Guidance

Affordable home ownership: charitable status and tax

Joint guidance from HM Revenue and Customs, the Charity Commission and the Homes and Communities Agency

Contents

Section A - Introduction

A1. This guidance is issued jointly by HM Revenue and Customs (HMRC), the Charity Commission (the Commission) and the Homes and Communities Agency. It updates the guidance that was published in May 2008. While it gives charity trustees (you, or trustees), including the boards of registered social landlords (RSLs), general information and advice on providing charitable shared ownership housing, it is not a definitive interpretation of tax or charity law.

A2. In line with wider social changes, many charitable RSLs now seek to give beneficiaries the security of affordable low cost home ownership (LCHO). However, charity trustees need to be clear what charitable purpose they are furthering and to be satisfied that providing access to LCHO achieves this. This guidance explains when this activity may be charitable, and the legal and tax implications.

A3. Trustees have a duty to act in the best interests of their charity and are responsible for deciding how best to use its resources to meet its objectives and so help beneficiaries. Historically, charitable RSLs have mainly provided rented housing to beneficiaries but now you can consider a range of ways to assist beneficiaries and, where purposes allow, affordable home ownership may be an option.

A4. We cannot specify exact rules about the scale or application of these activities. You should always take appropriate professional advice to decide the best mix of housing provision to further your RSL's charitable purposes and activities in the most effective way.

A5. This guidance reflects the need for trustees:

- to be prudent and systematic so that their RSLs ensure that the affordable home ownership they provide is charitable; and
- to fully assess whether or not it is primary purpose trading for the purposes of charity tax law.

Section B - In brief

B1. While rented housing remains the main way of helping people of limited means meet their housing needs, many charitable RSLs now seek to give their beneficiaries the added security of affordable low cost home ownership (LCHO) (see section C1).

B2. Providing housing can serve various charitable purposes, for example, relieving need or serving the needs of those who are elderly or disabled. It can also serve a number of charitable purposes that promote urban or rural regeneration in areas of social and economic deprivation (see section C2).

B3. It can be charitable to provide housing for key workers, for example, teachers or health workers, where there is a need for the charitable service that the key worker will provide, which have been created by shortages of such workers due to the difficulty of affording accommodation in the area. In the respective examples, the charitable services provided are advancing education and promoting health (see section C2).

B4. When deciding whether individuals or families are suitable to participate in an LCHO scheme, trustees must be clear about the charitable purpose they are furthering and take into account all relevant factors. For example, if the applicant is in need, then the suitability of their present accommodation and their financial circumstances should be considered (see section C3).

B5. Assessing financial need is not uniform and will vary according to local circumstances, such as average local income levels and the cost of accommodation. In some circumstances LCHO may be the most cost-effective way of relieving housing need among some groups of charitable beneficiaries whose own financial resources are insufficient to relieve that need, but who can afford to buy on a shared-ownership basis without excessive hardship (see section C4).

B6. Trustees must also be aware that they must report on the new public benefit requirement introduced by the Charities Act 2006 (see section C5) and that the Government's priorities for affordable housing are not necessarily charitable (see section C6). They must also be aware of the differences between trading that promotes their charitable purposes (primary purpose trading), for example providing low cost homes for their charity's beneficiaries, and trading that does not further a charitable purpose and creates a tax liability (non-primary purpose trading), for example, selling homes on the open market (see section C7).

B7. In some circumstances the tax implications of non-primary purpose trading can be relieved by setting up a non-charitable trading company, which covenants its profits to the parent charity through Gift Aid (see sections C8 and C9).

B8. Sometimes a RSL may complete a properly planned shared ownership (Homebuy) housing development only to find that circumstances have radically changed and there is little or no demand for the properties among its beneficiaries. In these circumstances the trustees must consider what to do with the property (see section C10).

B9. All RSLs are subject to specific accounting requirements that are described in the 'Accounting Requirements for Registered Social Landlords General Determination 2006'(see section C11).

B10. Examples of when LCHO schemes may or may not be charitable can be found in section D.

Section C - In detail

C1 - Rented housing as a charitable activity

C1.1. Rented housing remains the main way of helping people of limited means to meet their housing needs. Access to social rented housing is controlled through statutory criteria that enable local authorities (councils) to assess and prioritise need in a fair and consistent way.

C1.2. As well as meeting the statutory criteria, households may have other needs, for example concerning location or type of home. These needs may be reasonable in themselves, but if a landlord cannot meet them this may not justify the applicant refusing the offer of a home. In terms of modern standards of housing management and maintenance in the social sector, and in light of demand, most social rented homes will probably qualify as reasonable offers of accommodation in most circumstances.

