Not for Profit eNews

July 2021

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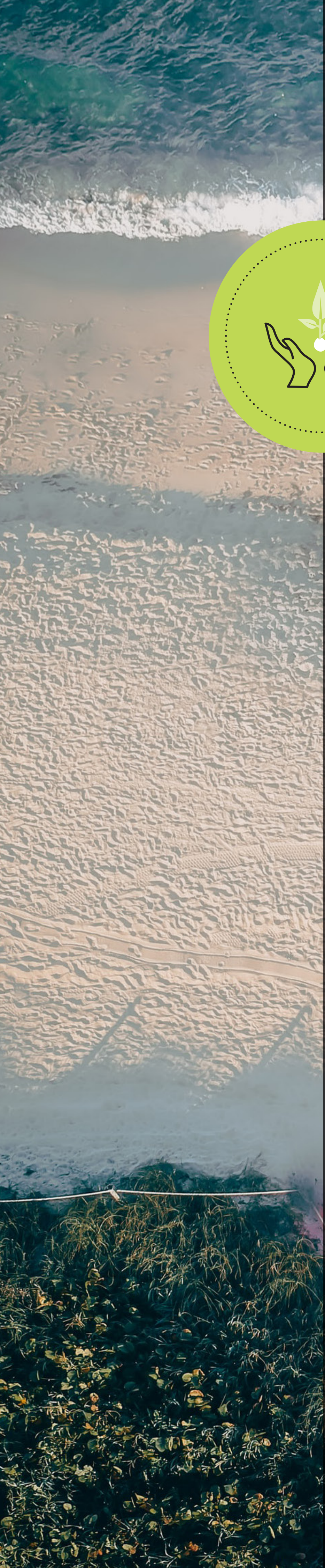

July 2021 eNews

Welcome to our July edition of eNews.

In this month's edition, we will review the impact of The Charities Bill, announced as part of the Queens Speech 11th May 2021. The bill contains some key amendments to charity law, and we will take an overview of the practical difference this will make to charity governance.

The Fundraising Regulator has stated that they are planning to build a self-reporting function for fundraising incidents. This comes as a finding resulting from their Annual Complaints Report. We will look at the potential benefits of this service for organisations involved in fundraising.

The Government has opened a 6-week consultation on "Restoring trust in audit and corporate governance", aiming to improve audit and corporate governance systems. The document raises the question of whether larger charities should be regarded as Public Interest Entities, we will take a brief look at the implications this might have for the sector.

The Charity Commission has engaged in an iterative process of improvement since launching the new version of the online Register of Charities in September 2020. This edition of the Not-for-Profit eNews will conclude with a breakdown of the enhancements made to the Register of Charities and benefits it holds for entities in our sector.

Finally we include some other considerations for the charity sector including the importance of insurance at fundraising events, HMRC's accelerated process for changes to partial exemption methods as well as updates on gift aid.

Best Regards,

MHA Not for Profit team

The Charities Bill

In May, the Queen's Speech saw the announcement of the Charities Bill, which is the result of several years of coordinated effort between the Government, the Law Commission, the Charity Commission, and a number of charitable organisations. The Bill aims to simplify the legal framework for charities, helping them dedicate more time and resources to their important work.

What are the key changes?

The **main changes** proposed by the Charity Bill are as follows:

1 Property disposals

Currently for most land disposals, charity law requires the engagement of a RICS qualified surveyor to write a detailed report on the property. The same standards are required of the sale of a small slice of land as for a complex development, which has been previously criticised as being disproportionate and burdens smaller charities with unnecessary costs.

By increasing the pool of advisory professionals and ensuring the report content will be matched to the nature of the transaction, the Bill seeks to break up this monolithic approach with one that is tailored to the scale of the transaction.

2 Ex-gratia payments

Trustees currently require the authorisation of the Charity Commission for all ex-gratia payments. However, the Bill will introduce a power that will allow Trustees to make small ex-gratia payments without prior consent from the Charity Commission.

The power will also allow Trustees to delegate ex-gratia decision making to a member of staff, though this carries with it further potential reporting obligations in such a case.

This regime allows further flexibility for Charities to respond to situations without incurring the additional expenses and delays associated with direct applications to the Charity Commission.

