Crowe

Charities Alert

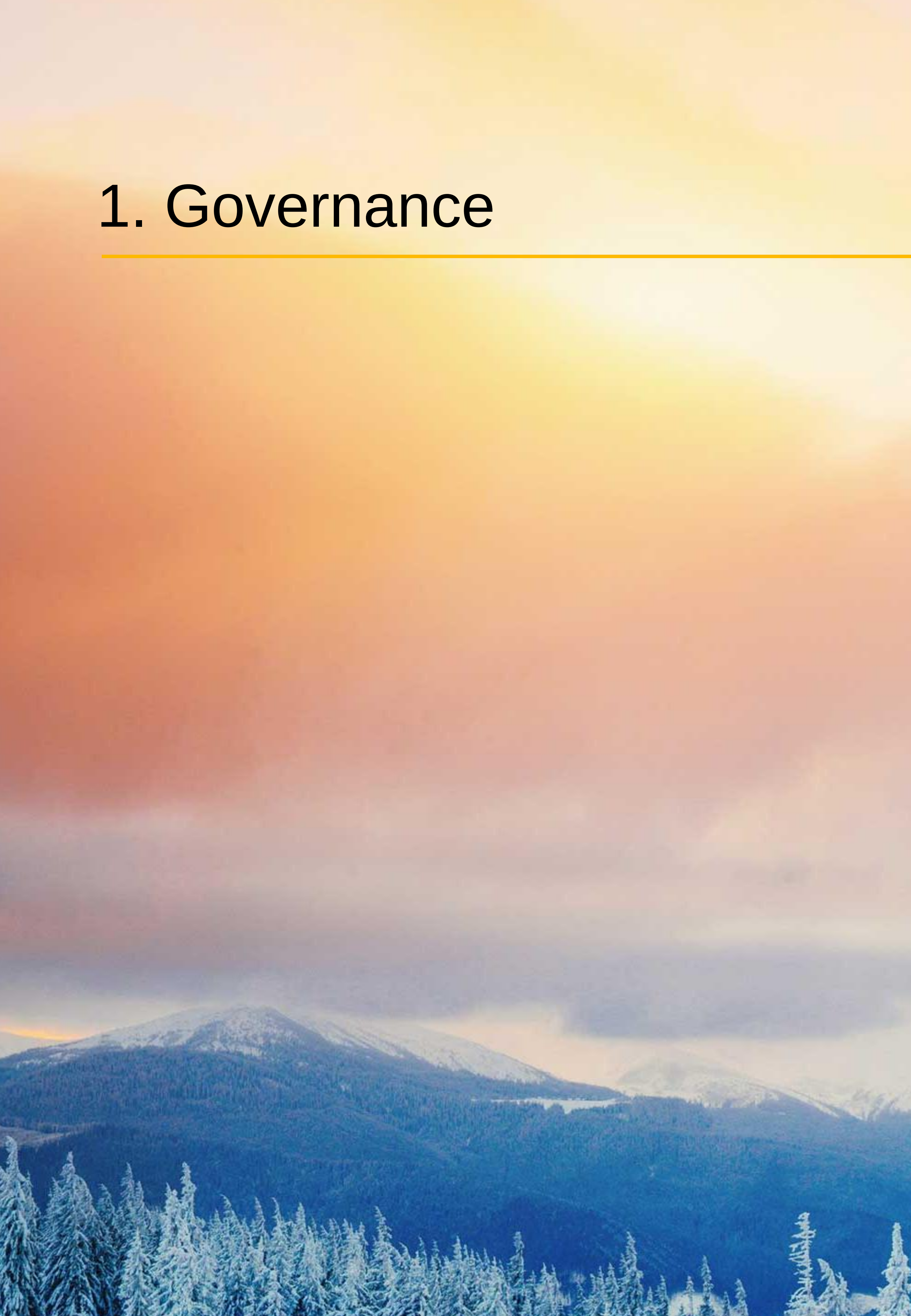
Autumn/Winter 2018

Audit / Tax / Advisory / Risk

Smart decisions. Lasting value.

Contents

1. Governance



Trust in Charities

In July, The Charity Commission published its 'Trust in Charities' 2018 report. The report presents the findings of independent research conducted by Populus into public trust and confidence in charities. The research, which follows on from previous research on the same topic, provides crucial insights into what the public expect of charities.

The report highlights that public expectations go beyond mere compliance with charity law and that the public want charities to demonstrate good stewardship of funds, to live their values, and to demonstrate impact. From the research the factor rated as having the highest overall importance in creating trust is charities' transparency about where their money goes.

The report also shows that trust matters to donation behaviour and that many of those who feel that their trust in charities has decreased in the past two years (and this cohort has increased in number to over 4 in 10 members of the public) say they are donating less money as a result.

