

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 30 Schedule 6: Charities and Community Amateur Sports Clubs: Definitions

Summary

1. **Section 30** and Schedule 6 introduce a new definition of a charity for tax purposes following the extension of UK charitable tax reliefs to bodies equivalent to charities and community amateur sports clubs (CASCs) in Europe.

Details of the Schedule

Part 1 - Definition of “charity”, “charitable company” and “charitable trust”

2. Paragraph 1 sets out the broad conditions an organisation must meet if it is to be defined as a charity.
3. Sub-paragraph (1) requires a charity to be established for charitable purposes only and, in addition, to meet three further conditions: the jurisdiction condition (defined in paragraph 2 of the Schedule), the registration condition (defined in paragraph 3 of the Schedule)) and the management condition (defined in paragraph 4 of the Schedule)).
4. Sub-paragraph (2) defines a charity that is a body of persons as a charitable company and a charity that is a trust as a charitable trust.
5. Sub-paragraph (3) makes plain that the new definitions of “charity”, “charitable company” and “charitable trust” are subordinate to any definitions already in the statute. The effect of this provision is that the new definitions will not apply unless the previous definitions are expressly repealed.
6. Sub-paragraph (4) refers to section 2 of the Charities Act 2006 for the meaning of “charitable purpose”. The charitable purpose must fall within a list of descriptions of purposes set out in the 2006 Act and must also be for the public benefit. The reference to public benefit is to that term as understood for the purposes of the law relating to charities in England and Wales.
7. Sub-paragraph (4)(a) makes it plain that charitable tax reliefs and exemptions are available to organisations only if they meet the definition of charitable purposes as defined in section 2 of the Charities Act 2006, wherever the organisation is established.
8. Sub-paragraph (4)(b) makes plain that in the context of tax the definition of “charitable purposes” applies also for the purposes of the law of Scotland and of Northern Ireland.
9. Paragraph 2 sets out the details of the jurisdiction condition (paragraph 1(1)(b)). Under sub-paragraph (1), in order to meet the jurisdiction condition a body of persons or trust must be subject to the control of a relevant court in the UK with respect to charities or a corresponding jurisdiction outside the UK in the EU or a specified relevant territory.

*These notes refer to the Finance Act 2010 (c.13)
which received Royal Assent on 8 April 2010*

10. Sub-paragraph (2) defines what is meant by a “relevant court in the UK”. The courts are the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.
11. Sub-paragraph (3) defines a “relevant territory” as being a member State of the EU other than the UK or a territory specified in regulations made by the Commissioners for HMRC.
12. Sub-paragraphs (4) and (5) provide that regulations specifying a relevant territory are to be made by statutory instrument. Such regulations will be subject to the negative resolution procedure.
13. Paragraph 3 sets out the details of the registration condition (paragraph 1(1)(c)). Sub-paragraph (1) introduces two conditions, condition A and condition B which a body of persons or trust must meet in order to meet the registration condition. Condition A applies to organisations in England and Wales, and condition B applies to organisations outside England and Wales.
14. Sub-paragraph (2) sets out the details of condition A. If the charity is required to be registered under the Charities Act 1993 then it must be so registered.
15. Sub-paragraph (3) sets out the details of condition B. Where the law of the territory requires a charity to be registered in a register corresponding to the register of charities held by the Charity Commission in England and Wales then the charity must be registered in order to meet the registration condition.
16. Paragraph 4 sets out the details of the management condition (paragraph 1(1)(d)). Sub-paragraph (1) requires managers of a body of persons or trust to be “fit and proper” persons in order to meet the management condition. “Fit and proper” is not defined in the legislation so takes its natural meaning. HMRC will issue guidance on how it will apply this test. Sub-paragraph (2) defines a “manager” as a person having general control and management of the administration of the body or trust.
17. Paragraph 5 introduces a relaxation to paragraph 4 such that, depending on the circumstances, the Commissioners for HMRC may treat a charity as having met the management condition throughout the period of appointment of a manager who is not “fit and proper”.
18. There are two circumstances where the relaxation under paragraph 5 may apply:
 - where the manager is not in a position to prejudice the charity’s delivery of its charitable objects then sub-paragraph (2)(a) may apply and the charity may be treated as meeting the management condition; or
 - where, taking account of all the circumstances, it is just and reasonable for the charity to be treated as meeting the management condition then sub-paragraph (2) (b) may apply.
19. Paragraph 6 allows HMRC to publish a list of the names and addresses of organisations who have claimed, and appear to be, or to have at some time been, eligible for, charitable tax reliefs.
20. Paragraph 7 applies the new definition of a charity in Part 1 of the Schedule to income tax, capital gains tax, corporation tax, value added tax, inheritance tax, stamp duty, stamp duty land tax and stamp duty reserve tax.

