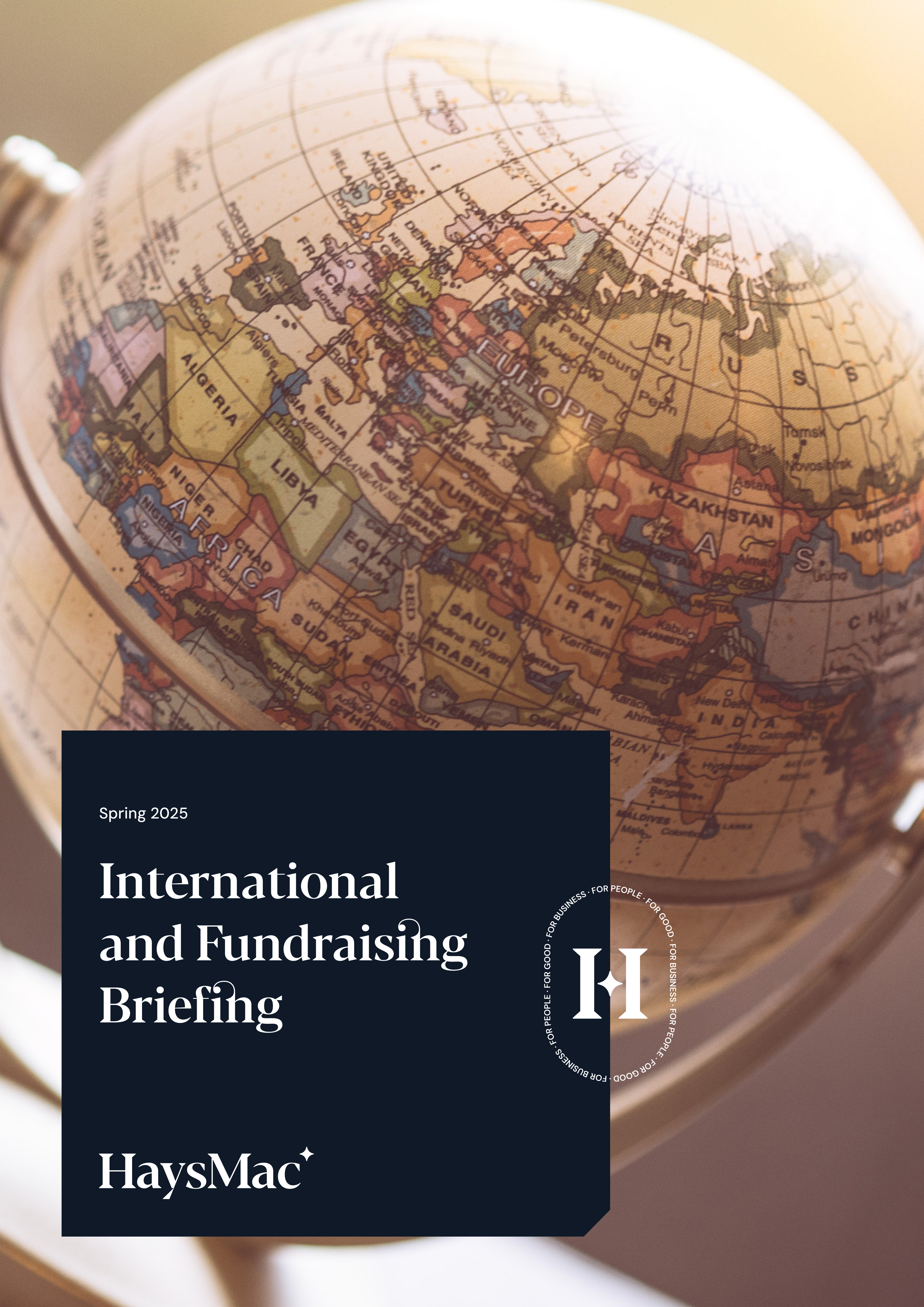

Spring 2025

International and Fundraising Briefing

FOR PEOPLE · FOR BUSINESS · FOR GOOD

HaysMac

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Welcome

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Welcome from the editor

Welcome to the latest edition of our International and Fundraising Briefing, where we provide updates and insights on accounting, tax, reporting and governance for international and fundraising charities.