3 Governing documents

The process for charities and Trustees to amend their governing documents or Royal Charters will be simplified and streamlined, an area that has in the past been highly restrictive and particularly difficult for unincorporated charities.

The Charity Commission will now use a three-part test to decide upon any amendments:

- The original purposes of the charity
- The desirability to keep the proposed purposes close to the originals
- The need for the charity to have purposes which are suitable and effective.

Through these changes, Charities should gain greater flexibility when considering amendments to their governing documents, but without losing controls and assurances from the Charity Commission.

4 Permanent endowment

The Charities Bill will introduce a power which will allow Charities to spend up to 25% of their permanent endowment without prior approval from the Charity Commission, providing the Trustees can give assurance that they will recoup those funds over a period of 20 years.

In the case of permanently endowed investment portfolios, the Bill also introduces a power to release the permanent endowment restrictions on making investments with an uncertain return.

This will allow charities greater ability to leverage their assets for the furtherance of their charitable objectives and remove the time and resource costs associated with applications for Commission approval.

5 Supply of goods to a charity by a Trustee

Currently, Trustees can only be paid for the supply of services to a charity. However, the Bill seeks to allow trustees to be paid for goods provided to a charity, in certain circumstances. This covers a wide range of goods, and will hopefully allow greater opportunity for charities to access resources from Trustees when needed, without requiring the permission of the Charity Commission.

6 Charity appeals

Under the regulations proposed by the Bill, rules regarding failed fundraising appeals will be simplified and made more proportionate, rather than a one-size fits all policy. If a charity appeal does not raise sufficient money to be successful, the charity will be able to spend donations below £120 on similar charitable activities, without needing to contact the individual donors for permission to do so. This will greatly reduce the unnecessary administration costs associated with a failed charity fundraising appeal.

Conclusion

The Bill has had its first and second readings in the House of Lords, so no immediate changes have been made, but over the coming months the Bill will continue its journey through Parliament and subsequently take legal effect. As it does so, the MHA Not-for-Profit team will investigate further changes proposed.

Fundraising Regulator Self-Reporting

The Fundraising Regulator has announced plans to develop a self-reporting tool for fundraising incidents. This move comes after receiving responses to its Annual Complaints Report that showed a demand for a tool that would allow charities and other organisations involved in fundraising to report incidents that breach the Code of Fundraising Practice themselves.

What are the benefits?

The Fundraising Regulator hopes that the introduction of a self-reporting tool will streamline the process of reporting fundraising incidents. As it stands, there is no formal facility for organisations to report breaches of the Code of Fundraising Practice.

The "Self-Reporting" pathway will allow the Regulator to provide advice and guidance to users in a timely manner, building a closer relationship between organisations and the Fundraising Regulator.

The pathway will also hopefully increase reporting of said incidents, creating a larger pool of information, allowing the Fundraising Regulator to improve its understanding and ability to respond to incident and risks in the sector.

Concerns

In its announcement of these plans, the Regulator reassured users that it understands the present reporting requirements placed on charities, whether it be to the Charity Commission, ICO, Police or other bodies.

It has asserted that the self-reporting function does not seek to increase the burden on charities or duplicate reporting that already occurs, but rather to gain information in a co-ordinated fashion, and only where the regulators involvement would add value.

Next steps

The Fundraising Regulator plans to design criteria and guidance for self-reporting and build an expectation of what situations would self-reporting be appropriate for over the course of the next year. Further updates will be given as there is currently no timetable for this development.

Restoring trust in audit and corporate governance

Following the findings of the Kingman Review, the CMA Study, and the Brydon Report, the Government has opened a consultation aiming at restoring trust in audit and corporate governance. This consultation is wide-ranging and considers a great many potential changes to regulation concerning these areas, some of which may influence charities and non-profit organisations.

How does this effect the Not-for-Profit Sector?

Whilst the majority of issues discussed in the paper impact all sectors through audit, there is one particular section that this edition of eNews will bring attention to. Specifically, a consideration of whether large third sector entities (including further education institutions, charities, housing associations and more) could be considered Public Interest Entities (or PIEs), given the often-public nature of charitable purposes.