Although the report finds that public trust and confidence in charities remains at similar levels to 2016 it also notes that in both 2016 and 2018 the public's trust in charities was knocked by high profile controversies.

The report also confirms that the Charity Commission is seen to have a highly important role by a vast majority of the public. The issue of trust and confidence in charities has been reflected in the recently published Charity Commission Statement of Strategic Intent 2018 – 2023.

In setting the context for their next 5 year strategy the Commission have noted that "The benefit of charity to people and society is a precious asset we can't afford to risk - and it has the potential to do much more. That is why the public's demand for high standards of behaviour from charity - evidenced by the Commission's own research - needs to be understood and taken seriously. It is the role of the Charity Commission to see that it is."

The full Trust in Charities 2018 report can be seen on the GOV.UK website:
www.gov.uk/government/publications/trust-in-charities-2018

The Statement of Strategic Intent can be seen on the GOV.UK website:
www.gov.uk/government/publications/charity-commission-strategy-2018-2023/charity-commission-statement-of-strategic-intent-2018-2023

Safeguarding and protecting people for charities and Trustees

In April 2018 the Charity Commission sent out an email to remind all charities and Trustees of the importance of Trustee responsibilities in relation to safeguarding. The Commission continue to emphasise that safeguarding is a key governance priority for all charities, not just those working with groups traditionally considered at risk.

In October 2018 they added to their guidance information on protecting staff and volunteers in a charity, working with children and adults at risk and working overseas.

The guidance, although recognising that what Trustees need to consider, will depend on what your charity does and who it works with. It lists eight things they expect Trustees to do:

- make sure all Trustees, employees, volunteers and beneficiaries know about safeguarding and people protection
- have appropriate policies and procedures in place
- check that people are suitable to act in their roles
- know to spot and refer or report concerns
- have a clear system of referring or reporting to relevant organisations as soon as you suspect or identify concerns
- set out risks and how you will manage them in a risk register which is regularly reviewed
- be quick to respond to concerns and carry out appropriate investigations
- not let one Trustee dominate your work - Trustees should work together

The guidance also covers risks to be aware of and policies and policies and procedures your charity need to have, also noting that for charities that work with children or adults at risk there are specific additional legal requirements.

We recommend that all Trustee boards should review this updated guidance which can be seen on the GOV.UK website: www.gov.uk/guidance/safeguarding-duties-for-charity-trustees

Charity Trustee welcome pack

The Charity Commission have recently published an 8 page welcome pack which will be emailed to new Trustees to introduce them to the role so that they have a basic understanding of their duties and responsibilities.

The guide:

- outlines the basics of trusteeship
- summarises what they can expect
- raises awareness of their duties and responsibilities
- explains what needs to be sent to us
- provides reference to more detailed guidance and information.

Copies of the guide can be downloaded from the Commission website: www.gov.uk/government/publications/charity-trustee-welcome-pack

Draft Charity Code of Ethics

NCVO have recently published a draft of a proposed Code of Ethics for the charity sector for consultation.

The Code aims to support charities, their governing bodies, and those who work and volunteer in and with them in recognising and resolving ethical issues and conflicts. It sets out the key ethical principles and the supporting actions that charities should take to ensure an ethical approach to their work.

The code consists of statements of overarching principles and standards to guide decision making, good judgement and conduct. It does not provide a set of rules that prescribe how to act in all situations.

The four principles are Beneficiaries First, Integrity, Openness, and Right to be Safe. For each principle there are 4 or 5 actions for charities to help them to uphold the principle.

The code is intended to be complimentary to existing sector codes such as the Charity Governance Code but is not intended to replace charities own definitions of values and codes of conduct. Although the code is intended to be voluntary, all charities will be encouraged to meet the principles of the code or explain why they have not done so.

More information on the Code and consultation process can be seen on the NCVO website www.ncvo.org.uk/policy-and-research/ethics.

Tackling Charity Fraud

Earlier this year The Fraud Advisory Panel, supported by the Charity Commission and Crowe, published its report ‘Tackling Charity Fraud - Prevention is Better than Cure’.

The Panel has also promoted a Charity Fraud Awareness Week to encourage openness and honesty about fraud. The event was set up to bring together everyone involved in the charity and not-for-profit sectors to raise awareness and share good practice in tackling fraud and financial crime.

