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FIT AND PROPER PERSONS HELPSHEET AND DECLARATION

This is taken from the text released by HMRC in March 2017. Charities must bring the new declaration into force immediately

WHO IS THIS HELPSHEET FOR?

This helpsheet and the model declaration are for use by 'managers' of a charity,

Community Amateur Sports Club (CASC) or other organisation entitled to UK charity tax reliefs. The term 'managers' applies to the trustees of charities, directors of corporate charities, directors of corporate trustees, CASC officials and any other persons having general control and management over the running of the charity or the application of its assets. For example: In a typical small local charity, a manager for the purposes of the fit and proper persons test could include the Chairperson, Treasurer, Secretary and the rest of the management committee who would have control over expenditure.

In a larger charity, a manager would include all trustees or directors of a corporate charity but may also extend to certain employees who are able to determine how a significant proportion of the charity's funds are spent. For example, most large charities have a Board of Trustees and an Executive Board of senior employees. In such a case the trustees and members of the Executive Board would be managers of the charity.

If you are a 'manager' of a charity you should read this helpsheet and, if appropriate, sign a declaration based on the model below. You can use the model declaration below or copy the wording onto your own stationery. The organisation entitled to charity tax reliefs should keep the signed declaration in case HM Revenue & Customs (HMRC) ask to see it. The signed form should not be sent to HMRC unless HMRC asks to see it.

WHY IS THERE A 'FIT AND PROPER PERSONS' TEST?

The 'fit and proper persons' test is a statutory requirement. It requires that individuals who are 'managers' of the organisation are fit to be managers of such a body. It exists to ensure that charities, CASCs and other organisations entitled to charity tax reliefs are not managed or controlled by individuals who might misuse the tax reliefs the organisation receives. Fraudsters have been known to exploit charity tax reliefs so this test exists to help prevent that.

WHAT DOES 'FIT AND PROPER' MEAN?

An individual is 'a fit and proper person' if they ensure, or are likely to ensure, that charity funds and tax reliefs are used only for charitable purposes. In signing a declaration like the one below you are confirming that you will ensure that funds are used for charitable purposes and also disclosing certain information about your past that may impact on whether or not you are indeed 'a fit and proper person'. When a charity notifies HMRC of certain new managers, HMRC cross-checks that person's details against any information it has and will raise any concerns it has if there's anything to indicate the person may misuse the charity funds and tax reliefs. Factors that may lead to HMRC deciding that an individual manager is not a fit and proper person include where:

1. the individual has been involved in tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft
2. HMRC has knowledge of the individual's involvement in attacks against, or abuse of, tax repayment systems
3. the individual has been removed from acting as a charity trustee by a charity regulator or been disqualified from acting as a charity trustee or company director.
4. the individual has used arrangements notified under the Disclosure of Tax Avoidance Schemes ("DOTAS") rules in Part 7 Finance Act 2004 in respect of which a reference number has been issued under section 311 of Finance Act 2004, and the arrangements featured charitable reliefs or which used a charity, and their tax position has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final.
5. the individual has used tax arrangements which have been successfully counteracted under the general anti-abuse rules (see Part 5 of Finance Act 2013 or section 10 National Insurance Contributions Act 2014, as enacted or as amended from time to time) and such counteraction has become final.
6. the individual has been actively involved in designing and/or promoting tax avoidance schemes featuring charitable reliefs or which used a charity, and they are: a promoter named by HMRC.

However, just because a person has been, say, barred from acting as a charity trustee or one of the other points above applies, it does not always follow that the charity will not be eligible for tax reliefs. When considering the application of the fit and proper persons test to particular managers, HMRC will take account of the likely impact on the charity's tax position. For example, any person who has no dealings with HMRC and no control over spending charity funds, even if the person is not a fit and proper person, is unlikely to affect the charity's eligibility to tax reliefs.

WHAT DO I NEED TO DO?

If you are confident you will do your best to ensure that charity funds and tax reliefs are used only for charitable purposes and do not need to disclose any information listed on the declaration then you should sign a declaration and give it to the charity. If you are confident you will do your best to ensure that charity funds and tax reliefs are used only for charitable purposes but you do need to disclose any information listed on the declaration, then you should sign the declaration suitably amended - for example by crossing out the relevant bullet point - and provide details in the final box before you give the declaration to the

charity. The charity will then need to decide what to do. If neither of the above applies you should not sign the declaration.

I'VE SIGNED THE DECLARATION SO WHAT HAPPENS NEXT?

The charity will keep the declaration and in certain cases pass your details to HMRC. If HMRC have any concerns about you they will contact you to clarify the situation.

MODEL DECLARATION FOR FIT AND PROPER PERSONS:

Declaration

Name of organisation in full.....

Name of individual.....

Role in the organisation.....

I, the undersigned, declare that:

- 1. I am not disqualified from acting as a charity trustee**
- 2. I have not been convicted of an offence involving deception or dishonesty (or any such conviction is legally regarded as spent)**
- 3. I have not been involved in tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft**
- 4. I have not used arrangements notified under the Disclosure of Tax Avoidance Schemes ("DOTAS") rules in Part 7 Finance Act 2004 in respect of which a reference number has been issued under section 311 of Finance Act 2004, where the arrangements featured charitable reliefs or which used a charity, and where my tax position has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final.**
- 5. I have not used tax arrangements which have been successfully counteracted under the general anti-abuse rules (see Part 5 of Finance Act 2013 or section 10 National Insurance Contributions Act 2014, as enacted or as amended from time to time) where such counteraction has become final.**
- 6. I have not been actively involved in designing and/or promoting tax avoidance schemes featuring charitable reliefs or which used a charity, and I am not:**
 - 1. a promoter named by HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation in Part 5 of Finance Act 2014, or**
 - 2. a promoter of any tax arrangements designed or intended to obtain for any person a tax advantage and such tax advantage has successfully counteracted by HMRC under the general anti-abuse rule (see Part 5 of Finance Act 2013 and section 10 National Insurance Contributions Act 2014 as enacted or as amended from time to time) and such counteraction has become final, or**
 - 3. a promoter of arrangements notified under DOTAS, in respect of which a reference number has been issued under section 311 of Finance Act**

2004, and the tax position of all or any of the users of the arrangements has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final

(The meaning of a 'promoter' in this context is explained in the Promoters of Tax Avoidance Schemes guidance:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313987/Promoters_of_Tax_Avoidance_Schemes_Guidance_v1_0.pdf)

- 7. I am not an undischarged bankrupt**
- 8. I have not made compositions or arrangements with my creditors from which I have not been discharged**
- 9. I have not been removed from serving as a charity trustee, or been stopped from acting in a management position within a charity**
- 10. I have not been disqualified from serving as a Company Director**
- 11. I will at all times seek to ensure the charity's funds, and charity tax reliefs received by this organisation, are used only for charitable purposes**

Signed.....

Date.....

Home address.....

.....

Previous address if moved in past 12 months

.....

Date of birth.....

National Insurance number

National Identity Card Number (If you have one).....

If you have signed this declaration but want to make any information known or clarify any points please add them in the space below.

Daryl Martin – April 2017

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