We often talk about uncertainty in the sector, and with the conflicts in Ukraine and Israel/Gaza continuing, together with political change in US, cuts to UK foreign aid budgets and pressures from the cost of living crisis continuing, we can certainly point at a sector which faces uncertainty for the foreseeable future. As ever this presents numerous challenges, though for some parts of the sector those challenges may also bring opportunities.

In this issue we begin with an article from myself on the potential impacts from the Stop Work Order issued by the US Government over the activities of USAID. A fast moving area where being prepared for all eventualities will be vital.

We follow with a timely article on avoiding the common pitfalls of Gift Aid. In this article Louise Veragoo, Director goes through the latest guidance and opportunities around claiming Gift Aid.

Nick Bustin, Director and Dinesh Pancholi, Senior Manager from our Employment tax team run through travel expenses when working overseas and where you need to be careful to avoid falling into tax traps.

Andrew Roberts, Senior Manager, has pulled together a response to the recent Charity Commission inquiry into the Quba Trust, outlining some key areas where Trustees need to be pro-active with how their charities are governed together with some practical steps you can take to protect your charity from fraud and/or misuse of charitable funds.

Lastly, we turn to Adam Halsey, Partner who gives some top tips for charities working with corporate bodies, including how to make and document key decisions together with key steps to monitor your relationship with corporate bodies on an ongoing basis.

I hope you enjoy reading through this edition and find these articles of some interest. Do feel free to let the articles' authors, me or your regular contact know if you have any questions or queries arising. We would be happy to help and look forward to sending you the next edition of our briefing later in the year.

Impact of the Trump administration Stop Work Order

A range of international charities receiving US Federal Funding have been impacted by the Stop Work Order recently issued by the Trump administration. Whilst some charities will have received the Stop Work Order from their Officer or Prime recipient, and some may not have, it will potentially apply to **all recipients of US Federal Funding.**

The order mandates an immediate cessation of all projects and activities funded by US federal grants, causing significant disruptions to ongoing humanitarian and development programs. Whilst the Stop Work Order acts as a 90 day pause on disbursements, it has sparked concerns about the long-term implications for global aid efforts and the stability of international partnerships.

This is an emerging situation and whilst we hope there will be greater clarity soon, it is important that charities do not delay in their response. I recommend the following actions to mitigate disruption and safeguard your charity:

Assess the exposure

The starting point, if you have not done so already, is to assess your charity's exposure to US Federal Funding. As part of this, you should identify all ongoing projects and activities which are affected. Building a clear picture of the financial exposure will help you to determine future actions. You should consider both your contractual exposure, as well as any key non-contractual arrangements (e.g. partners working in challenging situations who may be dependent on funding coming via your charity).

Having assessed the financial exposure, it is important to review and adjust your charity's budgets quickly. You should identify areas where costs can be reduced or deferred, or alternative revenue sources where they areincome is available.

I would also recommend reviewing the relevant agreements and understanding your own contractual rights, and any mitigating actions you may be able to take. Similarly, it is important you understand any ongoing contractual obligations you still have.

Timely communication

Given the uncertainty, effective communication is critical. This should include a range of stakeholders including staff, partners and beneficiaries. Similarly, timely communication with the relevant Officers or Prime Recipients is also appropriate essential.

Where your projects are reliant on multiple donors, ensure that you communicate with other donors and keep them informed of the situation. This is especially important where you foresee disruption to ongoing projects.

Consider your contingency plans

At this stage, the longer-term impact on US Federal Funding is unknown. I would strongly recommend scenario planning. What would your response be to an extension of the Stop Work Order? In the worst-case scenario, how would your organisation react to full cancellation of your US Federal Funding?

Now would be an appropriateis the time to reassess your reserves policy and ensure that it remains appropriate. It would also be sensible to consider other linked policies such as your treasury management policy and the impact on your cash flows. For those organisations with significant reliance on US Federal Funding, accurate and timely cash flow modelling will be absolutely critical.

