

By email: charitypolicy.taxteam1@hmrc.gsi.gov.uk

15 April 2014

Dear Sirs,

Charities and tax avoidance: discussion paper

On behalf of the Institute of Chartered Secretaries and Administrators (ICSA), I am pleased to respond to your discussion paper regarding the proposed new definition of charity for tax purposes.

ICSA is the professional body qualifying and supporting corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, acting as adviser to government and regulators on company law and corporate governance; able to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A number of our members are involved in the not for profit sector, and all will be familiar with the importance of ensuring that their organisation pursues its charitable objects in accordance with legal and regulatory requirements and adopts good governance practice. This wealth of expertise and experience has informed our response to this consultation.

While attempts to tackle tax abuse and significantly reduce the ability of unscrupulous individuals to abuse charities are fundamentally important, due consideration should be given to ensuring that any protective measures do not adversely impact the rich diversity of the sector. Public trust and confidence in the sector is imperative for charities to continue providing public benefit through appropriate use of donations of time, gifts in kind and money. To develop a thorough and proportionate approach to tackling this problem, it is important first to have a clear understanding of the level of tax abuse orchestrated through ostensibly charitable entities. Any suggested legislative changes to this end must be considered and proportionate, taking a holistic view of all factors and determined to protect the sector. .



In order to be registered as a charity, an organisation must be set up for solely charitable purposes, as defined in the Charities Act 2011. While the tax reliefs will be an incentive for some social purpose entities to become charities, the underlying driver for the organisation will be to address an identifiable need in society that meets defined charitable purposes and satisfies the public benefit test. The attendant tax reliefs will be no more than a 'sweetener' to a decision that focuses more on achieving the charitable objects for which the organisation was originally set up. Charities that do not have wholly charitable purposes and meet the public benefit test are unlikely to obtain registration, and consequently will be unable to access the tax reliefs available.

Furthermore, the discussion document adds confusion to the difference between tax advantage with tax avoidance. The proposal therefore could lead some to question the legitimate pursuit, by charitable organisations, of appropriate and legal tax reliefs with the deliberate action of avoiding the collection of taxes that are applicable to the charity and its activities.

In short, neither option defined in the discussion paper provides HMRC, the Charity Commission or the sector with the tools to better identify and tackle tax abuse via the use of charitable organisations. Version A would introduce an unacceptable lack of clarity to how and when HMRC could refuse to accept an organisation as charitable for tax purposes and version B adds little to what already exists.

It is the Institute's view that changing the legislative framework will not deliver the benefits HMRC seeks, but the desired outcome could be achieved through closer collaboration between HMRC and the Charity Commission, appropriately funded to undertake such work. Increased vigilance and monitoring by the two agencies are likely to have a more successful outcome without unduly confusing the definition of a charitable organisation for tax purposes and avoiding any adverse impact on public trust in, and donations to, the sector.

ICSA appreciates the opportunity to comment on HMRC's thinking in developing measures to protect the sector from tax abuse. I hope the above comments are useful for the further consideration of the situation and in developing a way forward. Should further information or clarification be required, please do not hesitate to contact me.

Yours faithfully,

Louise Thomson

Head of Policy, Not for profit

020 7612 7040

lthomson@icsa.org.uk