even if ultimately this turns out to be wrong, HMRC may be able to accept that there were grounds for not registering at the time. However, HMRC advice is that churches should not delay in submitting a registration application to the Commission.

Action Points:

All churches that are not registered and should have been will be in contravention of the registration condition since 6th April 2010. Trustees of churches that are not registered with the Charity Commission or OSCR should urgently review their position and unless they are *legally* not required to register (see above), the process of registration should be commenced as soon as possible.

Stewardship are able to provide assistance with charity formation. Further information is available from our website:

<http://www.stewardship.org.uk/smartweb/support-services/charity-formation>

or by calling Ginny Kpayser on 020 8502 8592.