



ADDING VALUE
THROUGH THE PLUS
FACTOR

Charity Newsletter

October 2011



**ANDERSON
ANDERSON
& BROWN LLP**

CHARTERED
ACCOUNTANTS

Fit and proper persons

Definition of “charity” for tax purposes

Under tax legislation there is a definition, for tax purposes, of charities and other organisations entitled to UK charity tax reliefs. This definition was introduced by the Finance Act 2010 and requires that an organisation must satisfy the “management condition” in order to be a charity. In order to satisfy this condition, the charity’s managers must be **fit and proper persons**.

At present this definition applies to Gift Aid but will be extended to other charity tax reliefs in the future.

Who is a “fit and proper person”?

First of all the test applies to those who have the general control and management of the administration of a charity. This means it applies to the “managers” of the charity and includes charity trustees and directors of charitable companies. It may also extend to certain employees who are able to determine how a significant proportion of the charity’s funds are spent, for example the members of an Executive Board.

The legislation doesn’t provide a definition of a “fit and proper person”. However, HM Revenue & Customs (“HMRC”) have issued guidance to explain how they will apply the test.

HMRC assumes that charities have given proper consideration to the suitability of those persons appointed to act in a management capacity and that all people appointed by charities are fit and proper persons unless it holds information to show otherwise. Charities which take appropriate steps on appointing personnel may assume that they meet the management condition at all times unless they are challenged by HMRC.

Factors which might lead HMRC to decide that a manager is not a fit and proper person would include:

- a history of fraudulent behaviour such as tax fraud, misrepresentation, identity theft;
- where HMRC has knowledge of involvement in attacks against or abuse of the tax repayment systems;
- those barred from acting as a charity trustee by a charity regulator or the Courts;
- those disqualified from acting as a company director.

This information is published without the responsibility on our part for loss occasioned to any person acting or refraining from action as a result of any information published herein.

- AUDIT
- ACCOUNTING
- TAXATION
- CORPORATE FINANCE
- MANAGEMENT INFORMATION SOLUTIONS
- ACCOUNTING OUTSOURCING
- PAYROLL SOLUTIONS
- WEALTH MANAGEMENT

9 QUEENS ROAD
ABERDEEN
AB15 4YL
TEL: 01224 625111
FAX: 01224 626007
email: accountants@aab.co.uk
web: www.aab.co.uk

Suggested procedure for applying the “fit and proper person” test

HMRC have provided suggested procedures in their document “Detailed guidance on the fit and proper persons test “. Although charities are not legally required to follow these procedures, this is one way in which a charity can demonstrate, if required, to HMRC that it has taken the necessary steps to reassure itself that its managers are fit and proper persons. Although HMRC suggests these procedures could be used when appointing new managers it might be beneficial to ask existing managers to complete these, unless a similar process was undertaken on appointment.

The suggested procedures are as follows:

1. Ask managers, covered by the “Fit and Proper” test, to read the basic guide (fit and proper persons helpsheet) and sign a declaration based on the model declaration included in that guide.
2. Assuming the individual signs the declaration, the charity should retain the signed declaration for the duration of the individual’s engagement with the charity and for four years after leaving.
3. Notify HMRC (on form ChV1 HMRC Charities Variations) of those who are the entity’s “responsible persons” or “authorised officials” (see definitions below).

An “authorised official” is the person within your charity you have told HMRC is authorised to deal with your tax affairs including signing and submitting tax returns.

“Responsible persons” are normally trustees or directors of a charitable company. You will need to nominate a minimum of two and a maximum of four individuals to be responsible persons.

4. If the individual refuses to sign the declaration then the charity needs to decide whether that person should be appointed as a manager of the charity and what financial responsibilities they should be given.
5. If the individual signs the declaration but gives additional information the charity will need to consider the information and decide whether to seek advice on what to do.

Further information

Further information can be found on the HMRC website

Detailed guidance

www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm

Fit and proper persons helpsheet

www.hmrc.gov.uk/charities/guidance-notes/chapter2/model-dec-ff-persons.pdf

Alternatively if you wish to discuss this further please contact:

Elaine Parr, Charity Services Senior Manager (elaine.parr@aab.co.uk) or

Moira McMahon, Tax Senior Manager (moira.mcmahon@aab.co.uk)

This information is published without the responsibility on our part for loss occasioned to any person acting or refraining from action as a result of any information published herein.



**ANDERSON
ANDERSON
& BROWN LLP**

**CHARTERED
ACCOUNTANTS**

AUDIT

ACCOUNTING

TAXATION

**CORPORATE
FINANCE**

**MANAGEMENT
INFORMATION
SOLUTIONS**

**ACCOUNTING
OUTSOURCING**

PAYROLL SOLUTIONS

**WEALTH
MANAGEMENT**

**9 QUEENS ROAD
ABERDEEN
AB15 4YL**

**TEL: 01224 625111
FAX: 01224 626007**

**email: accountants@aab.co.uk
web: www.aab.co.uk**