C1.3. RSLs have to help councils fulfil their housing functions. Assessments of need ensure that, in many parts of the country, access to social rented housing is available only to those who:

- are homeless; or
- are at risk of becoming homeless; or
- need to be rehoused quickly for reasons of health or personal safety.

Increasingly, social rented housing is mainly for those in extreme need. So providing it will be charitable in almost every case.

C1.4. Housing need has never been uniform, but many households who might once have expected their needs to be met through social rented housing now find their level of need is not enough to enable them to access it because of other pressures on their landlord. Equally, some households whose needs might have been met in the private rented market may find that changing market conditions now make it impossible to find adequate accommodation in the area where they need to live. Some of these households may have scope to move somewhere cheaper but, for many, choices are limited by family, work or other commitments.

C2 - Home ownership as a charitable activity

Relief of need

C2.1. Providing housing, which may include providing housing for sale, can serve various charitable purposes. The purpose of many charitable RSLs is to prevent or relieve poverty by providing housing to people in need, and this purpose will be relevant in many cases involving LCHO. In other cases the purpose may be to relieve the needs of elderly or disabled people.

C2.2. Some LCHO schemes may promote mixed development as a more effective way of relieving poverty or need, for example by preventing a high concentration of very poor families in one place.

Urban and rural regeneration

C2.3. Many charitable RSLs have 'regeneration purposes'; that is, they promote urban or rural regeneration in areas of social and economic deprivation. However, a regeneration purpose is an umbrella for various charitable purposes and we must be clear which of those purposes is furthered by providing access to LCHO. The relevant purpose could be the relief of poverty or disability or the needs of the elderly. The Commission's publication Promotion of Urban and Rural Regeneration (RR2), explains in detail when this activity can be charitable. If you are in doubt about whether a regeneration purpose is charitable, you should get legal advice from someone qualified to give it.

Key workers

C2.4. Some charitable RSLs provide LCHO to key workers. The charitable purpose is that furthered by having the key worker in post; for example, the advancement of education if the key worker is a teacher, or the promotion of health if they are a health worker. So the key workers themselves are not necessarily charitable beneficiaries. However, it is only reasonable for a charity to provide assistance to such workers if:

- there is a need for the charitable service that the key worker will provide; and
- there is a shortage of such workers due to difficulties in recruiting and retaining key workers; and
- those difficulties can be overcome by enabling suitable people to afford appropriate accommodation in the area.

C2.5. The Commission accepts that it may be charitable for trusts to provide accommodation for key workers, and has also agreed the following model definition of 'key workers':

> 'those persons (and their dependants living with them) who have need of such accommodation by virtue of:
>
> (i) their employment in the public or voluntary sectors or in a relevant employment in the locality in such manner or capacity as to advance education, relieve sickness, promote public health, relieve charitable need, protect human life and property, promote the sound administration of the law, or advance other charitable purposes for the general benefit of the community, including in particular (but without prejudice to the generality of the foregoing) the maintenance for the benefit of the community of its infrastructure, including supplies of gas, water, electricity and food, of transport and other means of communication, of telecommunication information and information technology services, and of emergency services; and
>
> (ii) the fact that they could not afford from resources available to them to secure such accommodation on normal commercial terms;
>
> and for the purposes of this object:
>
> 'public sector' means any department of central or local government or health or other statutory authority;
>
> 'voluntary sector' means charities and voluntary organisations;
>
> 'charities' means organisations which are established for exclusively charitable purposes in accordance with the law of England and Wales;

'voluntary organisations' means independent organisations which are established for purposes that add value to the community as a whole, or to a significant section of the community, and which are not permitted by their constitution to make a profit for private distribution. Voluntary organisations do not include local government or other statutory authorities;

'relevant employment' means employment by an employer which though not in the public or voluntary sector, is engaged in the provision of services equivalent to those referred to in sub clause (i) above.'

C2.6. Guidance from the Department for Communities and Local Government (the CLG) (see paragraph D2.9) defines the key worker professions that are eligible for LCHO assistance, and for which you can apply to the Corporation for capital grants or allocations. Provided the people to be helped under such guidance meet the definition of key workers in paragraph C2.4 and are employed in the CLG's key worker professions, they are likely to qualify for accommodation as key workers. If the people to be helped fall outside that definition, it may not accord with your charitable purposes to assist them.

C2.7. Section D provides some examples to illustrate when LCHO schemes may or may not be charitable.

C3 - Deciding whether a particular individual or family is a suitable beneficiary for an LCHO scheme

C3.1. In deciding whether a particular individual or family is a suitable beneficiary for an LCHO scheme, you must be clear about the charitable purpose you are furthering and must exercise your discretion in good faith and in a reasonable manner, taking into account all relevant factors. When making decisions, you should consider the immediate circumstances of the individual or family and also whether their circumstances are likely to change.