Public interest Entities have greater reporting requirements than other entities, and up until now their definition has been limited to specific types of entities that the public has a vested interest in, for instance insurance providers. The consultation shows that the Government is open to the possibility of larger charities meeting the definition of Public Interest Entities, with the caveat that they do not want to create a regulatory gap for the larger entities, and they also understand that there is already sector-specific regulation via the Charity Commission and related bodies. A further consideration is that an appropriate measure to avoid these concerns might be a different threshold to be considered a PIE for third sector organisations given their relative size. A potential alternative threshold was placed at £100m.

Conclusion

The consultation is due to close on the 8th of July, and so no changes have yet been made. But we will be able to further investigate the impact of this movement depending on the results of the consultation.

Charity Commission – Improving the Register of Charities

Many of us reading our regular monthly Charity eNews letter will be familiar with the Charity Commission Register of Charities, and probably use it regularly.

The Register of Charities plays a vital role in helping people make informed decisions about which charities to support. You can use it to check the 170,000 charities which are registered, download data for research, find out whether donations are being spent in the way they should, and search for charities that might be able to help you.

The Commission updated the register to a new version back in September 2020 to give more useful information (such as employee benefits and income from Government sources).

What has been improved:

- Quick search to allow an easier search without having to return to the landing page
- Downloading of data (particularly for batch downloads) is easier to allow users to perform their own analysis of the Register's data
- Where a charity has sought a filing extension, messaging to clearly identify where it has been agreed
- Detailed breakdown of financial history and prior 5 year's assets and liabilities in interactive charts
- Linking charities with fund transfers.

The Charity Commission's new version of the Charity Register can be viewed and further feedback provided.

Why you need insurance for your next charity fundraising event

After a year without events, we can all appreciate just how important and effective they are for raising valuable funds for your charity. Events are particularly effective ways of raising funds because they offer the donors a little something in return, some fun or glamour for their donation.

Perform a risk assessment

It's important that charities perform a risk assessment when planning an event, so they can understand and minimise any risks before they happen.

An insurance broker will be able to give the charity more specific advice depending on the event it is planning on executing. General guidance from the **Royal Society for the Prevention of Accidents (RoSPA)** as a starting point, includes:

1. Identify the hazards
2. Decide who could be harmed and how. Are there any children or vulnerable adults taking part?
3. Evaluate the risks and decide on control measures
4. Record your findings and implement them
5. Review your assessment and update if necessary

Find a good insurance broker

It is highly recommend that the charity speaks to an insurance broker to see what they have to say regarding how risky they think your event could be. They may be able to offer advice on how to lower any risks, as well as help you find the best insurance cover.

A good broker will also be able to help show you how to set up an incident management procedure in advance and make sure everyone knows how to implement it, as well as deciding whether medical care on-site is warranted.

Build insurance costs into the overall event plan

We know the cost of an event will be a big part of your planning process, but having specific insurance to cover your charity and those involved should something go wrong will be vital.

Some further guidance

If you're looking for more information and guidance on event fundraising, we recommend visiting the **Chartered Institute of Fundraising (CIOF)** where there are plenty of useful tips and links there to help you keep your event as safe as possible

New accelerated HMRC process for changes to partial exemption methods

HMRC have published Revenue and Customs Brief 4 (2021): partially exempt VAT registered businesses (many of which include charities) affected by coronavirus (COVID-19).

This brief gives information about an accelerated process for VAT registered businesses to request temporary alterations to their partial exemption methods (including combined methods) to reflect changes to their business practices because of the coronavirus pandemic.

Organisations who make a mixture of taxable and exempt supplies can only recover input tax to the extent that it is used in making taxable supplies. This is the case of many charities whose income can be a mixture of donations, service level agreement grants and trading income. Residual input tax (VAT incurred on purchases used to make both taxable and exempt supplies) must be apportioned using a fair and reasonable method to calculate the percentage which is recoverable.

Many charities have seen a change in their trading activity due to the pandemic, often reducing whilst being replaced by emergency funding income. This change in activity may mean the partial exemption method used before the pandemic no longer produces a fair level of input tax recovery because of the impact if COVID-19 on activities.

Accelerated process

HMRC will be using an accelerated process to make sure coronavirus-related changes to partial exemption methods are considered, and where appropriate, approved swiftly.

