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31 August 2010

Dear Mr Hurd

The Institute of Chartered Accountants of Scotland's (ICAS's) Charities Committee would like to take the opportunity to comment on the remit of the Cabinet Office's Big Society de-regulation taskforce.

We welcome the decision to include areas of the law impacting on charities which fall within the scope of other UK Government Departments, specifically the decision to work with the Department for Business, Innovation and Skills and to engage with the Home Office, on the criminal records and vetting and barring regime, and with HM Treasury and HM Revenue and Customs (HMRC), on the Gift Aid review. ICAS recently undertook a review of the difficulties faced by not for profit organisations when dealing with their value added tax affairs. A report on our findings was submitted to HM Treasury and a meeting between ICAS and HMRC is planned for September to explore any opportunities to ease these difficulties. We mention our report as the taskforce may have an interest in considering the value added tax affairs of voluntary organisations as part of its review.

The wide ranging nature of the remit means that it covers matters relating to all organisations in the UK entitled to charity tax reliefs and to all UK charitable companies. We would therefore urge the taskforce to consider the impact of any proposed changes on the wider UK charity sector, not just the impact on charities in England and Wales in isolation. There are recent examples of changes to the law which have created added complexity for charities and their advisors. Also, the number of regulators involved with charities adds considerably to the bureaucracy they encounter. We highlight several of these issues below.

The definition of charity

The implementation of the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act 2006 created three expressions of ‘charity’ and ‘charitable purposes’ across the UK, by adding to the definition of what constitutes a charity for tax purposes. Once the new Charity Commission for Northern Ireland begins registering charities there will be a fourth expression.

The Calman Commission received representations on this issue and concluded that “...the only acceptable solution is that there should be a single definition [of ‘charity’ and ‘charitable purposes’] for all purposes, applicable throughout the United Kingdom.....”

We support the Calman Commission’s recommendation that there should be a single definition in the UK. Having a single definition would provide clarity for the charity sector, reduce complexity for charities and for regulators and support consistent access to charity tax reliefs, therefore we would welcome the inclusion of this topic within the remit of the taskforce.

External scrutiny arrangements for charitable companies

Amendments to the Companies Act 2006 aimed at removing small and medium-sized charitable companies from external scrutiny under company law and placing these solely under charity law, gave insufficient regard to how Scottish charities would be affected, and have created scope for interpretation as to which legislation applies to the audit of some charitable companies. This has led to the need for detailed guidance from the Auditing Practices Board. We support a consistent approach to the audit regime for companies across the UK which requires all companies receiving an audit to be audited under company law. As a separate but related point, we recommend that any changes to be made to company law as part of the taskforce’s review are made with regard to the requirements of charity law under each UK jurisdiction, to avoid unintended consequences.

Filing requirements

Many charities have to file an annual report and accounts each year with more than one regulator. For example, a charitable company based in England which also operates from premises in Scotland could have to file its annual report and accounts with the Charity Commission, the Office of the Scottish Charity Regulator (OSCR), Companies House and HMRC. However, these regulators require a charity’s annual report and accounts to be delivered in different formats. We believe that there is further scope for regulators to co-ordinate their information requirements to reduce the time spent by charities complying with these and we would welcome the inclusion of this issue within the remit of the taskforce. In addition to regulatory requirements for information, funders also request the same or similar information from charities in different forms and it may be helpful if the taskforce could look at working with funders to develop guidelines on information requests, to aid consistency and reduce duplication of effort by charities.

The Charitable Incorporated Organisation

Charities come in many forms, from trusts, to unincorporated associations, companies and others. The company form is popular particularly as it offers limited liability to trustees. However, the Charitable Incorporated Organisation (CIO), a vehicle for charities offering limited liability outside of company law, has been under development for a number of years. At a time when charities are under extreme financial pressure, many are looking at how to work more efficiently. Increased acquisition and merger activity in the charity sector is expected as a result of efficiency reviews. For charities undertaking major restructuring, it would be helpful for them to have clarity about if and when the CIO form will be available. As a form of charity designed to reduce the burdens of dual charity and company regulation, we believe that the future for the CIO should fall within the remit of the taskforce.

Unincorporated associations

In November 2009, the Scottish Law Commission published a report which clarifies the law on unincorporated associations. The report sets out the difficulties encountered by unincorporated associations by the absence of legal personality and recommends a simple regime, with the minimum of administrative burdens, to ensure that associations and clubs are recognised as legal entities.

This report may be of interest to the taskforce in two respects. First of all, the law on unincorporated associations in Scotland is similar to the position under English law and therefore the proposals may provide an alternative, or complementary option to the CIO. Secondly, the law on unincorporated associations is a reserved matter and reform in Scotland would require the support and commitment of a UK Government Department.

We trust that these comments will be helpful to the taskforce. Please do not hesitate to contact me if there is anything in this letter that you wish to discuss further.

Yours sincerely



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