C3.2. For example, you may assess applicants against the following criteria:

1) Housing need

In assessing whether an applicant is in need, you could consider:

(a) the suitability of their present accommodation – that is, whether their existing accommodation is adequate for their situation. In assessing suitability, you may consider factors such as state of repair, health, employment or family responsibilities, as well as probable changes to those factors, such as whether a potential beneficiary has a medical condition that is likely to deteriorate. If the existing accommodation is adequate, you must be clear what charitable need access to LCHO will relieve;

(b) the applicant's financial circumstances (for example, disposable income, savings, etc) balanced against such factors as the average local income levels and whether they are able to find other accommodation at an affordable price or rent.

As a general guide, a person may be regarded as 'poor' or in 'necessitous circumstances' in the housing context if they cannot afford from all their resources either the purchase price or the market rental of accommodation that would provide a modest and decent standard of living. However, this is only a general guide, and you will need to consider each applicant's circumstances individually. As most private rented accommodation will be shorthold, the fact that a tenancy is for a limited initial term will not in itself make it inappropriate.

2) Whether it is appropriate to relieve housing need by LCHO schemes

You could consider the following:

> (i) Is this what the applicant needs? Is the type of accommodation suitable for their housing need and can they afford to buy on the terms offered?
>
> (ii) Is providing the relief an effective use of your charity's resources? In other words, are the resources necessary for the LCHO scheme a cost-effective way of relieving housing need in the area concerned?

3) Safeguards against non-incidental private benefit

When shared-ownership purchasers sell on their share (and assuming that they have not increased their interest to complete ownership) RSLs will want to ensure that the home is resold on similar terms to a properly qualified beneficiary household. Historically, shared ownership leases have stated that RSLs must seek subsequent buyers from their own or the council's housing waiting lists. More recent shared-ownership leases include a pre-emption right, meaning that residents must offer the home back to the RSL first, before seeking a buyer elsewhere. These terms are intended to enable you to find suitable buyers for resales.

C4 - Household income – assessing charitable need

C4.1. Charity law would allow you to meet housing need by providing rented accommodation in all cases. However, that need is not uniform and providing LCHO may be the most cost-effective way of relieving housing need among some groups of charitable beneficiaries.

C4.2. Such beneficiaries will still have to be in housing need and unable to relieve it themselves because they lack financial resources. However, they must be able to afford to buy on a shared-ownership basis and should have reasonable prospects of being able to sustain home ownership without excessive hardship.

C4.3. The following table is not intended to show whether someone is in charitable need. Its purpose is to help you decide:

- whether it is appropriate to relieve that person's housing need by an offer of LCHO; and
- what percentage of equity (the value of the home) they could afford to pay, bearing in mind the rent they will pay for the remaining value, once you have established that they are in charitable need.

Region	Lower-quartile house price (HM Land Registry 2006)	Household Income required (3.5 income multiple)*
East	£133,500	£38,143
East Midlands	£105,000	£30,000
London	£183,000	£52,286
North East	£80,000	£22,857
North West	£88,000	£25,143
South East	£150,000	£42,857
South West	£135,000	£38,571
West Midlands	£107,000	£30,571
Yorkshire and the Humber	£90,000	£25,714
England (average)	£119,000	£34,000
*Based on 100% purchase (interest rate does not affect this figure) figures as at May 2009.		

C5 - Reporting public benefit – Commission guidance

C5.1. The Charities Act 2006 includes several changes relating to public benefit. The Commission has issued guidance on the operation of the new public benefit requirement, which is available on our website. In your annual report you now have to include information about how your charity meets the public benefit requirement. Larger charities, in particular, have to say how they have provided such benefit.

C6 - HomeBuy Agents and applicant assessment

C6.1. The Government's priorities for affordable housing are not necessarily charitable. Thus, eligibility under these schemes does not automatically make the provision of LCHO charitable. The following paragraphs set out these priorities.

C6.2. Homes for sale that are provided as part of the Government's investment programme for affordable housing are prioritised for certain groups:

- existing social renting tenants;
- households in priority housing need, as assessed against statutory criteria;
- key workers, as defined by the CLG (see paragraph D2.9);
- first-time buyers and others identified as priority groups by Regional Housing Boards (RHBs) (some of whom may be key workers) (Note that all first-time buyers with annual household incomes of less than £60,000, who otherwise cannot afford to buy without help, are now eligible to apply for New Build HomeBuy (NBHB) and Open Market HomeBuy (OMHB) housing).

C6.3. There are further, specific criteria where homes are targeted at key workers, older buyers and people with a disability.