Where HMRC are satisfied that the aim of the proposal is to address coronavirus issues only, in order to facilitate a quick decision, HMRC advises it will restrict its enquiries to how that proposal addresses those issues.

Any new methods approved will have a time limit stating that, subject to any other changes, the method will revert to the previous calculation, or for previous standard method users will end, after this point. The default time limit will be one tax year. If at the end of the year it is apparent that this will not be sufficient, businesses must submit a further request to continue the changes into a second tax year.

HMRC will only allow changes to partial exemption methods to be applied retrospectively (beyond the tax year in which the proposal and supporting declaration are received) in exceptional circumstances. HMRC have confirmed coronavirus qualifies as an exceptional circumstance and meets the criteria for retrospective approval.

Who does this impact?

Any partly exempt charity that has seen a change in activity because of the impact of COVID-19 which may impact whether the current partial exemption method is fair and reasonable.

This will be of particular benefit to charities using the standard method who find that their actual deductible input tax differs significantly from that calculated based on the use of input tax in making taxable supplies and the charity can't apply a standard method override i.e. where this difference does exceeds £50,000, or 50% of the residual input tax and £25,000.

Action required

Charities need to consider whether their current partial exemption method continues to produce a fair and reasonable result in light of the impact of coronavirus and whether it would be advantageous to request a temporary change to their partial exemption method to ensure a fair and reasonable level of VAT recovery.

How can we help?

MHA can assist by:

- Providing advice and support on partial exemption issues and the new accelerated PESM process
- Reviewing your current partial exemption position and advising whether an alternative calculation method would be advantageous
- Designing and evaluating alternative partial exemption methods to optimise the level of input tax recovery
- Applying to HMRC to get approval for a new PESM.

The full HMRC brief is available **here.**

For further advice, please contact your local MHA office

Bridging the Gift Aid Gap with JustGiving and Streeva

This month, JustGiving and Streeva have announced a co-operative effort to maximise Gift Aid claims through the integration of their systems.

Background

Currently over half a billion pounds of gift aid goes unclaimed each year, as donations are unrecorded, or just not made with knowledge of Gift-Aid as an opportunity. In 2016 it was estimated that £0.56bn went unclaimed, which could have been benefitting both charities and donors, and this is down to a lack of knowledge, and a lack of streamlined solutions.

How to tackle the Gap

JustGiving, the largest online platform for giving is partnering with Streeva, who operate the SwiftAid solution that assists in Gift Aid claims for online payments. By Integrating their platforms, donors and charities will have more ability than ever before to claim, and more visibility over those claims.

Automation of Gift Aid makes the process of claiming hands free. SwiftAid just requires donors to register once to enable gift aid to be claimed on all future donations, building a profile and database of charitable donations that reduces the burden on donors and charities.

This will hopefully decrease the portion of Gift Aid that goes unclaimed on JustGiving, but also increase awareness of the benefits Gift Aid holds for both donors and recipients, making it easier to donate than ever.

Future plans

In their announcement of partnership, JustGiving and Streeva also consider the potential of their integration for the future. Their platform could extend towards Open Banking, integration with other giving methods and even a "deeper" relationship with the HMRC, that could see the creation of individual profiles that would further streamline the process of reporting and claiming Gift Aid.

Further HMRC research - Gift Aid

In 2016 HMRC conducted some **research** into Gift Aid. They calculated the Gift Aid Tax Gap to be £179m. The Gift Aid Tax Gap being the amount of Gift Aid claimed in error.

We would always recommend that charities take the utmost care to follow the Gift Aid rules, however, as noted in the previous article the value of eligible unclaimed Gift Aid is estimated to be £564m. This means that Gift Aid was not being claimed where it was eligible on 25% of total donations.

Whilst this research is old, how would this compare to the rate of Gift Aid claimed on the donations made to your charity?

Are there actions your charity could take to encourage more donors to make Gift Aid declarations and enable you to recover more Gift Aid?

