

THE FIT & PROPER PERSON REQUIREMENT



The Finance Act 2010 introduced a definition - for tax purposes - of charities and other organisations entitled to UK charity tax reliefs. The definition includes a requirement that, in order to qualify, an organisation must satisfy the 'management condition'. For a charity to satisfy the management condition, its managers must all be 'fit and proper persons' - although there is no definition in the legislation of a 'fit and proper person'.

In March 2017, HMRC published updated guidance on the fit and proper person test, which is concerned with ensuring that charities are not managed or controlled by individuals who present a risk to the charity's tax position. The revised guidance now includes a detailed description, by reference to the Disclosure of Tax Avoidance Schemes rules and the general anti-abuse rule, of the circumstances in which a charity manager, who has used or been involved in the design or promotion of tax avoidance schemes, may be deemed not to be a fit and proper person.

These changes are in line with those made by HMRC to its Fit and Proper Person Declaration and help sheet. The model declaration is intended to be completed by all "managers" of charities, Community Amateur Sports Clubs (CASCs) and any other organisation entitled to claim UK charity tax reliefs, and may be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597664/Fit-and-proper-persons-helpsheet-and-declaration.pdf

If you are a 'manager' of such an organisation (e.g. a charity trustee or senior staff member) you should read the help sheet and, if appropriate, sign a declaration based on the model. The model declaration itself may be used or it may be copied onto your own stationery. The charity, CASC or other organisation entitled to charity tax reliefs

should actively seek declarations from all relevant managers, and keep the signed declarations in case HMRC asks to see them. (The signed forms should not be sent to HMRC unless HMRC asks to see them).

For most managers, this is a straightforward declaration to make. HMRC has, though, also added the following helpful points to its guidance where organisations or managers are concerned about a possible risk:

- An individual will not be considered to be actively involved in designing or promoting tax avoidance schemes merely because they work for, or in, the same organisation or partnership as an individual who has been actively designing or promoting schemes.
- In all cases, HMRC will consider all the relevant circumstances, such as the nature and size of the scheme, the extent of the manager's involvement and the likelihood of their future participation in such schemes.
- The guidance also now includes a new section explaining what HMRC means by tax avoidance.

The Charity Commission states that when charities make use of the fit and proper persons test, it is harder for fake charities and fraudsters working within a charity, or targeting a charity from outside, to abuse charity tax reliefs – 'It's not intended as something to deny tax reliefs to charities who make a genuine mistake'.

Charities should note that the fit and proper person test for tax purposes should not be confused with the Charity Commission's own Trustee Eligibility Declaration which must be completed by all trustees on the registration of a new charity and may be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581249/Trustee_declaration.pdf

This form may also be used on the appointment of all new trustees, and mirrors some of the provisions of the HMRC declaration. For the sake of consistency, your charity may wish all new trustees to complete the same Charity Commission form on appointment. For tax purposes, however, the HMRC form should also be completed and kept safely stored in case it is requested by HMRC.

If you have any questions about the appointment of new trustees please contact a member of our charities team.

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This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

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