C6.4. HomeBuy Agents (HBAs) make the initial assessment of an applicant's suitability. The role of HBAs is to:

- determine eligibility according to the criteria in paragraphs C6.1 and C6.2;
- tell applicants about the options available to them; and
- process applications, including carrying out a preliminary financial assessment.

C6.5. To achieve maximum benefit for public funding, shared-ownership buyers must buy as large a share of a home as they can afford and sustain. The Corporation requires that HBAs use their affordability calculator or a comparable means of deciding applicants' ability to afford and maintain long-term home ownership. The calculator (and affordability assessment tool kit) is available at www.housingcorp.gov.uk/server/show/ConWebDoc.11151.

C6.6. As HBAs are not able to provide financial advice, they should as part of their assessment process, refer applicants to their retained panel of independent financial advisers for a detailed and more rigorous affordability check.

C6.7. The HBA process does not assess charitable need. So it may recommend someone who is not in charitable need and cannot be helped by a charitable RSL. The judgement may be a fine one and depend on the individual circumstances of the case. You should review all relevant circumstances and consider the principles described in this guidance when making your decision.

C7 - Does providing the housing meet a charitable purpose? (Charitable trading and the HMRC clearance process)

C7.1. This guidance supports a clearance process, developed by HMRC, which is intended to assure trustees in advance that your proposed activities are properly charitable trading. HMRC's guidance on the distinction between primary and non-primary purpose trading is as follows:

Charitable trading such as selling homes to poor people to relieve their charitable need is known as primary purpose trading in charity tax law. For a charity, the profits of primary purpose trading are normally exempt from tax. The profits of non-primary purpose trading, such as selling homes to people who are not in charitable need, are usually taxable, just as they would be for any other house builder. The fact that the non-primary purpose profits are used to support charitable projects will usually be insufficient to benefit from charitable exemption.

Selling to non-charitable beneficiaries may be incidental to the charitable purpose where it is part of a mixed development which is reasonably considered to be a more appropriate way of relieving charitable housing need than providing LCHO only.

Trustees of charitable RSLs have a responsibility to:

- identify the non-primary purpose trading which their charity is carrying out. See: http://www.hmrc.gov.uk/charities/guidance-notes/annex4/sectionb.htm#14.
- properly apportion income and expenses to it. See: http://www.hmrc.gov.uk/charities/guidance-notes/annex4/sectione.htm#48
- make a return to HMRC under Corporation Tax Self Assessment of any profits arising from non-primary purpose trading. See: http://www.hmrc.gov.uk/ctsa/ctsaguide.pdf.

If this is uncertain, then professional advice may be needed.

The issue of trading losses is explained in paragraphs 51 to 55 of the HMRC Charities trading guidance. See: http://www.hmrc.gov.uk/charities/guidance-notes/annex4/sectionf.htm.

A trading subsidiary or associate company may be used to carry out non-primary purpose trading, which can transfer its profits to the charity under 'company gift aid' provisions. See: http://www.hmrc.gov.uk/charities/guidance-notes/chapter3/sectionc.htm

This typically means that neither the subsidiary/associate nor the charity pays any corporation tax. It should be noted that, unlike an associate company, a subsidiary has nine months after the end of the accounting period to make the Gift Aid payment, so a subsidiary is generally the best option.

C7.2. Before undertaking any housing development, you need to be as certain as possible about whether sales are likely to be treated as primary purpose or non-primary purpose trading. For smaller and more straightforward developments, this should be obvious. But HMRC recognises that some social housing developments are big, financially complex, or take a long time to come to fruition, for example because of land assembly or planning discussions.

C7.3. In these exceptional cases, you will want reassurance about the likely tax position, either at an early stage or if the scope of the development changes, to help inform your decisions. HMRC form CAR1 should be used to request advice on the application of section 505(1)(e) or section 505(1B) of the Income and Corporation Taxes Act 1988 (ICTA). The form is available on the HMRC website at http://www.hmrc.gov.uk/charities/crs-landlords.htm. This clearance process is not intended to apply to every scheme, but provides certainty in those few cases where you have serious doubt whether an intended activity is charitable.

C7.4. Any advice given in response to these requests is governed by HMRC's 'Non-statutory business clearance process', which is described on its website at http://www.hmrc.gov.uk/cap/links-dec07.htm.

C7.5. This is a formal clearance process and you can rely on the advice of HMRC; provided that the application for advice sets out all the relevant facts and draws attention to all the relevant issues. 'Relevance' should be taken to include any transactions related to, or consequent on, the transaction in question.