Given the evolving landscape, keeping these plans under constant review is a must. Whilst the above assumes the worst, you should also assess your own readiness for resumption of programmes. What would you need to do to resume programmes at short notice? If you would be unable to resume programmes (e.g. if you determine you need to reduce staff numbers immediately) consider how this needs to be documented and communicated to stakeholders.

Document and report the impacts

Keeping clear documentation on the impact of the Stop Work Order on your charity is advisable. This documentation will support you in reporting to stakeholders, seeking alternative funding, and engaging in any wider advocacy plans.

Focus your plans

Given the disruption, focus on those costs and activities which are most critical to your mission. If you can delay activities, or activities that are not core to your work, strongly consider doing so. Depending on your financial position, you may need to pause, scale back or even cease some activities to ensure your charity remains viable.

Keep up to date

Ensure you stay informed about regulatory developments and changes in US Federal Funding policies. Monitor announcements from the US government, USAID, and other relevant agencies to anticipate any further actions or clarifications regarding the Stop Work Order. Being proactive and well-informed will enable your charity to respond swiftly to any new developments and adjust your strategies accordingly.

Conclusion

The Stop Work Order presents significant challenges for UK charities reliant on US Federal Funding. A proactive approach is required to navigate the uncertainty. In particular, assessing the financial risk, putting in place mitigating actions and ensuring timely communication with stakeholders is critical.

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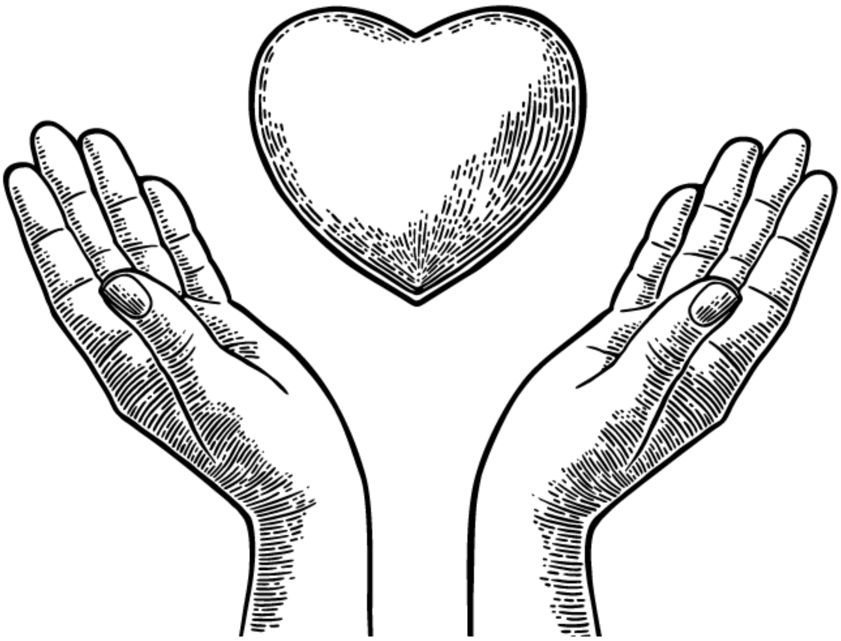
Avoiding common pitfalls of Gift Aid

Charities are making an increasing return to fundraising activities and in-person events and now is the time to ensure you are getting the most out of your charity's Gift Aid claim. Follow up with donors where you believe there to be missing or unclear information from their Gift Aid declarations. If you think there is an opportunity to claim Gift Aid, then take the initiative.

Are you using inexperienced or poorly trained staff/ volunteers to process your Gift Aid claims?

Gift Aid is complex and it is worth investing time and resources in correct training and awareness for your staff/ volunteers. Give it the attention it deserves!



Can you produce a complete audit trail from donor to donation?

HMRC is increasingly interrogating claims and expects a charity to be able to document the path of a donation, including linking the donor to a valid Gift Aid declaration.

Gift Aid and tax legislation is always changing. Are you up to date with the latest changes?

