



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

30 June 2014

PREVENTING CHARITIES BEING SET UP TO AVOID TAX

Thank you for your response to the discussion paper published by HM Revenue & Customs (HMRC) on approaches to preventing charities being set up to avoid tax. I was extremely pleased to hear unanimous support for our work to protect charitable tax reliefs from abuse. Having considered these responses and the points made I wanted to update you on the responses and how we intend to proceed.

Respondents largely agreed with HMRC's analysis of the respective merits and risks of both approaches set out in the paper. Many respondents also raised concern that the proposed approach could impact on legitimate charities and donors and create uncertainty.

The commonest objections were that the 'tax advantage' test common to both approaches was too broad and that existing defences can deal with the worst cases of abuse. The introduction of the General Anti Abuse Rule (GAAR) was frequently mentioned.

Several respondents felt that the first approach could catch innocent charities while the second approach would not effectively bolster existing defences.

A number of possible alternatives were put forward including:

- basing a definition of charity for tax purposes on use of arrangements that would not be caught by the GAAR or subject to the Disclosure of Tax Avoidance Schemes (DOTAS) rules;
- classifying charities as 'large' or 'small' for tax relief purposes and requiring large charities to undergo an annual certification process to show that they did not use offensive tax arrangements; and
- advance clearance by HMRC of proposed transactions.

I have made it clear throughout that we are not prepared to jeopardise the status of legitimate charities carrying out charitable activities. Considering the points raised, as well as further internal analysis of the impacts, HMRC has

recommended not pursuing either of the options as they stand and I have agreed to this recommendation.

Overall the potential for disruption to legitimate charities carrying out important good works is too great from both of the options. In addition, HMRC's continued success in the courts, underpinned by more recent powers including the General Anti Avoidance Rule and the Fit & Proper Persons test have increased our confidence in current defences. The advent of the Accelerated Payment provisions at this year's budget will also provide additional deterrence.

The Government is clear that charity tax reliefs should not be subject to abuse. We will continue to monitor the situation and work with the sector to make sure that we effectively detect and prevent abuse. We will continue to study our options, including those that came through from this discussion paper, and we are prepared to act as necessary in the future.

A handwritten signature in black ink, reading "Nicky Morgan". The signature is fluid and cursive, with the first name "Nicky" and the last name "Morgan" clearly distinguishable.

RT HON NICKY MORGAN MP
FINANCIAL SECRETARY TO THE TREASURY