C7.6. So it is in your interests, as a charitable RSL, to complete the clearance form as fully and accurately as possible, giving full details of:

- homes being developed; and
- how these are split between rented and home ownership provision; and
- which homes are likely to be sold to charitable beneficiaries and on what terms.

Any failure to do so may be regarded as evasion. If the scope of a development changes later, you should make a fresh application.

C7.7. The clearance process aims to provide certainty on the tax treatment of trading by charitable RSLs. With proper consideration, it should be possible to plan housing developments to comply with the principles of primary purpose trading in charity tax law. Sometimes, activity on a particular development may not be as charitable as you originally intended. The clearance process may help to show where you could take compensatory action elsewhere. In some circumstances, you may decide that it is more straightforward or administratively cheaper to accept at the outset that a development is non-primary purpose trading and therefore taxable.

C8 - Corporation tax self assessment and trading subsidiaries

C8.1. Charities must keep sufficient records to make a correct and complete return for the purposes of Corporation Tax Self Assessment (CTSA). For general guidance, see: www.hmrc.gov.uk/pdfs/ctsabk4.pdf.

C8.2. HMRC guidance on trading is as follows:

> Usually, trading involves the provision of goods or services to customers on a commercial basis. Simply because a venture is a one-off or occasional does not mean that it will not be treated as trading for tax purposes.
>
> Whether an activity is, or is not, trading depends on the facts in each case. When it is not clear it will be necessary for HMRC Charities to look at all the circumstances surrounding the activity. Further guidance can be found in the Business Income Manual at paragraph 20200, which is available at www.hmrc.gov.uk/manuals/bimmanual/BIM20200.htm.
>
> When deciding whether an activity amounts to trading, it is not relevant that the profits are intended to be used for charitable purposes.

C8.3. The Commission guidance Trustees, Trading and Tax (CC35), quoted here, advises on the use of trading subsidiaries. The full guidance is available on our website.

Where trading (other than trading in pursuit of its charitable objects) involves significant risk to a charity's assets, it must be undertaken by a trading subsidiary. But even where it is not essential for the trading to be undertaken by a trading subsidiary, the use of trading subsidiaries may produce benefits, for example in reducing tax liabilities. In particular, trading subsidiaries may make donations to their parent charity as Gift Aid, so reducing or eliminating the profits of the subsidiary which are liable to tax.

But the use of trading subsidiaries where it is not essential to do so is not always beneficial, since it may involve additional management and other costs. And there may be fiscal drawbacks to balance against the advantages to be obtained, although direct financial considerations may not be the only ones which are relevant. Trading operations may benefit from using a trading subsidiary due to the organisational and financial clarity conferred by distinguishing a trading operation from the charity's main work.

C8.4. Provided that certain conditions are met, a trading subsidiary benefits from some, but not all, of the Value Added Tax privileges of its parent charity. There are no corresponding privileges for Corporation Tax. However, the subsidiary can adjust its Corporation Tax liability by the use of Gift Aid (see www.hmrc.gov.uk/charities/guidance-notes/chapter3/sectionc.htm). Gift Aid payments reduce the trading subsidiary's taxable income by the amount of the payment. Therefore, it is often possible to eliminate the trading subsidiary's entire potential Corporation Tax liability by making such payments. You should consider whether this is a subject on which you seek professional advice.

C9 - Trading subsidiaries in the RSL sector

C9.1. There is no special tax regime for charitable RSLs and their subsidiaries, which means that, like all other charities, the trustees of these RSLs have to decide the most effective way to manage their liability. In some developments, circumstances may mean that the activity might be better done by a non-charitable subsidiary, in line with Gift Aid principles.

C9.2. But the particular operating environment of RSLs can mean that use of a non-charitable subsidiary is not always the best solution. For example, in some circumstances the full amount of profit may not be available for Gift Aid. The transfer of homes between related RSLs can create liability to Stamp Duty Land Tax, in effect trading one tax liability for another. Organisational costs are also a factor. You will want to demonstrate that you are operating your RSL efficiently, and one approach is to reduce administrative costs by merging subsidiaries into the parent body. Sometimes the operating costs of a subsidiary may even be more than the potential tax liability.

C9.3. If, after considering HMRC and Commission guidance, charitable RSLs decide not to use trading subsidiaries, they must be very careful to ensure that the activity is clearly charitable. The requirements on the reporting of public benefit are particularly relevant here. Where trading subsidiaries are not used, RSLs should consider the HMRC clearance process before starting an activity where there is scope for significant doubt. In some circumstances, you may need to decide to accept tax liability from the outset.

C10. What happens if circumstances change?

C10.1. It is important that charitable RSLs planning any shared ownership housing development assess the need for the accommodation being offered among its potential beneficiaries from the beginning.