Latest changes include:

- Clarification of the availability to claim Gift Aid on waived refunds and loan repayments by individuals in certain circumstances
- Reduced administration for end-of-year letters for Retail Gift Aid, where the sales proceeds raised are less than £20 p.a.
- Increases in value thresholds for benefits received as a consequence of the donation
- Simplification of the Gift Aid Small Donations Scheme (GASDS), making it easier for charities to access
- HMRC guidance now suggests that the Gift Aid declaration should include the donor's full name, rather than just initials

Gift Aid opportunities

- Where your charity has cancelled ticketed events or other fee paying activities and the donor has indicated that they would like to donate the refund to your charity, you should now be able to claim Gift Aid on these amounts. You will need to hold a valid Gift Aid declaration for the individual and meet the other usual requirements for Gift Aid in order to make the claim. Individual donors waiving the right to a repayment of a loan made to your charity may also now attract Gift Aid, subject to certain conditions.
- Remember that some items 'given' by your charity to your donors do not count as a benefit for the purpose of calculating the benefits limits. These relate to items given as a consequence of a donation, i.e. a thank you. One such item is naming rights, which can be very useful for your more generous donors as a way of saying thank you without jeopardising the availability of Gift Aid.
- If your charity has not yet claimed for Gift Aid or is behind with claims, do not delay, get your claim in as soon as possible. Time limits for claims are:
  - **Trusts:** four years from 5 April in which the donation was received
  - **Corporates:** four years from end of accounting period in which the donation was received
  - **GASDS:** two years
- Follow up with donors where you believe there to be missing or unclear information from their Gift Aid declaration. If you think there is an opportunity to claim Gift Aid, then take the initiative and make contact with your donors.
- Take care not to exclude donations where the donor has an unusual address. Claims can still be made for donors living in care homes, houseboats and pubs. For example, HMRC does not expect you to investigate every donor's address details; if it looks reasonable, make a claim.

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Travel Expenses just got more taxing!

We frequently come across situations where employees travel overseas for conferences and seminars and the employer incorrectly assumes that the expenses will be allowable.

Presumably on the misconception it was a requirement of the job, or their employer had requested they attend a particular conference or seminar, the expenses are allowable if they meet the very restrictive conditions set out in the primary legislation, that is, the expenses are only deductible if:

- they are within Section 337 Income Tax (Earnings and Pensions) Act (ITEPA) 2003 as necessarily incurred in the performance of the duties of the employment; or
- they are within Sections 338 and 339 ITEPA as travel to a temporary workplace.

However, for both these tests to apply, the expenses are only deductible if they are incurred necessarily in the employee's performance of duties of employment. Necessary is defined as "if each and every holder of that employment would have to incur expenditure of that type" so a high bar to overcome!

It is also not enough to demonstrate that a trip had a personal educational value. Expenditure incurred by an employee to improve his or her qualifications for doing the job, or to keep his or her knowledge up to date, are not deductible. However, please refer to our comments further down in this article.

We take a considerable amount of guidance from decisions hand-down by the Courts and tribunals, some have stood the test of time. The cases of Owen v Burden (47TC476) and Thomson v White (43TC256) demonstrate how restrictive the necessary criteria is, as in both cases although it was accepted that the trips were for business reasons, it could not be shown that the trips were to perform the duties of employment.

Furthermore, the decision handed down in White v Higginbottom (57TC283) provides a useful example of the practical operation of the "necessary" test; albeit in relation to the similar rule relating to capital allowances.

