

9. Payments to overseas bodies

9.1 When a payment is made or is to be made to a body outside the UK, this will only be considered charitable expenditure if

- the payment is made to a foreign supplier of goods or services in the ordinary course of the charity's activities; or
- the charity takes steps that the Commissioners for HMRC consider are reasonable in the circumstances to ensure that the payment is applied for charitable purposes, including where the payment is made to an overseas branch or office of the charity to be applied for charitable purposes.

'Applied for charitable purposes' means applied for purposes, which are regarded as charitable within Section 2 of the Charities Act (England and Wales) 2006. The same definition of charitable purpose applies for all charities claiming UK tax reliefs and exemptions, wherever the charity is located, whether in the UK or other member states of the EU, Iceland or Norway.

It is not sufficient for the charity to establish that the overseas entity is a charity under the domestic law of the host country.

The rest of this chapter deals with the situation where the charity makes a payment for which it must take steps to ensure that the payment is applied for charitable purposes.

9.2 The charity trustees must be able to describe the steps they take, explain how those steps ensure charitable application of funds, demonstrate that those steps were reasonable and produce evidence that the steps were, in fact, taken.

9.3 When considering whether the steps taken by the charity were 'reasonable in the circumstances', HMRC will have regard to:

- the charity's knowledge of the overseas body
- previous relations with the overseas body and
- past history of the overseas body.
- the amounts given in both absolute and relative terms, and

9.4 When reviewing payments made to overseas bodies HMRC will generally ask the charity trustees to provide information about:

- the person or persons to whom the payment was given
- for what charitable purpose it was given
- what guarantees or assurances have been given by the overseas body that the payment will be applied for the purpose for which it was given
- what steps the trustees took to ensure the payment will in fact be applied for charitable purposes

- what follow-up action the trustees took to confirm that payments were applied properly.

The Commissioners for HMRC must be satisfied that the steps taken by the trustees are reasonable in the circumstances. If HMRC Charities is not provided with sufficient evidence of the steps taken it may not be able to accept the expenditure as charitable expenditure. This may give rise to a liability to tax. The steps to be taken will depend upon the nature of the expenditure. The rest of this section explains what sorts of steps would be reasonable depending on the circumstances of both the donating charity and receiving bodies.

9.5 Trustees are expected to make adequate enquiries to find out such information as is reasonably available about the overseas body, and establish what evidence will be provided or made available by that body to show that the payment(s) will or have been applied for charitable purposes. The nature of the steps will depend upon the scale of operations and the size of the sums involved.

9.6 In the case of small one-off payments, an exchange of correspondence between the charity and the overseas body will normally be sufficient. Where possible, the correspondence should be on headed paper and it should:

- give details of the payment and the purpose for which it was given, and
- provide confirmation that the sum has or will be applied for the purpose given.

Example 1

A situation where a thank you note on headed notepaper will be sufficient evidence

A pastor from a church outside the UK visits a partner parish in the UK. On his return home he discovers that the church building in his home town has burned down. When writing to the UK church to thank them for his visit he mentions this and the UK church decide to donate £500 to help rebuild the church. The overseas church sends a thank you note and a picture of the new building when it is complete.

This is a situation where the local pastor is known to the UK charity, the amount is a small, one-off payment and there are likely to be good connections between the charity and the overseas church. In this case a thank you note on headed paper is sufficient.

The relatively small amount of the donation affects the level of evidence required. In a situation like this HMRC would accept that the trustees' personal knowledge of the pastor and his connection with the overseas church is sufficient evidence.

Where there was no personal connection with the pastor more evidence would be needed, for example press reports confirming that the building had, in fact burnt down, and was, in fact, a church and had been rebuilt.

9.7 More thorough work by the trustees will be required where the sums involved are larger or where a transfer of funds is to form part of an ongoing commitment. This might include independent verification of the overseas body's status and activities along with reporting and verification of the manner of application of resources provided. The steps required can be reviewed in the light of evidence of proper use of funds and resources from earlier involvement with a particular project.

Example 2

A situation where further evidence of action taken, is required.

A UK charity becomes aware of a small overseas hospital that is struggling to afford drugs to treat a local epidemic. They agree to provide funding for six months supplies at the cost of £10,000 and enter into an arrangement with a pharmaceutical company close to the hospital. The company supplies the necessary drugs and invoices the UK charity.