C10.2. However, sometimes a charitable RSL may complete such a development only to find that there has been a major change in circumstances in a way that could not have been anticipated, and there is little or no demand for it, perhaps because potential beneficiaries can no longer access a mortgage. Consequently the property cannot be used for the intended purpose.

C10.3. In these circumstances charity law requires that the RSL's trustees should make the most effective use of the property for the charity's purposes in a different way. For example the RSL may be able to:

- convert the property from one which is offered for sale to one available at an intermediate market rent [i.e it must not exceed 80%of local market rent] or to general needs social rent;
- convert the property from low cost sale to intermediate market rent for a maximum period of 5 years, with the expectation that at the end of that period, tenants will purchase on standard shared ownership terms. Tenants seeking to purchase will be subject to reassessment by the Local Homebuy Agent, to ensure that they meet the shared ownership eligibility criteria.
- they may be able to sell the property on the open market and use the proceeds to further those purposes in another way.

C10.4. Clearly, any relevant funder, such as the Homes and Communities Agency, will have to approve a change of use before such action is taken and need to be satisfied that any grant is being used for the purposes for which it was given. The terms of the funding may also include requirements that the RSL must comply with in these circumstances.

C10.5. In any situation like this the trustees need to have clear evidence (for example advice taken, minutes of meetings, evidence from marketing activity) that:

- the development was properly planned as an effective and prudent way of enabling the charity to further its purposes;
- the difficulties in finding beneficiaries have been caused by a major change in circumstances arising after the decision to proceed with the development was taken; (An example of a major change of circumstances would be the radical alteration in the market produced by the 2008 'credit crunch'); and
- the proposed use of the property or the proceeds of sale is the most effective way of furthering the purposes of the charity in the circumstances.

C10.6. Provided this evidence is in place the trustees' actions are unlikely to breach charity law or incur any tax implications. Without it, the trustees could be in breach of their duties and may be liable to the charity for any loss caused to it.

C.10.7. If it is difficult to sell a property so the decision is made to move it to rental stock, then this will be with the intention that the transfer is either temporary or permanent.

If it is temporary the property is still an item of trading stock and the rental income is included under business property income. The timescale is unimportant.

If it is permanent, then, irrespective of the generally accepted accounting practice, the legislation at paragraph 6, Part 2, Schedule 15, Finance Act 2008 will apply for taxation purposes. Market value must therefore be brought in when computing the assessable trading profits. However, the property will normally be a qualifying investment (see D.2.13 below) and so the disposal will normally fall within primary purpose trading with any profit exempt.

C11 - Accounting requirements

C11.1. In addition to statutory obligations, all RSLs are subject to specific accounting requirements. These are described in the Accounting Requirements for Registered Social Landlords General Determination 2006, issued by the HCA and available on its website at www.housingcorp.gov.uk/upload/pdf/Accounting_det.pdf.

C11.2. In particular, the General Determination requires an analysis of the tax charge for the year being reported on, including the Corporation Tax charge over the period of account, and any over- or under-provision for Corporation Tax in previous periods. The number of homes managed by the RSL, separated out by tenure type, should also be reported.

C11.3. The latest version of the RSL Accounting Statement of Recommended Practice (SORP) came into use in April 2008.

Section D - Examples

D1 - What are these examples for?

D1.1. To help you put this guidance into practice, several examples follow. Though not definitive, they represent the range of potential circumstances where affordable home ownership might form part of an RSL's housing provision and:

- where it may or may not be charitable; or
- where it might be charitable, when other factors are taken into account.

D2 - When affordable home ownership might be a charitable activity

Shared ownership: variable first-tranche sales

D2.1. To comply with a planning requirement under section 106 of the Town and Country Planning Act 1990 (section 106), a commercial developer has transferred eight homes to a charitable RSL, within a large, high-demand city-centre scheme. To make shared ownership affordable for its beneficiaries, the RSL's trustees offer first-batch (tranche) sales at around 45% of equity.

D2.2. As a first-tranche sale of 45% may not accord with the needs and means of all potential beneficiaries, the trustees adopt a flexible approach. They accept some applicants who can afford a 60% initial share, as doing this allows first-tranche sales to be made at 35% to other beneficiaries, whose needs and means are different.

A flexible approach to first-tranche sales can help to ensure that benefit is spread widely. Beneficiaries will have a range of personal circumstances and it is reasonable, within the overall scope of the scheme, to include some purchasers who, although poor and in charitable need, are slightly better off than other beneficiaries, to enable others who are less well off to be helped. Provided that this intention is consistent and clear, the whole activity is likely to be regarded as charitable.