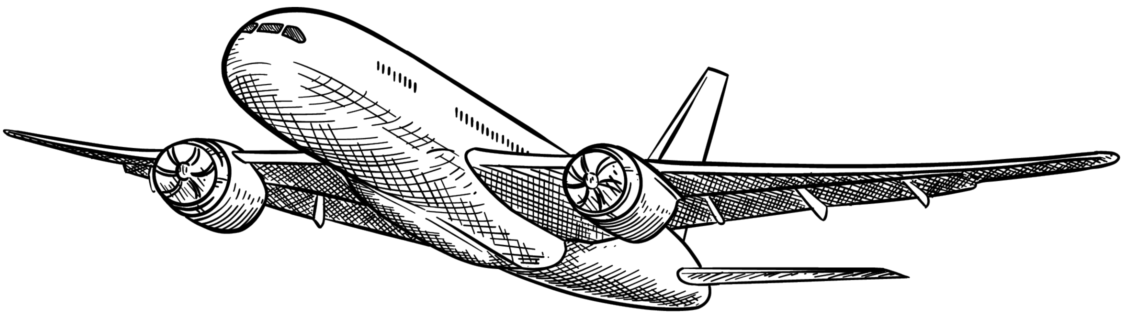
Overseas trips

Where we see HMRC challenge frequently is where some overseas trips are deemed to be incentive or to reward employees; particularly where the trip is to an exotic location or is organised and paid by third party. HMRC guidance states that insertion of a token business element is not sufficient to make it a business journey.

Based on experience, HMRC's initial challenge will be that it is to incentivise or reward that particular set of employees. It can generally be demonstrated that the cost of incentive trips is not incurred necessarily by the participants, since less successful colleagues doing the same or similar jobs will not have needed to incur the expense. Furthermore, it is unlikely the costs incurred do not form part of the duty of their employment to attend the conference.

The following example will illustrate HMRC's thinking. In the case in question, certain employees (identified as high performers) were rewarded with trips to exotic locations. HMRC considered only the primary legislation within Section 336 ITEPA 2003 and sought to disallow all of the expenses.

The legislation within Section 336 ITEPA 2003 is very restrictive as it only allows costs which have been incurred "wholly, exclusively and necessarily in the performance of the duties of the employment" and all three hurdles of the test need to be met, not just one or two of them".



Work related training

However, we managed to steer HMRC to consider the work related training legislation which can be found within Section 250 ITEPA 2003, which states that "work-related training" is defined as "any training course or other activity which is designed to impart, instill, improve or reinforce any knowledge, skills, or personal qualities which:

- Are, or are likely to prove, useful to the employee when performing his/her duties or
- Will qualify or better qualify the employee to undertake the employment, or to participate in charitable or voluntary activities arising through the employment.

A key point when using this legislation is there must be an itinerary to help demonstrate the reason why the event is being held and to support the extent of the costs which can be allowed, especially where some form of apportionment is going to be claimed. In the case in question, we were able to get an equitable result for the client where only the cost of deemed private element were subject to a benefit in kind charge, instead of the whole expenditure as was HMRC's original assessment.

Partners or spouses accompanying employees on a business trip

HMRC also look closely when spouses or partners accompany the employee or director on business trips, particularly abroad. The starting position for HMRC will be that all spouse/partner related travel costs (including food, accommodation etc) are taxable because they have not been incurred in the performance of duties of employment.

For spouse/partner expenses to be allowable, it must be demonstrated that they have a skill that is required, such as competency in a particular language which no other employee has, or the spouse/partner presence is essential to host a series of business entertaining occasions or the employee's health is so poor that it is essential that the spouse/partner accompanies them on the trip.

The above circumstances are rare so we need to determine if we can mitigate any of these costs.

Costs such as flights and accommodation will be the same, so can be claimed as business expense. You need to bear in mind that other personal expenditure such as food, personal trips etc will be taxable and reporting process would be dependent on if it were purchased via Company credit card, paid by the Company to the provider or the employee is reimbursed for the costs incurred.

In summary, travel expenses for overseas business trips are not as straight forward as one imagines and therefore may not be allowable for the above reasons. However, a different strategy of using the employer related training exemption may be more fruitful.

To conclude, for an employer to contend that there was business element/training attached to a business trip, especially to an exotic location, it must keep robust records to support this assertion such as an agenda or itinerary.

