Sending funds overseas

Faith-based charities often support overseas charities, but need to take care that these payments fall within HMRC's definition of charitable purposes.

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Stephanie Biden explains how to avoid falling foul of HM Revenue and Customs when working with partners overseas

Many faith-based organisations that work internationally do so by supporting the work of local partner organisations overseas. When making grants overseas, trustees need to be particularly careful to comply with their duties to act in the best interests of the charity. This includes furthering the purposes of the charity for the public benefit, acting reasonably and prudently, ensuring that the charity's funds, assets and reputation are not placed at undue risk, and complying with the law. As well as fulfilling their general duties under charity law, trustees need to be alert to HMRC's expectations when sending funds overseas.

In general, a payment by a charity for its charitable purposes is treated by HMRC as charitable expenditure by the charity. However, HMRC will only treat payments made to bodies outside the UK as charitable if the trustees have taken such steps *as HMRC considers reasonable in the circumstances* to ensure that the payment will be applied for charitable purposes. The consequence of HMRC deciding that a charity's trustees have not taken these 'reasonable steps' could be that the payment will be taxable as non-charitable expenditure, with the result that the charity loses tax relief on that amount. It is also possible that the trustees may be held personally liable to make good such losses, if they are shown to have acted negligently.

HMRC guidance sets out the factors it considers when deciding whether trustees have taken reasonable steps to ensure payments made overseas are applied for charitable purposes.

The guidance states that *'to meet their legal duty as trustees'* the 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.

It is not enough to establish that an overseas body is charitable under the domestic law of its host country. Nor is it sufficient to keep records of how funds are spent (though this is necessary and important). To assess whether the steps taken by the trustees were reasonable, HMRC will consider the amounts involved in both absolute and relative terms (the higher the sum, the greater the level of compliance required). It will look at the charity's knowledge of, and previous relations with, the overseas body, as well as the previous history of that overseas body. Finally, it will examine the charity's internal financial, management and decision-making procedures to determine whether they are adequate – and were correctly followed.

Faith-based charities often have long-standing relationships with local partner organisations. This is particularly so where a church or other local faith community directly supports partners abroad or where a charity has been set up in the UK with the focus on supporting a specific overseas ministry known to the UK founders or trustees. HMRC will take this existing knowledge of the overseas partner into account, although these long-standing informal relationships are often not documented, which can make it hard for faith-based organisations to provide sufficient evidence to satisfy HMRC.

We recommend that faith-based organisations should put in place an overseas grants policy setting out its procedures to comply with HMRC and Charity Commission guidance. You should also have a grant agreement in place for grants to overseas partners, and ensure there is proper reporting back to provide evidence that funds have been used for the purposes for which they were given.

Find out more
The HMRC guidance is available at https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-ii-non-charitable-expenditure#payments-to-overseas-bodies