Details of the week, together with other fraud related information and resources can be seen on the Fraud Advisory Panel website: https://www.fraudadvisorypanel.org/

Read the ‘Tackling Charity Fraud’ report here: www.fraudadvisorypanel.org/wp-content/uploads/2018/03/Tackling-Charity-Fraud-Summary-Report-Web-March2018.pdf

Draft UK Charity Digital Code of Practice

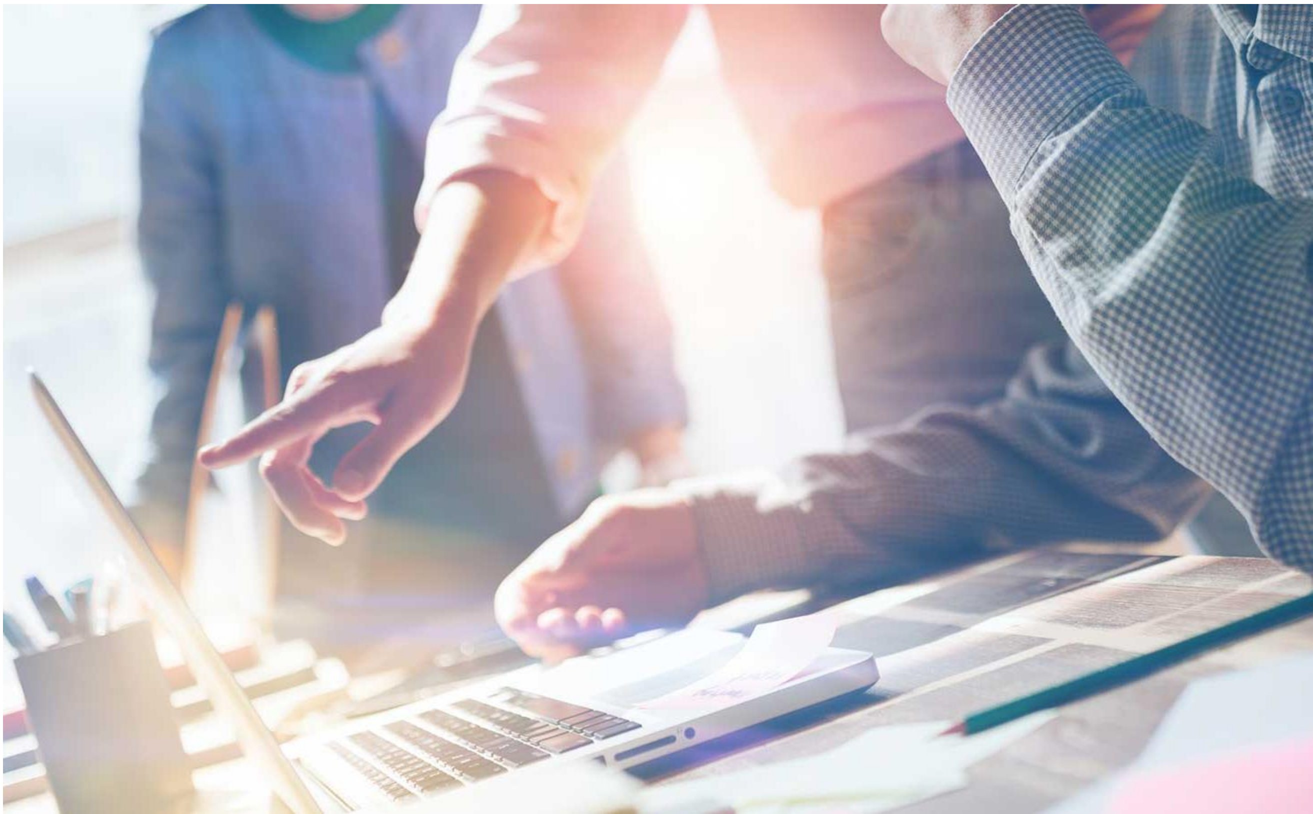
The UK Charity Digital Code of Practice – due to be launched in November 2018 – is being funded by Lloyds Banking Group and the Co-op Foundation. Adoption will be voluntary and free to access.

The Code aims to be relevant for all charities and particularly benefit those with 'limited capacity for digital engagement'. It will include best practice guidelines as well as practical tips and advice with an overall objective is to increase' digital motivation and confidence in activities including fundraising and engaging with stakeholders'.

Recognising that digital is a broad area, the Code identifies 7 principles which shape areas of focus for the Code. For each of the principles it explains why they matter, what success looks like and suggests best practice for both larger and smaller charities.

The code is currently being updated to reflect feedback from a period of consultation and a final version will be launched on 15 November 2018

View the draft code here:
https://doit.life/charity-digital-code/.



2. Compliance

Criminal Finances Act 2017

The majority of part 3 of the Criminal Finances Act 2017 (the CFA) took effect from 30 September 2017 to target corruption, money laundering and tax evasion. One of the most significant elements of the CFA is the introduction of two new corporate tax offences which extend liability for tax evasion from the individual and any facilitators to the corporation.