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Recent survey

Earlier this year HMRC's User Research team undertook a study with a user panel around Gift Aid. The project lead, shared their finding at a recent **"CTG Expert Insight session".** The findings included:

- once a person makes a decision to "tick the box" to allow a charity to claim Gift Aid on their donation, they will generally "tick the box" every time thereafter
- most people are comfortable about providing personal information to charities
- many people can't explain how Gift Aid works, but they understand it benefits the charity
- where a charity displays the Gift Aid logo it helps legitimise the charity in the eyes of the donor, promoting trust
- most donations are made online
- social media can increase donations e.g. when one person posts that they have donated to a cause it encourages their friends to do the same.

Actions to consider

Whilst we don't know if this survey reflects the experience of your charity it does raise some interesting points. Could your Gift Aid recovery be increased? Would it be worth investing time in actions to boost Gift Aid recovery? If so, it might be worth considering the following:

- Run a campaign to highlight Gift Aid, explain the benefit, how it works and how a donor can make a declaration
- Ensure your Gift Aid documentation is up to date and meets all the relevant conditions
- Update your website to provide more information on Gift Aid, consider using the Gift Aid logo on your website
- Review how easy it is for an individual to make a donation to your charity. What are the barriers to an individual making a donation and then completing a Gift Aid donation? Would it be beneficial to set up a PayPal account for giving (or something similar)?

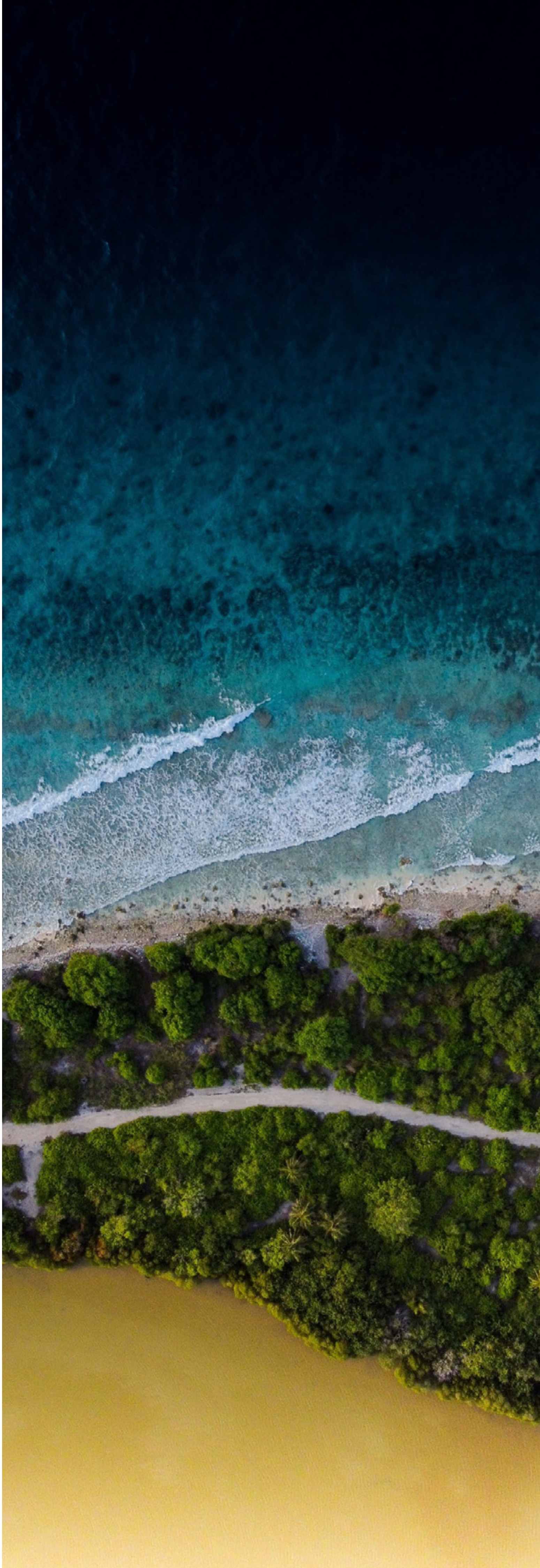
Useful links

Set out below are some useful links to further information on Gift Aid:

HMRC high level guidance:
www.gov.uk/claim-gift-aid

HMRC detailed guidance:
www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-3-gift-aid

If you need any further information please don't hesitate to contact your local MHA office



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