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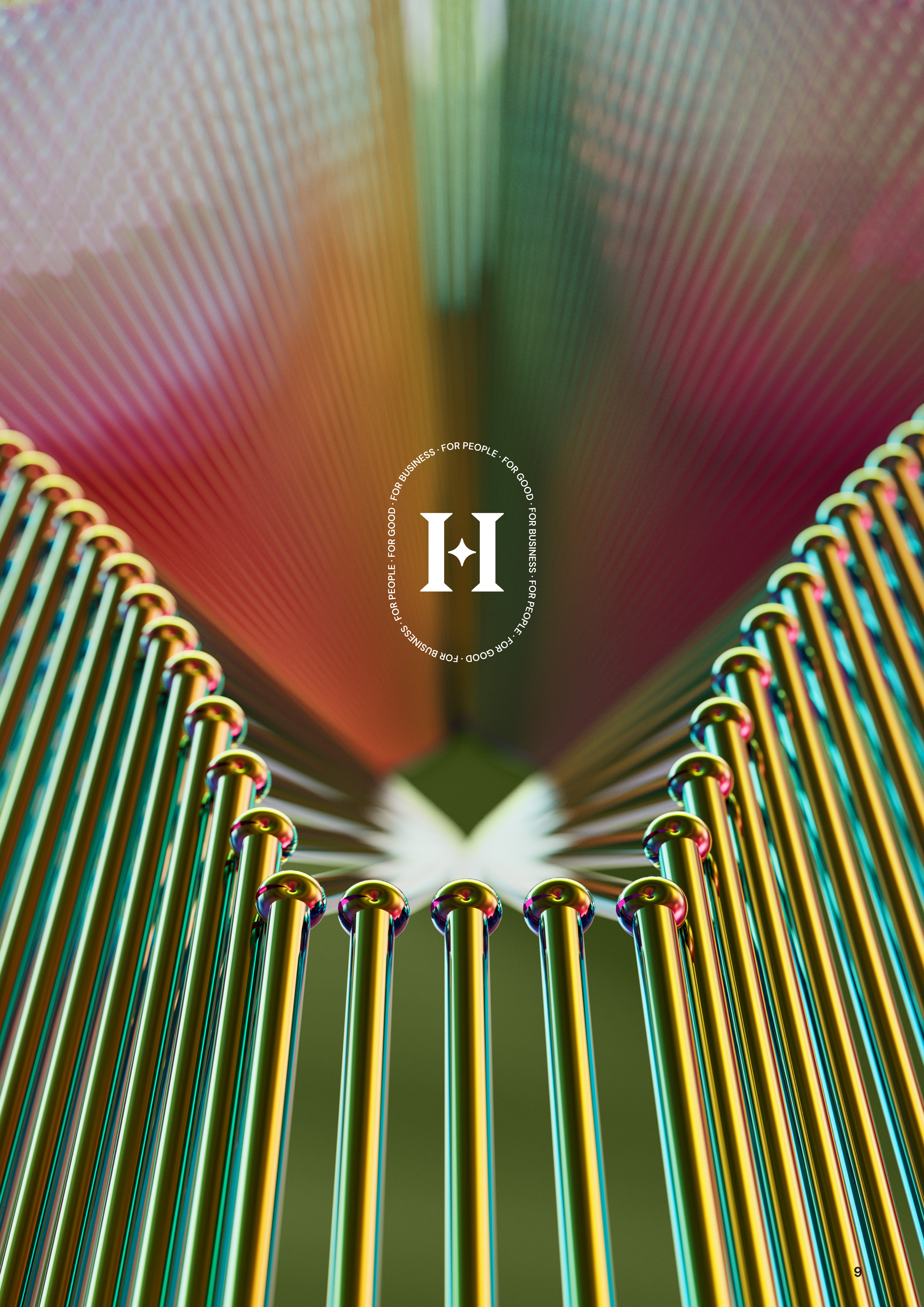
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What can we learn from the investigation into the Quba Trust

The Charity Commission published its inquiry findings regarding the Quba Trust in December 2024. The Quba Trust is an international charity based in the UK, set-up to alleviate poverty, provide disaster relief and promote the Islamic Faith. The Charity Commission opened an investigation in May 2022 following routine monitoring which flagged concerns over both governance and financial management, especially in relation to its overseas activity in Pakistan.

The findings of the inquiry found a number of areas of concern around compliance with the governing document, a lack of proper financial controls, failure to evidence the end use of funds, poor record keeping, payments made to trustees and connected companies, late filing of annual accounts and then later failure to comply with the orders of the Commission.