The new rules don't change what is criminal tax evasion, but add an additional offence which makes it significantly easier to hold a corporate entity, which will include incorporated charities, accountable for the activities of persons acting on their behalf where they facilitate tax evasion.

If an offence does occur, the charity faces the risk of criminal prosecution and unlimited fines unless it can demonstrate that it had reasonable procedures in place at the time of the offence to prevent the associated person committing the offence or it was unreasonable to have such procedures.

HMRC has published a guide which sets out six guiding principles to help corporate entities to ensure they have in place appropriate processes and procedures to limit the risks.

The six guiding principles are:

- risk assessment
- proportionality of procedures
- top level commitment
- due diligence
- communication and training
- monitoring and review.

The legislation is not specifically aimed at charities, but there is also no exemption for charities. So for example a charity representative who assists a corporate donor to obtain tax relief on a donation where tax relief would not normally be available might be facilitating tax evasion leaving the charity potentially exposed to prosecution.

Charities therefore need to understand this legislation and assess what actions are needed and by whom to manage any CFA related risk assessment and related actions.

The HMRC guidance with the six guiding principles is available on the GOV.UK website: www.gov.uk/government/publications/corporate-offences-for-failing-to-prevent-criminal-facilitation-of-tax-evasion

Continuing consultations on and changes to the Code of Fundraising Practice

The Fundraising Regulator is continuing to make changes to the Code of Fundraising Practice including in May 2018 to incorporate the GDPR and Data Protection Act 2018 requirements.

Changes to the Code are published on a separate website page which can be seen here www.fundraisingregulator.org.uk/code-of-fundraising-practice/code-changes/.

This website is also used by the Regulator to publish consultations on the Code. The latest consultation, which ran up to 16 November 2018, was seeking views on a new draft version 2 of the Code, focussing mainly on the style, presentation, clarity and accessibility of the Code.

Full details of the consultation and of how charities can respond to this can be seen on the Regulator's website: www.fundraisingregulator.org.uk/code/consultations/consultation-fundraising-code

GDPR and Brexit

Trustees will already be aware that GDPR, together with the new Data Protection Act 2018 (DPA 2018), now forms part of the data protection regime in the UK. Although the main provisions of this already apply from 25 May 2018, it will be important that charities continue to monitor the guidance as it develops.

The ICO website has a separate page which they will update monthly to highlight and link to what's new in their Guide to the GDPR. We recommend that charities should monitor this to ensure they are aware of any updates to the guidance.

The Institute of Fundraising (IoF) and the Fundraising Regulator have also released some charity guidance on the GDPR which has been reviewed and co-badged by the ICO. This provides information on various areas including understanding what the GDPR means for charities and fundraising as well as giving some tools and templates to help charities put GDPR into practice.

One issue that Trustees may need to consider going forward, in the event that no Withdrawal Agreement being in place before 29 March 2019 the UK will become a “third country” for the purposes of the GDPR. The government have recognised this issue and in September 2018 published guidance on “Data protection if there’s no Brexit deal”.

The guidance confirms that if the UK leaves the EU in March 2019 with no agreement in place regarding future arrangements for data protection, there would be no immediate change in the UK’s own data protection standards. However, the legal framework governing transfers of personal data from organisations (or subsidiaries) established in the EU to organisations established in the UK would change on exit.

The issue would be that EU data controllers and processors wanting to transfer personal data to the UK would be subject to the GDPR requirements for transferring data to third countries. Similarly this could also have implications for UK data controllers wanting to transfer data to the EU and also to certain other jurisdictions where they can currently rely on the “adequacy decisions” made by the EU Commission.