Part 2 - Repeals of superseded definitions and other consequential amendments

21. Paragraphs 8-28 repeal the definitions of a charity, charitable company and charitable trust in various Acts. These will be superseded by the new definitions of “charity”, “charitable company” and “charitable trust” in Part 1 of the Schedule and makes a number of further consequential amendments.

22. Paragraph 29 provides for the Commissioners for HMRC to make amendments, by order, to enactments relating to income tax, capital gains tax, corporation tax, value added tax, inheritance tax, stamp duty, stamp duty land tax and stamp duty reserve tax to align those statutes with the new definitions of “charity”, “charitable company” and “charitable trust” in Part 1 of the Schedule. Such orders will be subject to the negative resolution procedure.

Part 3 - Meaning of “community amateur sports club”

23. **Part 3** of the Schedule broadly applies the location and management conditions in Part 1 of the Schedule to community amateur sports clubs (CASCs). CASCs are eligible to some, but not all, charitable tax reliefs.
24. Paragraph 31 amends section 658(1) of the Corporation Tax Act 2010 (CTA) to require a CASC to meet the location condition and the management condition.
25. Paragraph 32 introduces three new sections into CTA: section 661A (the location condition); section 661B (the management condition); and section 661C (periods over which management condition is to be met).
26. New section 661A sets the location condition for CASCs. Subsection (1) provides that a CASC will meet the location condition if the club is established in a member State of the EU or in a relevant territory (subsection (1)(a)), and the facilities it provides for eligible sports are all located in a single member State of the EU or relevant territory (subsection (1)(b)). Subsection 2 defines a relevant territory as being one specified under paragraph 2(3)(b) of this Schedule (see paragraph 11 above).
27. New section 661B sets the management condition for CASCs. It is the same as that for charities, suitably amended as set out in paragraph 4 of this Schedule (see paragraph 16 above).
28. New section 661C sets out the circumstances for CASCs when the management condition is treated as being satisfied even where a manager of the CASC is not or was not a “fit and proper person”. Subsections (1) and (2) follow the same form as for charities in paragraph 5 of this Schedule (see paragraphs 17 and 18 above). The same comments on the application of this section to CASCs apply as for charities.

Part 4 - Commencement

29. Paragraph 33 provides for the commencement of Part 1 of this Schedule. Under sub-paragraph (1), Part 1 is treated as coming into force on 6 April 2010. However, under sub-paragraph (2), the new definitions in Part 1 will not apply to a provision until the provision it replaces, set out in Part 2 of the Schedule, is repealed.
30. Paragraph 34 sets out the provisions for repealing the current definitions of a charity, charitable company and charitable trust.
31. Sub-paragraph (1)(a) repeals the current definition of a charity as it applies to Gift Aid donations made by individuals for the purposes of Chapter 2 Part 8 of ITA for gifts made on or after 6 April 2010.
32. Sub-paragraph (1)(b) and sub-paragraph (2) provides HM Treasury with the power to apply the new definitions in Part 1 of the Schedule to the provisions in Part 2 by order.
33. Sub-paragraphs (3) and (4) set out the conditions for the order making powers in sub-paragraph (1)(b) and sub-paragraph (2).
34. Paragraph 35 provides for the provisions in Part 3 of this Schedule (CASCs) to be treated as applying from 6 April 2010