In this situation the invoices from the drugs company are not sufficient on their own. The trustees must be able to produce sound evidence to show what they did to verify that the hospital warranted funding. This might include evidence of governance arrangements, financial controls and alternative available funding. In addition as things progress the trustees should check that the correct drugs are actually being delivered to the hospital in the amounts invoiced. A letter from the hospital confirming that they have received what the charity purchased would be acceptable evidence.

The larger level of the donation, a lack of detailed knowledge of the recipient charity and the existence of a third party means that more evidence is required than for Example 1 at paragraph 9.6. In a situation like this the evidence to verify the suitability of the expenditure is likely to include:

- Records of meetings or teleconferences with the overseas body
- Exchanges of correspondence
- A copy of any agreement between the third party and the charity
- If the charity was supporting a particular project being carried out by an overseas body, official project literature.

9.8 The steps taken are to 'ensure' that the payment to the overseas body will be applied for charitable purposes. If the recipient body is not bound by its own domestic law to apply all of its income for charitable purposes, then the trustees of the paying charity should consider seeking a legally binding and enforceable agreement to ensure that their payment will be applied charitably. If the overseas body declines to enter into such an agreement, the trustees of the paying body may have difficulty ensuring that the payment is applied for charitable purposes. If an agreement is entered into the trustees will need to have a means of establishing whether the agreement has been complied with.

9.9 Where a charity makes a series of payments to the same overseas body for the same charitable purpose, it is not necessary for fresh enquiries to be made in respect of each new payment. If the trustees have recently checked the overseas body is applying its charitable funding properly, for example within the last year, and they are satisfied that the overseas body has an ongoing need for funding and is bound to apply payments from the charity for charitable purposes, then it is not unreasonable for the trustees to rely on the results of this review for a payment shortly afterwards.

9.10 However, reliance on the overseas body's integrity may diminish with the passing of time and the trustees should be able to demonstrate that they are making enquiries of a sufficiently searching nature at regular intervals to ensure that the funds are being properly applied for charitable purposes.

Example 3a

A situation where more positive action is needed.

A charity is approached by an overseas body to provide support for a school building project. This is scheduled to take 18 months to complete. The proposed project is evaluated by the trustees who consider this to be within their charitable objects. They agree to provide staged funding totalling £250,000.

In this case the trustees must be able to produce evidence to demonstrate the research carried out in advance of any funds being made available and detailed records of how the grants were actually spent.

In a situation that involves large sums of money and a long term commitment, which could involve several overseas contractors, HMRC would expect to see comprehensive evidence of the trustees' considerations. This might include:

- A detailed project plan
- A formal funding application from the overseas body
- Records of the evaluation procedure carried out by the trustees.

In addition HMRC would expect the funding to be dependent on the overseas body entering into a formal agreement with the charity providing for:

- The payment of grants in stages based on specific targets
- A series of reviews to monitor project delivery
- Claw back provisions should the project fail or the building is not used as intended.

The trustees should also be able to produce evidence of ongoing evaluation as the project advanced including recommendations in relation to further funding.

Example 3b

A charity wishes to endow an overseas body with £1,000,000 to be used for charitable purposes at the body's own discretion. The charity will need to either:

- obtain detailed and legally binding assurances from the recipient body that the money will be applied for purposes that are charitable for UK purpose, or
- satisfy itself that the body is established in such a manner that it is subject to regulation in the overseas country that will ensure its funds can only be applied for purposes that are charitable for UK purposes

If the charity is seeking binding assurances it will need to:

- obtain the assurances in a form that is legally binding and enforceable in the overseas country; ideally this will be in writing

- ensure, taking specialist advice if necessary, that it will be able to take enforcement action against the overseas body in case funds are not applied as intended
- ensure that it and the overseas body have a clear understanding what expenditure the funds provided are intended to meet and over what time scale
- ensure that effective monitoring arrangements are agreed with the overseas body.

If the charity is relying on the manner of establishment of the overseas body and local regulation it will need to:

- ensure, taking specialist advice as necessary, that the overseas body is established in such a way as to ensure that it can only apply its funds for purposes that are charitable within the meaning of English law; in practice this will be set out in its governing document,
- ensure, taking specialist advice as necessary, that the domestic legislation and regulatory structure in the overseas country are such that the overseas body will be effectively monitored, and the controlling individuals held to account, if it fails to apply its funds in accordance with its governing document.