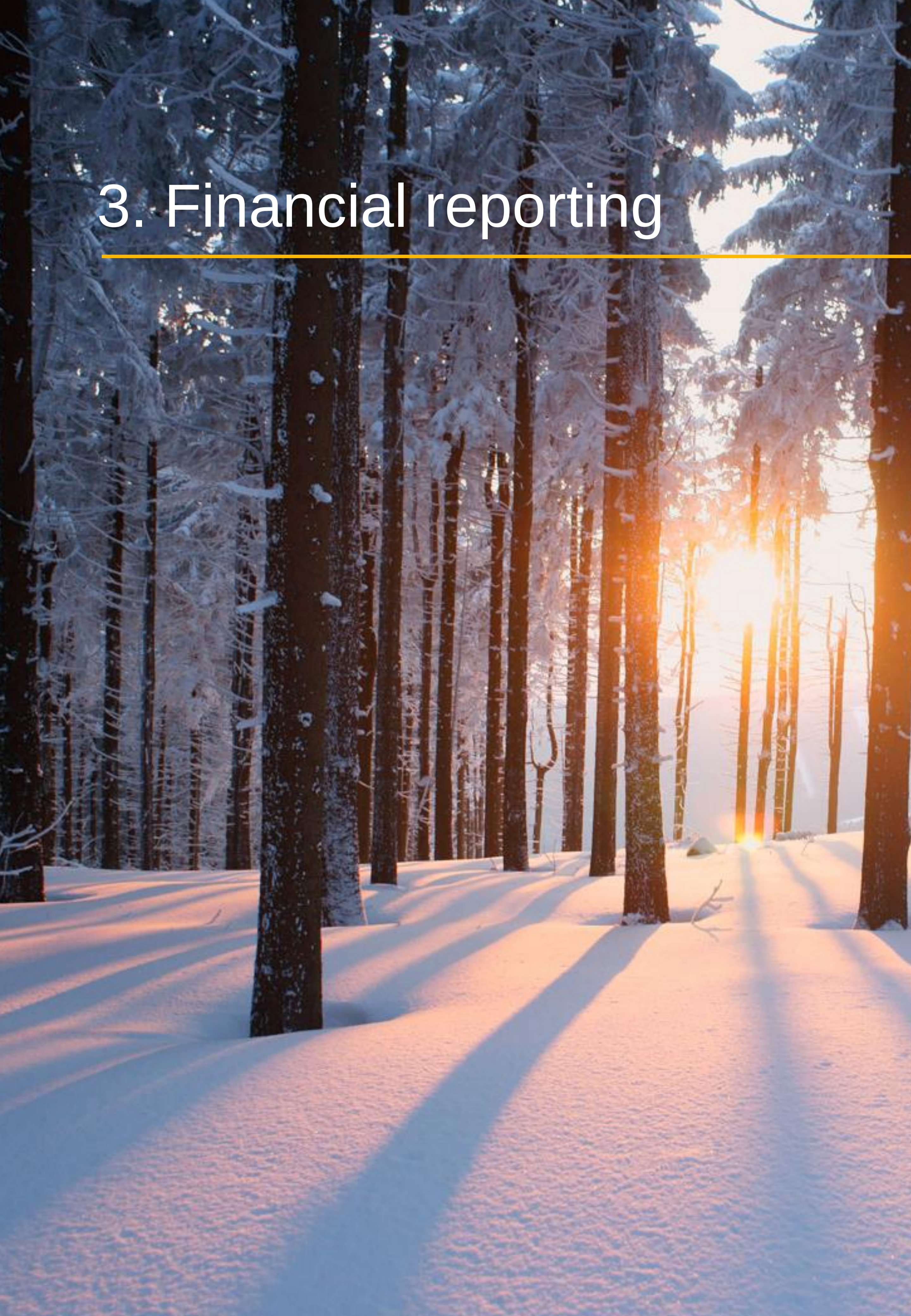
Charities which transfer personal data to or from the UK will need to keep this under review over the coming months.

ICO monthly update information: www.ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/whats-new/

The Institute of Fundraising (IoF) and the Fundraising Regulator charity guidance on GDPR: www.fundraisingregulator.org.uk/information-registration-for-fundraisers/guidance/data-protection-library-general-data-protection-regulation-gdpr/

Further information is available in the Government guidance which is on the GOV.UK website www.gov.uk/government/publications/data-protection-if-theres-no-brexit-deal/data-protection-if-theres-no-brexit-deal

3. Financial reporting



Charities SORP – Update Bulletin 2

The Charities SORP Update Bulletin 2 was published on 5 October 2018 and reflects the Amendments to FRS 102 (Incremental improvements and clarifications) published in December 2017. The amendments have been split into three categories and are presented in separate sections of the Update Bulletin.

Section 3 ‘Clarifying amendments’ sets out amendments to the Charities SORP (FRS 102) which ensure the Charities SORP (FRS 102) is consistent with existing requirements of FRS 102. These amendments are applicable to reporting periods beginning on or after 5 October 2018 and include amendments clarifying:

- the existing requirement to provide comparative information, and specifically that charities must provide comparative information for all amounts presented in the accounts and notes to the accounts (unless otherwise stated in FRS 102) including for any disclosures that are additionally required by this SORP.
- that payments by subsidiaries to their charitable parents that qualify for Gift Aid should only be accrued in the individual accounts of the parent charity when the Gift Aid payment is payable to the parent charity under a legal obligation.
- that payments that qualify for Gift Aid by subsidiaries to their charitable parents occurring after the end of the reporting period are only adjusting events for the subsidiary's reporting when the subsidiary had a present legal obligation to make the payment at the reporting date.
- that the undue cost or effort exemption for depreciating assets comprising of two or more major components which have substantially different useful economic lives is not consistent with the requirements of FRS 102.