Affordable rent, shared ownership and outright sale: working together in regeneration

D2.3. An RSL redevelops a redundant industrial site in an area of acute housing need. The scheme provides 160 new homes: 50 for social rent, 50 for shared ownership, and 60 for outright sale, alongside commercial and leisure space. Scheme costs are met from a variety of sources.

D2.4. The income from outright sales covers the costs of the affordable rented homes and makes the overall scheme viable. This income also helps make the shared-ownership element affordable, enabling average first-tranche sales of 40%.

The development of properties for outright sale is generally non-charitable trading and the income from this should be treated accordingly. The trustees will need to decide whether it is better to keep the trading within the charity or transfer it to a non-charitable trading company.

Exceptionally, where the mixed development is a means of relieving charitable need in a more effective way, the outright sale of a few properties to non-charitable beneficiaries may be consistent with furthering the charitable purpose. It will probably be a matter for expert advice to decide the optimum levels of different types of property.

Other outright sales of property to non-charitable beneficiaries will be considered as incidental to the charitable purpose and so will not be taxable. Such sales will be relatively few and either will not be an intended part of the development (for example, a property which turns out to be unsuitable for furthering the charitable purpose) or will take place where the charity has no choice but to sell the property to further the charitable purpose (for example, because of a condition required by a funder).

Shared ownership and outright sales: enabling charitable benefit

D2.5. An RSL develops 100 new homes for sale. 92 of the homes are sold on shared-ownership terms to charitable beneficiaries, while the other eight are outright sales on the open market. Proceeds from the open-market sales help to lower the cost of first-tranche sales for the shared ownership homes.

The sale of eight homes on the open market is non-charitable trading to generate an income that can be used to subsidise the charitable activity. This does not seem to be mixed development that is likely to contribute to the relief of charitable need, except by generating funds.

Shared ownership and outright sales: enabling regeneration

D2.6. An RSL develops 100 new homes for sale in a regeneration area where property values are very low. Seventy of the homes are sold on shared-ownership terms to charitable beneficiaries, some of whom may be former owner-occupiers who have had to move from homes of very low value. The other 30 homes are sold on the open market.

D2.7. This high proportion of outright sales reflects property values in the area and is aimed at promoting stability in the local market. These sales also allow low first-tranche sales across the shared-ownership part of the development.

Selling homes on the open market is not a charitable activity. It may be non-charitable trading to generate income that can be used to further the charitable activity.

Open market provision: people with disabilities

D2.8. An RSL, whose main activity is the provision of accessible rented housing with specialist support, buys a few homes on the open market for adaptation and sale on shared-ownership terms to beneficiaries with disabilities.

The RSL has to make a judgement about whether certain of its beneficiaries will be better assisted through home ownership than by renting. This should be seen in the context that access to any charitable home ownership is subject to the assessment of affordability described in paragraphs C6.1 to C6.6, which is intended to identify both those who are too poor to cope with home ownership and those whose income is too high to qualify for assistance. Between these extremes are those proper beneficiaries whose needs may be best met through the offer of a home for sale.

Provided that the reasoning for these decisions is transparent and that reasonable use is made of the charity's resources, the adaptation and sale of homes should be viewed as charitable.

Shared ownership: key worker provision

D2.9. Under a section 106 planning requirement, an RSL works with a commercial developer on a high-demand, high-value scheme to provide housing for key workers in the area. The provision is heavily subsidised and marketing is targeted at local key-worker employers. The RSL uses its funds to ensure that initial tranche sales are pegged at or below 45%. There is no other social housing in the scheme.

The key-worker homes form a small part of a larger scheme but they are the whole of the RSL's input. The RSL has invested heavily but, as these are key-worker homes, clawback arrangements are in place, meaning that the charity will benefit when purchasers move on. Provided that the employment of the key workers will further charitable purposes and that without the housing the key workers would be unable to take up the employment, this is likely to be viewed as a charitable activity.

Where housing is specifically developed for key workers, buyers must fulfil all criteria applicable at the time. 'Key worker' is as defined by Government from time to time and must also meet the requirements set out in paragraph C2.4. The latest definition is available on the CLG website at www.communities.gov.uk/housing/buyingselling/ownershipschemes/homebuy/keyworkerliving, and is reflected in the Corporation's Capital Funding Guide, which is available in the 'Investing' area of its website at http://www.homesandcommunities.co.uk/national_affordable_housing_programme.

Properties must be bought within reasonable travelling distance of the workplace. The HBA or RSL will decide on what is 'reasonable' for the areas they cover and will consider each case individually. It will depend on several factors, including the availability of public transport and whether the scheme is in an urban, greenfield or rural setting. The nature of employment might also be a factor; for example, whether there is shift working or short-notice attendance at the place of work.