The main finding highlighted by the Charity Commission was that £250,000 sent overseas was unable to be accounted for, with a further £500,000 lacking a satisfactory audit trail. Since the investigation began the Commission has disqualified three former trustees for periods ranging five to ten years and continues to monitor the activity of the charity under new management.

This inquiry serves as a crucial learning opportunity for all charity trustees, but especially those involved in sending money overseas. A central takeaway for all charities is the absolute necessity of prioritising effective governance.

Financial transparency is equally critical. Trustees must ensure that the charity maintains strong and effective financial controls, safeguarding its assets and preventing any misuse of funds. Accurate record-keeping of financial transactions is essential, providing a clear and accurate audit trail for scrutiny and accountability. The trustees must ensure that financial systems, controls and processes are in place to enable this to happen.

Trustees must uphold strong ethical standards, always acting in the best interests of the charity and its beneficiaries. This would include avoiding any conflicts of interest, real or perceived, and ensuring that all decisions are made with objectivity and impartiality. Transparency in decision-making is crucial, allowing stakeholders to understand the rationale behind key decisions and ensuring that the charity operates with openness and accountability. For trustees, maintaining accurate meeting minutes and documenting key decisions is vital.

The Charity Commission publishes guidance on a regular basis to help trustees both understand and meet their duties. Perhaps the first place to start is “CC3 – The Essential Trustee” which outlines they key duties for all trustees to be aware of. As part of its Compliance Toolkit on how to safeguard your charity from terrorism, fraud and other abuse, Chapter 4 has guidance for holding, moving and receiving funds safely in the UK and overseas, and perhaps of most relevance to this case Chapter 2 has guidance on due diligence of monitoring and the end use of funds. Lastly, the CC8 guidance on Internal Financial controls provides guidance on managing your charity’s financial activity and preventing fraud and loss from occurring.

From a practical point of view, for charities operating internationally, the key area trustees need to have oversight of is the end use of funds. It is important that all decision-making is documented, showing which options were considered and how decisions were arrived atmade. The trustees need to ensure an audit trail exists for those funds as they flow through to the eventual beneficiaries, this can involve many steps, especially where non-routine banking methods are used and where local partners are engaged to carry out the ‘on the ground’ work with beneficiaries. In areas where there is a risk of terrorist financing, it is especially important to maintain control over the flow of funds to the beneficiaries.

The Quba Trust case serves as a valuable learning experience for all charity trustees. Trustees must ensure that they are prioritising good governance, ensuring financial integrity, upholding ethical standards, seeking professional advice when needed and fostering open communication with key stakeholders. Following these principles will help charities avoid falling victim to abuse and fraud. Inevitably, even when following best practice, things can go wrong and being able to demonstrate good governance and decision-making will help to protect the reputation of a Charity and its Trustees.

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Charities working with corporate bodies

Charities have for a long time worked in partnership with commercial partners for many reasons, some of which include outsourcing catering; donor acquisition; project delivery; property management; provision of temporary staff; the list is extensive.

There are many reasons why this is an effective way to manage aspects of the charity's business from risk management and value for money, to flexibility of bringing on board specialist skills. If you wish to do so through outsourcing, grant funding or other ways of partnership, then getting it right from the start is important. **Charities need to consider the below.**

1) Governance

The choice to collaborate with a corporate partner may not be an easy one to make. Assessing risk, strategic objectives, integration with the charity and contract terms/KPIs can be complex, particularly if the reason for the partnership is because of a lack of relevant inhouse expertise. Being sure of what the objectives are and setting out parameters is key before embarking on any partnership. A good example is the outsourcing of the operation of a care home, or the provision of catering services. The standards, methods of delivery and reputation are almost more important than the price. Clarifying your expectations in any RFP is fundamental to the success of the relationship and this should be set by the trustees.

