

The Common Reporting Standard (CRS): is your foundation affected?

HMRC have recently published new guidance on how UK charities may be affected by Automatic Exchange of Information agreements between the UK and other countries aimed at combatting offshore tax-evasion.

Grant-making charitable trusts that rely on investments to fund their activity should pay particular attention, as trustees could well have due diligence and reporting obligations under the regime which has been live since 1 January 2016.

Under the rules, charities whose main income is from investing in financial assets - and where those assets are managed by a financial institution - will be treated as financial institutions themselves. It means that like banks, insurers, wealth and investment managers and private trusts, they will have to carry out due diligence checks on their 'account holders' – for charities anyone with a debt or equity interest in the charity. Charitable form makes a difference, but for unincorporated charitable trusts all grant-holders will be deemed to have an equity interest. We predict a substantial proportion of charitable trusts and grant-holders will be affected.

Charities that are financial institutions will have to find out whether 'account holders' are tax resident in the UK or overseas. Where they are resident overseas trustees may be required to report the information to HMRC to share with the tax authority where the account holder is resident.

ACF strongly supports efforts to reduce the risk of charitable foundations being used for tax evasion purposes. However, since learning about the regulation, we have been voicing to HMRC the potentially significant bureaucratic burden it places on the charities and grant-holders affected. For that reason we have been working closely and intensively with HMRC officials alongside other umbrella bodies and groups.

HMRC's initial consultation in 2014 didn't mention that charities were included in the regime which is based on the equivalent US system from which charities are exempted. In fact, it was only at the beginning of this year that HMRC contacted charity representatives, and since then we have been working through the implications, always raising the

practitioner perspective, in ways which have helped shape the guidance. Along the way we have:

- clarified the different way incorporated charities and trusts are affected;
- argued strongly and successfully that UK charity registration ought to be evidence of tax residency;
- convinced HMRC that for grants to individuals a shorter 'tick box' form will suffice for smaller amounts along the lines of gift aid declaration form;
- continued to question the unintended consequences of the regime, for example in relation to human rights and data protection.

On the latter point, ACF has taken the lead in highlighting how the exchange of information itself could heighten risks that activists already face in countries where civil society or civil liberties are under threat, for example those working across communities in countries with internal conflicts, or individuals and organisations promoting basic human rights for discriminated against groups. As well as raising concerns, we have taken legal advice, worked with the Ariadne group of human rights funders, and make direct calls for a clear process to enable funders to raise concerns directly with HMRC. We expect a response soon.

Application of the CRS is an example of how the operating environment for foundations can inadvertently be impaired by new regulations and how members' collective voice, channelled through ACF, can make a difference. We never work in isolation, and we've worked closely with Charity Finance Group, Charity Tax Group, Charity Law Association and the Association of Charitable Organisations. We've written to Ministers, worked with lawyers, and sought the support of Lord Hodgson who placed parliamentary questions on our behalf that revealed the little forethought government had put into understanding the implications for charities. We're also in close contact with European colleagues through the network of members' associations, Dafne, and the European Foundation Centre. The UK it seems is so far alone in producing guidance for charities.

We'll continue to keep the pressure up, including calling for an eventual exemption for charities as the risk of them being used for tax evasion, by HMRC's own admission, is low. For now, please be aware of how the regime affects you and let us know your experience.

Richard Jenkins
Head of Policy

[HMRC guidance summary](#)

[HMRC International Exchange of Information manual](#)