Section 4 ‘Significant amendments’ sets out those amendments which are considered to be more significant and likely to have an impact on the accounts of charities. These amendments are applicable to reporting periods beginning on or after 1 January 2019 and include amendments:

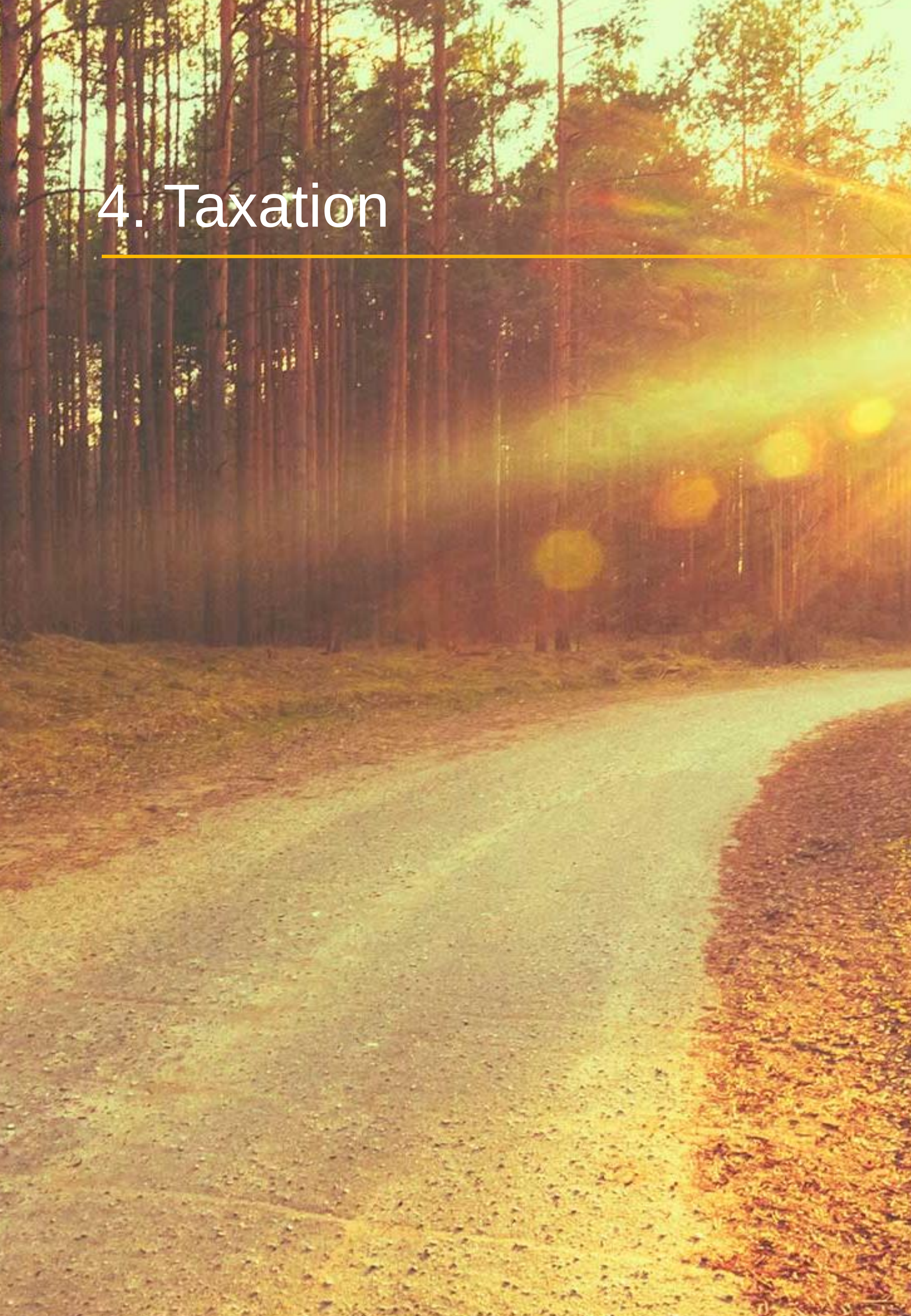
- permitting charities that rent investment property to another group entity to measure the investment property either at cost (less depreciation and impairment) or at fair value with related additional disclosure requirements
- requiring charities to prepare a reconciliation of net debt as a note to the statement of cash flows
- including the transfer of activities to a subsidiary undertaking, for example where a subsidiary is established to undertake non-charitable trading activities previously undertaken by the parent charity, as an example of a charity reconstruction that should be accounted for as a merger.