2) Procurement

The selection of a partner to work with is not always easy and where there is a limited number of suitable companies, getting it right can be a challenge. Key things to consider are:

- Setting the scope of the partnership is fundamental and this links with the KPIs and wider expectations you have set from the outset. Find a suitable person to help to project manage the procurement which can either be internal or external.
- Include in the Request for Proposal (RfP) sufficient detail to make your priorities clear and price/cost should only be part of the consideration.
- Do your due diligence on the shortlisted providers (even if there is only one). You want to see that they have positive experiences working with charities and that they engage in the operation knowing that cultures align. Go and see them in action and talk to the key people who will be managing the work on your behalf. If you are outsourcing an international project, it may seem to be an expensive cost in visiting that country to observe the partner in action, but the consequences of getting it wrong are significant.

3) Onboarding

Although a corporate partner will be taking the management and delivery of a discreet part of your work, there is always an interface with staff and beneficiaries of the charity and so the corporate partner will be an extension of your staff and management. Bringing them along as such will be critical.

4) Things to look out for when partnering with a corporate body:

- Remember that the primary objective of any partner is going to be sustainable profitability and so when choosing the partner make sure that there is demonstrable value for money which is determined at the outset by reference to both quality and price. The more transparent your requirements are, the more likely that the price charged will be fair and the deliverables in line with expectations.
- The Charity Commission accepts that making grants or other payments to non-charitable organisations is acceptable as long as the payments are to advance the public benefit of the charity to its beneficiaries, and that suitable governance is in place to prevent/manage the risk of fraud and the potential for abuses such as conflicts of interest.
- Reputation is key – make sure that any references taken, due diligence performed, and parameters set include consideration of how their culture/values align with yours.
- For any key decisions made by a charity, of which partnering with a corporate partner may be one, there should be a formalised decision-making process, and the decision-making process should be properly documented.
- Remember that for all partnerships there are many considerations to be had. Appointing a significant partner is a big step and so the preparation and management of this is crucial. Making it easy by setting out the parameters and then managing the relationship will put you in good stead to succeed. Make sure that if it isn't working, there is enough flexibility put into the contract to make changes, and if it really isn't working then find out why, and if you need to start again.

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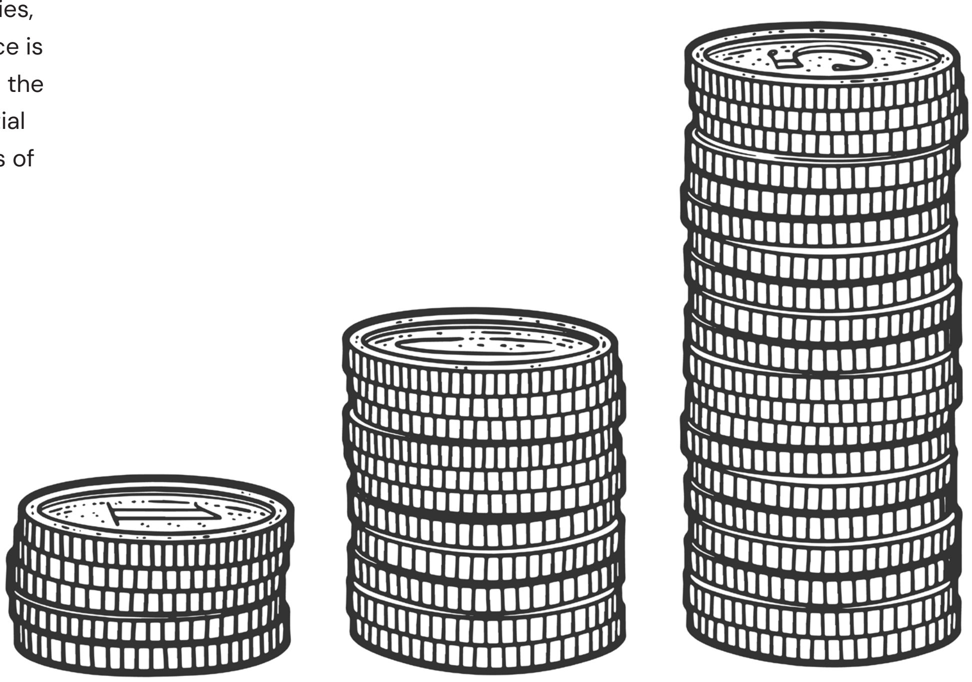

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