
The Charity Law & Practice Review

BOOK REVIEW

Tolley's Charity Investigations by Andrew Burgess

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This book breaks new ground in the sense that there is no other comparable collection of information on this subject, covering as it does charity investigations by the Charity Commission, the Inland Revenue and Customs and Excise. The chances of an enquiry by a tax authority leading to a Charity Commission examination, or vice-versa, have increased in recent years reflecting the use of powers of exchange of information between these bodies. However, the concern of the tax authorities to protect the revenue is at variance with, and may even conflict with the remit of the Charity Commission to protect charity property.

The author has adopted a three part approach to his subject: Part I introduces the reader to the basic concepts of charity and the main issues with which each regulator is concerned; Part 2 focuses on practical aspects, both general issues regarding the conduct of such investigations and specific issues that are likely to arise in the course of an inquiry by a particular regulator; Part 3 comprises a series of checklists filling over 100 pages that aim to assist charities and their advisers in implementing the standards of good practice that are increasingly necessary to minimize the risk of investigation. The book concludes with a list of useful publications, and series of (regrettably illegible) reproductions of Charity Commission and Inland Revenue return forms.

The author brings to his subject the benefit of 30 years' experience in practice, and previously with the Inland Revenue, of dealing with charity issues. This is reflected in the wealth of practical guidance on the conduct and settlement of investigations, although it has to be said that the number of pages devoted to Inland Revenue enquiries (including employer compliance issues) is significantly greater than those dealing with charity law and VAT aspects. However, the extensive income tax guidance does not extend to deeds of covenant, which have presumably been neglected on the grounds that they have essentially been superseded by the new Gift Aid rules. The balance of the book would be

improved by a more extensive analysis of the issues involved in the seemingly endless stream of charity cases that come before VAT tribunals, and further consideration of Charity Commission investigation cases. Of particular interest is the Charity Commission's recent decision to set aside a section of its website to report on the results of its latest investigations; most of these reports appeared too late for inclusion in this book, but interested readers should also consult the more detailed reports of earlier investigations published by the Charity Commission, notably those concerning War on Want and the Royal British Legion. A surprising omission in this context is comment on the ability of charity trustees to protect themselves against adverse findings in the future by seeking advice from the Charity Commissioners or an order under section 26 Charities Act 1993 sanctioning action that is expedient in the interests of the charity.

Readers who are seeking a guide to investigations of charities involved in avoidance schemes or other abuses will be disappointed. The author quite properly takes the view that most charity investigations reveal that the main cause for concern is a failure of governance or administration, rather than a wilful attempt to exploit or break the law, and the extensive checklists are an invaluable aid to improving the management of charities. The book can therefore be recommended as a practical aid to in-house charity lawyers and accountants as well as charity practitioners.

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Charity Law by Kerry O'Halloran

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ISBN 1-85800-1773 471 pages. Price: £75

This book marks the first attempt in recent years to provide a comprehensive description and analysis of the state of charity law in Ireland. In the absence of any system of compulsory registration, nobody knows how many charities exist in Ireland. The best available indicator is the list of 5,666 charities that had been granted tax exemption that was published by the Revenue Commissioners in 1999 following a successful petition under the Freedom of Information Act, but it is not possible to verify the accuracy of this list or determine how many charities have not applied for tax exemption.

The book is divided into three parts: the first and main part details the law and practice, including the meaning of charitable purposes in Irish law and the distinctive approach to the taxation and regulation of charitable bodies; the second part comprises a series of official precedents and other guidance on procedural matters concerning primarily income taxation of charities and charitable gifts, and the sale or transfer of charitable property (surprising omissions from this section are the model governing instruments approved by the Commissioners of Charitable Donations and Bequests); the third and final part consists of three appendices containing a list of charities authorised to receive tax deductible gifts from corporate donors, a selected bibliography and a list of useful contacts.

As the author makes clear in the first chapter, Irish charity law shares substantially the same roots as the law of England & Wales. Despite the distinct difference in the wording of the Irish Statute of Charitable Uses of 1634 and the corresponding English statute of 1601, judicial interpretation of charitable purposes in Ireland has proceeded on the basis that the framers of the Irish statute had the English law in mind at the time of its preparation, with the result that the decisions of the English courts have substantially influenced the determination of similar issues in Ireland. The author reviews the authorities in both countries and

highlights the subtle differences in interpretation as well as the contrasting approach to statutory intervention. Such differences in approach might be expected to reflect the role of the Catholic church in charitable provision in Ireland, and indeed this is evidenced in the more generous approach of the Irish courts to finding charitable public benefit in closed religious orders and the statutory presumption that gifts for the advancement of religion are charitable. More interesting in a comparative context is the Irish courts' use of a subjective approach to determining the charitable nature of a donor's intent, and the statutory modification of the requirement that purposes be exclusively charitable to enable non-charitable purposes to be disregarded in a case involving "mixed" purposes.

The two chapters on rating exemptions, and the narrow construction of charitable purposes in this context, will be of particular interest to readers in Northern Ireland, being the last jurisdiction in the UK to retain this tax in a similar form, as will the history of the Commissioners of Charitable Donations and Bequests who operated in Northern Ireland until the Government of Ireland Act 1920 transferred their functions to the Department of Finance. For contemporary charity lawyers, the most notable features of Irish charity law are perhaps the limited powers of the Commissioners of Charitable Donations and Bequests (at least when compared to those of the Charity Commission), the relative failure to regulate charities once they have been established and the historical lack of a coherent system of income tax incentives for charitable giving. There are indications that these deficiencies are now being addressed by the current Irish government which has released a White Paper proposing, *inter alia*, to implement the recommendations of the Costello Report on the regulation of fund raising activities and to review the legal framework of the voluntary sector, and has introduced a new scheme of tax relief for donations in the Finance Act 2001. Unfortunately, these developments occurred too late, for inclusion in the book but hopefully they will lead to legislation that will warrant the production of a second edition. The subject of cross-border issues is briefly touched on, notably in the context of a recent High Court decision that a foreign charity engaged in charitable activity in Ireland is established in Ireland for the purposes of claiming exemption from income tax (although, curiously, there is no mention of the mutual relief from income tax available to UK and Irish charities under the income tax treaty between the two countries). However, this reader would have welcomed a broader discussion of such issues, especially from the perspective of Irish charities operating in the UK (including Northern Ireland) or vice-versa.

The author, an academic lawyer engaged in voluntary sector research at the University of Ulster Centre for Voluntary Action Studies, aims not merely to state the law as it is but also to examine its effectiveness in the context of contemporary society and to provide practitioners with a practical guide to the

establishment, administration and supervision of charities in Ireland. In this he has succeeded and is to be congratulated on what is certain to become a leading textbook on the subject and an invaluable aid to anybody concerned with the establishment or administration of a charity in Ireland.

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