Section 5 ‘Other amendments’ sets out those amendments which are editorial in nature or considered to be less significant and likely to have an impact on the accounts of only a limited number of charities. The changes in this section include:

- clarification and small amendments to certain financial instruments disclosures, including potential additional disclosures if financial instruments are particularly significant to the charity but removing some disclosures on basic financial instruments.
- a small clarification on the basis for valuation of heritage assets.
- a similar clarification on the valuation of social investments.
- a confirmation that a subsidiary may be excluded from consolidation when its inclusion is not material for the purpose of giving a true and fair view (for this two or more subsidiaries must be considered as not material together).
- additional guidance on the accounting for intangible assets including any intangible assets acquired in the acquisition of non-charitable subsidiaries.

Full details of these changes can be seen in the Update Bulletin 2 which is published on the Charity SORP website: www.charitiessorp.org/media/646440/update-bulletin-2.pdf

4. Taxation



Making Tax Digital

Making Tax Digital (MTD) is expected to be the most fundamental change to the tax administration system for at least 20 years.

From 1 April 2019 most VAT registered businesses, including charities, with a taxable turnover above the VAT threshold (currently £85,000) will be required to keep digital VAT business records and send their VAT returns using MTD compatible software. Any businesses with a taxable turnover below the VAT threshold can also sign up for MTD for VAT voluntarily.

The only exceptions to this will be a small minority of VAT registered businesses with more complex requirements for which HMRC have recently announced a deferral until 1 October 2019. Businesses given this six month deferral include 'not for profit' organisations that are not set up as a company and VAT groups. Charitable companies, unless they form part of a VAT group, will still be required to use the MTD service from 1 April 2019.

To be ready to sign up for MTD you will need to keep your business records digitally from the start of your accounting period. If you already use software to keep your business records you should check your software provider's plans to introduce MTD-compatible software.

MTD does not require you to keep additional records for VAT, but to record data and information digitally. Your digital records will need to include, for each supply, the time of supply (tax point), the value of the supply (net excluding VAT) and the rate of VAT charged. They should also include information about your business, including business name and principle business address, as well as your VAT registration number and details of any VAT accounting schemes you use.

Crowe have published the most frequently asked MTD questions from our clients, together with responses, to help guide you through the changes:
www.crowe.com/uk/croweuk/insights/making-tax-digital-for-vat

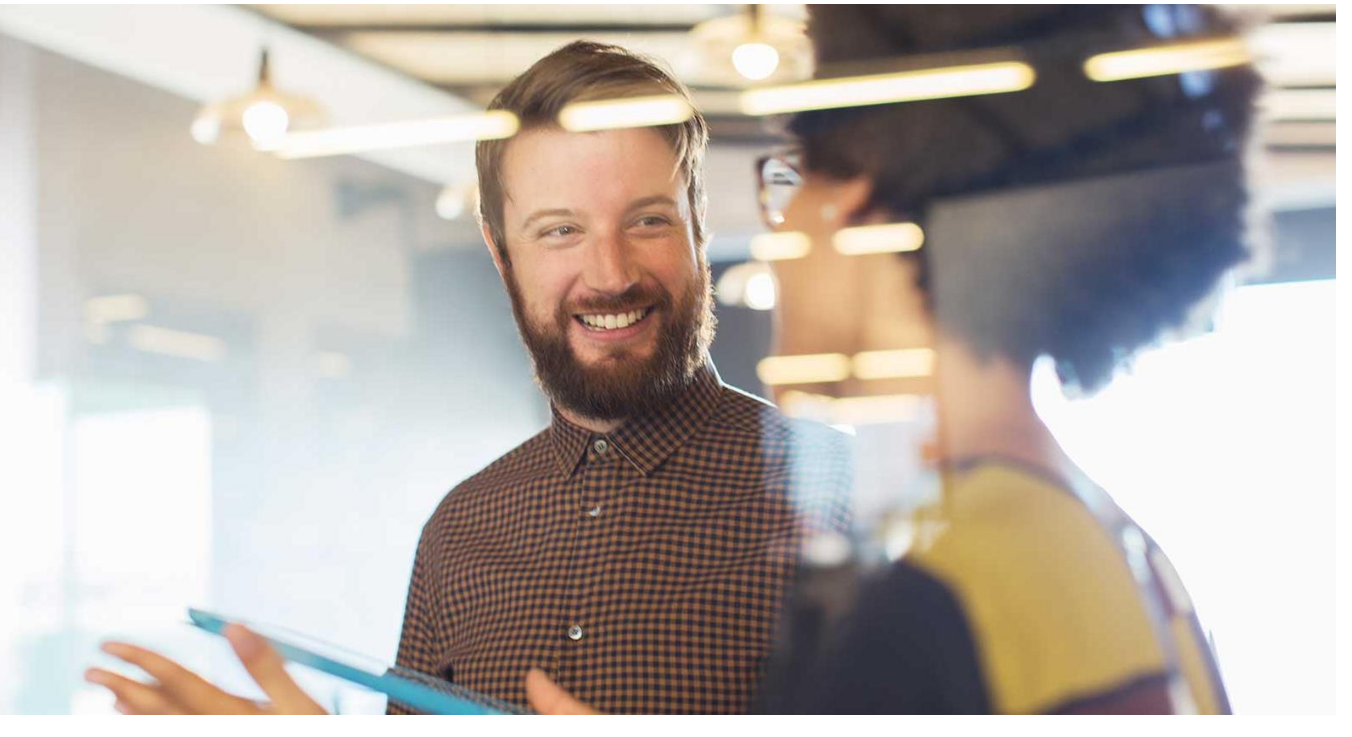
Changes to Gift Aid donor benefit limits