Background Note

35. UK charitable tax reliefs are being extended to organisations equivalent to charities and CASCs in the EU and in the European Economic Area (EEA) countries of Norway and Iceland following a judgment in the European Court of Justice (ECJ) in January 2009.
36. A new statutory definition of a charity entitled to UK charity tax reliefs is introduced. The definition is based on that of a charity under the law of England and Wales which is already used for UK tax purposes. New statutory definitions of a “charitable company” and a “charitable trust” are also introduced.
37. The definition introduces a four stage test to determine if an organisation is eligible for UK charity tax reliefs.
38. First, under paragraph 1 of the Schedule, the organisation must be established for charitable purposes only. The definition of charitable purposes is that under the law of England and Wales and is found in section 2 of the Charities Act 2006.
39. Second, under paragraph 2 of the Schedule, the organisation must meet the jurisdiction condition. It must be located in the UK or a member State of the EU or a specified country. The Commissioners for HMRC will have the power to specify countries outside the EU by statutory instrument. The countries of Iceland and Norway will be specified as soon as practicable.
40. Third, under paragraph 3 of the Schedule, the organisation must meet the registration condition. Where the organisation is required under the law of its home country to be registered with a charity regulator similar to the Charity Commission for England and Wales, it must be so registered. The purpose of this condition is to ensure that only organisations that comply with their charity obligations in their home country are eligible for UK charity tax reliefs.
41. Fourth, under paragraph 4 of the Schedule, the organisation must meet the management condition. All persons in the organisation having control and management responsibilities must be “fit and proper” persons. The term “fit and proper” is not further defined. “Persons” include corporate bodies and individuals who are trustees, directors, managers or any other officer of the organisation in a management position.
42. While a properly run charity always seeks to appoint persons of integrity to key management positions there is always a chance that a charity may unknowingly appoint a person who is not “fit and proper”. In such a case, under paragraph 4, the charity would cease to meet the management condition and would no longer be eligible to charitable tax reliefs even where it meets all the other conditions. However paragraph 4 is subject to the relaxation in paragraph 5.
43. **Paragraph 5** relaxes the strict conditions under paragraph 4 in certain circumstances:
 - where the manager is not in a position to prejudice the administration of the charity. For example, some charities appoint ex-offenders to positions of trust within a charity. If the ex-offender is not involved in the financial administration of the charity then sub-paragraph (2)(a) may apply and the charity may be treated as meeting the management condition; or
 - where a person has been appointed to a management position within the charity and it is subsequently found that the person is not a “fit and proper person”. In such a case, where the charity has not colluded with the manager and works with HMRC to rectify the position, the Commissioners for HMRC may consider sub-paragraph (2) (b) applies and the charity to have met the management condition throughout the period the person was in post.

HMRC will use its discretion under this paragraph to ensure this test does not impose an undue burden on existing charities.

*These notes refer to the Finance Act 2010 (c.13)
which received Royal Assent on 8 April 2010*

44. Whether either of the relaxations in paragraph 5(2)(a) or (b) applies will depend upon the circumstances of each case. A charity may challenge a decision by the Commissioners for HMRC not to apply paragraph 5 by appealing against the refusal of a claim to a tax Tribunal.
45. [Paragraph 6](#) allows HMRC to publish a list of the names and addresses of organisations that have claimed, and appear to be eligible to, charitable tax reliefs. The list would be a guide only to an organisation's eligibility, which may change from time to time, depending upon whether it meets all the conditions in paragraph 1 at any given time. The omission of an organisation will not necessarily signify that the organisation is not eligible to charitable tax reliefs; it is possible that an organisation that is eligible for charitable tax reliefs will not have made a claim for relief or exemption from tax to HMRC.
46. [Part 2](#) makes a number of repeals and consequential amendments to enactments which use various definitions so as to substitute the new definitions of "charity", "charitable company" and "charitable trust". Together, the repeals and amendments apply the new definitions of these terms in Part 1 of the Schedule to the enactments.
47. [Paragraph 29](#) enables additional minor amendments to be made to references in the statutes that may have been overlooked, without requiring primary legislation, for example, substituting "charitable company" for "body of persons established for charitable purposes".
48. [Part 3](#) applies the location condition and the management condition in Part 1, suitably amended, to CASCs. CASCs are eligible to certain charity reliefs, including Gift Aid.
49. [Part 4](#) provides the commencement provisions. The new definitions in Part 1 will not apply to most provisions until HM Treasury make a commencement order. However the new definitions will apply with effect from 6 April 2010 to donations by individuals under Gift Aid.