

Payments overseas – HMRC investigates

Over the past few months, we have seen an increase in the number of investigations being carried out by HMRC in relation to charities making payments overseas.

Augustus Della-Porta and Stephanie Biden draw on their experience of advising on HMRC investigations to explain what is involved.



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In our experience, HMRC carries out these investigations to ensure charities are making payments overseas in accordance with its guidance on payments to overseas bodies. Its key test is that 'a charitable payment made to a body outside the UK will only be charitable expenditure for UK tax purposes by the charity provided the charity can clearly demonstrate to HMRC that it has taken steps that HMRC considers are reasonable in the circumstances to ensure that the payment is applied for charitable purposes'.

HMRC goes on to state in its guidance that 'if that condition isn't met, the payment is treated as non-charitable expenditure by the charity for UK tax purposes'. To put it another way, the charity would receive a tax bill from HMRC on that amount.

HMRC may initiate an investigation as a matter of course, but this could also come about due to concerns raised following regulatory action by the Charity Commission. Charities will typically be required to provide information about payments made to overseas bodies over a previous financial year including:

- the amount of each payment, to whom, when paid and on what basis;
- details of the charity's internal financial, management and decision-making procedures and how they were applied in relation to the payment;
- the charity's relationship with the payee, what research and due diligence was carried out and what risks were taken into account before making the payment;
- the terms of any agreement(s) put in place with the recipient (or, if there is no agreement, why none was put in place);
- what monitoring work the charity carried out to confirm that the funds were used for charitable purposes.

HMRC typically asks charities to provide a large volume of supporting documents with their response – including copies of

agreements, correspondence, funding applications, project plans, trustee decisions regarding the payments, due diligence checklists, project updates, records of meetings or teleconferences and financial records. Ordinarily, the information must be provided in hard copy within six weeks of the request, but HMRC will often require further details and the investigation may take over a year to conclude.

If a charity does not have particular records it should consider what other useful evidence it might have. For example, instead of a monitoring report, a trustee may have personally visited a project and reported back to the board. The minutes of that meeting could be included in the response, together with a paragraph explaining how the project was monitored and why it was done in this way.

If you are funding projects overseas you should consider whether you would be able to provide this information if it was ever requested and make sure that policies, processes and documentation could stand up to scrutiny if needs be. You should ensure that you can clearly explain how and why particular decisions have been made and carefully document decision making, due diligence, justification for expenditure and monitoring of how funds have been spent. Doing this now could help to avoid problems in the future.

FIND OUT MORE

HMRC's guidance on payments to overseas bodies is at <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-ii-non-charitable-expenditure#payments-to-overseas-bodies>

See this article for more detail on the guidance: <https://bateswells.co.uk/2017/02/sending-funds-overseas>

We regularly advise charities operating overseas on these and other related issues. Please contact Augustus Della-Porta or Stephanie Biden for further details.