As promised in the 2018 Budget, the Gift Aid benefit limits are to be changed slightly with effect from April 2019. These set the maximum value of benefits that a charity can give to a donor as a thank you in return for their donation.

The draft legislation has now been published and will be included in the Finance Act 2019. The following table summarises the current position and how it will change in 2019.

Amount of donation	Maximum value of benefits to 5 April 2019	Maximum value of benefits after 5 April 2019
£0 - £100	25% of the donation	25% of the donation
£101 - £1,000	£25	£25 + 5% (excess over £100)
£1,001+	5% of the donation	£25 + 5% (excess over £100)
Overall annual limit for all donations in year	£2,500	£2,500

The effect is to rationalise and slightly increase the benefit limits for donations over £100.



VAT grouping of non-corporate entities

HMRC have announced that legislation will be introduced in the Finance Bill 2018-19 amending Section 43A of VAT Act 1994. It will allow a non-corporate entity which has a business establishment in the UK to join a VAT group with its body corporate subsidiaries if it controls all of the members of the VAT group.

VAT group treatment is a business facilitation measure to simplify VAT administration for business and HMRC. The effect of a VAT group is that its members account for tax on a single return and supplies between them are disregarded for VAT purposes.

Although this change will not change the overall VAT burden on charities, it may allow some charity groups headed by an unincorporated charity to simplify their VAT reporting and also allow supplies between the charity and its subsidiaries to be made without a requirement to account for VAT.

Further details are available on the GOV.UK website:
www.gov.uk/government/publications/vat-grouping-eligibility-criteria-changes/vat-grouping-eligibility-criteria-changes

Off-payroll working rules in the private sector (IR35)

Following a consultation over the summer, the 2018 autumn budget announced the reform of the rules for off-payroll working in the private sector (IR35). The changes are likely to mirror the reform in the public sector which was introduced from April 2017.

Under the proposals, the responsibility for assessing the individual's employment status will move from individuals to the organisation, agency or other third party engaging the worker.

The good news is that, to give people and businesses time to prepare, this change will not be introduced until April 2020 and also that small businesses will be exempt from applying the new rules. The reform will also not be retrospective and HMRC will focus its efforts on ensuring businesses comply with the reform rather than focusing on historic cases.

So what will this likely to mean for medium and large charities?

- From 6 April 2020, medium and large charities will need to decide whether the rules apply to any engagement with individuals who work through their own company.
- Where it is determined that the rules do apply, the entity paying the worker's company will need to deduct income tax and employee NICs and pay employer NICs.
- HMRC has developed, and is continuing to work with stakeholders to improve, the Check Employment Status for Tax (CEST) service to help organisations determine whether the off-payroll working rules apply.
- HMRC will provide extensive support and guidance to help organisations implement the off-payroll working rules to ensure they apply them correctly, and will ensure the guidance is appropriate to the needs of the private sector.

Although the changes are not immediate, medium and large charities will need to consider whether this will impact on them and, if so, what will be the financial and other implications. They will also need to put in place appropriate actions to ensure that the new rules can be applied in 2020.

The Treasury announcement on this can be seen on the GOV.UK website: www.gov.uk/government/publications/off-payroll-working-in-the-private-sector-ir35-budget-2018-brief

Start the conversation

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About us

Crowe UK is a national audit, tax, advisory and risk firm with global reach and local expertise. We are an independent member of Crowe Global, the eighth largest accounting network in the world. With exceptional knowledge of the business environment, our professionals share one commitment, to deliver excellence.

We are trusted by thousands of clients for our specialist advice, our ability to make smart decisions and our readiness to provide lasting value. Our broad technical expertise and deep market knowledge means we are well placed to offer insight and pragmatic advice to all the organisations and individuals with whom we work. Close working relationships are at the heart of our effective service delivery.

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