Equity loans

D2.10. An RSL, which owns a substantial number of rented homes, uses funds to subsidise the purchase of 10 homes on the open market, on an equity loan basis. Loans are marketed to renters of social housing who want to move into home ownership and to key workers identified in co-operation with local employers.

D2.11. Buyers raise a mortgage for 75% of the value of the home and take an equity loan of up to 25%. The details of the schemes will vary.

This is another means to address need, by subsidising the costs of buying, rather than simply providing a rented home. The RSL's rented homes are freed for other beneficiaries and, although the RSL receives no interest from the loan, it will share in any increase in value. This could be a more effective way to make use of charitable funds, making it primary purpose trading and therefore charitable.

D2.12. In general, equity loans are susceptible to the 'too poor to cope/too rich to qualify' test. They will not be appropriate for all social renters, and the need to raise mortgage finance for 75% of the value of the home means that RSLs will have to consider all relevant factors, within the overall affordability framework, when offering loans as primary purpose trading.

Shared ownership: redefined to outright sale

D2.13. An RSL develops 100 homes for sale on shared-ownership terms. Although the development reflects local priorities, it becomes clear after extensive marketing that, due to a major change in circumstances that could not have been foreseen, too few beneficiaries in the area would be able to buy a home. Rather than leave the properties empty, and mindful of its charitable obligations, the RSL transfers 20 homes to outright sale and uses the proceeds of sale to further its charitable purposes.

Provided the trustees have evidence that the difficulties in finding beneficiaries have been caused by a major change in circumstances arising after the decision to proceed with the development was taken, no tax liability will be incurred. Without that evidence the sales are likely to be treated as non-primary purpose trading and not charitable.

If the rent is low-end intermediate market rent and there are poor prospects for capital growth, HMRC may question whether the expenditure on land is an 'investment' at all, but normally the prospects for capital growth will mean that this is not in question, and para 4 Schedule 20 ICTA 88 will apply such that the investment is not non-qualifying.

Shared ownership: Change of use to intermediate rent

D2.14. An RSL develops 40 homes for sale on shared-ownership terms. Although the development reflects local priorities, it becomes clear that a downturn in the housing market means that too few beneficiaries in the area would be able to find the means to purchase a home. Rather than leave properties empty, and mindful of its charitable obligations, the RSL applies for a change of use from shared ownership sale to intermediate market rent in perpetuity. The RSL receives approval and transfers 20 homes to intermediate market rent and uses the proceeds of the rental income to further its charitable purposes.

D3 - When affordable home ownership might not be a charitable activity

D3.1. The provision of affordable home ownership by charitable RSLs is not inevitably a charitable activity. Trustees should consider the principles already described. As the examples in this guidance show, the distinction between primary and non-primary purpose trading is not always clear cut and some schemes will contain elements of both. Here are some further examples to show where, on balance, provision is less likely to be charitable.

Shared ownership: high first-tranche sales with Gift Aiding on a commercially developed site

D3.2. An RSL joins a partnership with a commercial developer, building a high-value complex in a high-value area. The commercial developer is delivering homes for outright sale and the RSL, under a section 106 agreement, provides 77 shared ownership and 32 rented homes.

D3.3. As a result of the commercial developer's income expectations, the RSL has to sell the first tranche of shared ownership homes with an exceptionally high level of equity of at least 60%. The second tranche homes are grant funded, enabling a lower level of equity of around 40% to be sold. To achieve sales, the first tranche properties are marketed beyond the beneficiary group. These sales cover the costs of the rented homes.

Unlike the example in paragraph D2.13, because the development is commercially driven it would be difficult to regard the whole of the RSL's activity as primary purpose trading. Proper beneficiaries will be assisted through the rented homes, but the proportion of rented homes is small, especially when only a few of the shared-ownership homes are likely to be sold to beneficiaries.

The RSL is having to work within a financial model it cannot, and never has been able to direct and, to minimise risk to charitable funds, it would be better to place the whole of the affordable home-ownership activity in a non-charitable subsidiary, with Gift Aiding of receipts to the charitable parent.

In this case, if the non-primary purpose sales are retained in the charity then section 505(1B) of ICTA applies. The sales will be aggregated with all non-primary purpose trading and any profits of the overall non-primary purpose trading will be taxable.

Outright sale without special circumstances

D3.4. An RSL develops 100 new homes for sale, in an area where there are no special market circumstances. Seventy of the homes are sold on shared-ownership terms to charitable beneficiaries, at first-tranche sales of around 50-75%. The other 30 homes are sold on the open market and the proceeds invested in other activities.

The sales to charitable beneficiaries will be primary purpose trading and the sales on the open market will be non-primary purpose trading.

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