

Sent: Friday, 24 April, 2009 21:59:07
Subject: Charity application rejected

Dear All,

Yesterday we received a letter from the UK Tax Authorities rejecting our application for recognition as a charity. Citing a legal precedent, they stated that "the production of an encyclopaedia is not the charitable advancement of education" and therefore we were not established for exclusively charitable purposes. The ruling they gave stated that "If the object be the mere increase of knowledge it is not in itself a charitable object unless it is combined with teaching or education".

The full letter from the HMRC is copied below with some explanatory notes added in { }

Their objection goes to the heart of what we have been established to do. On the surface, it does not appear that any different wording in our constitution or correspondence would have given us a different outcome. Nonetheless, the legal issues may be arguable - our job is not just to produce content in isolation, but also to spread that knowledge and make it accessible to all. I should imagine this will come down to the finer points of law, and it is probably best to engage a lawyer at this stage when we appeal.

If we had applied to the Charity Commission before HMRC the application would have been considered by different lawyers but the same law would apply. Therefore, it is likely that we would have come up against the same problem.

I'm contacting the Foundation to ask them if they are aware of any lawyers familiar with UK law who could help us pro-bono on this.

I'm also sending a note to our MP to thank him for his help in speeding this up: although it is disappointed to get this response, it is better to get it now than in 3 or 6 months' time.

In the meantime, we should probably stop referring to ourselves as a "charity" or an "exempt charity". Before receiving this letter it was reasonable for us to do this as that was our honest view. Now we know there is some disagreement over this, I suggest we should describe ourselves as a "not-for-profit" instead. Whilst we can still get Gift Aid declarations (HMRC have previously confirmed this was ok) we should probably add a caveat on the form explaining that our charitable status is contested.

Regards,

Andrew Turvey
Secretary, Wikimedia UK

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Company Secretary
Wikimedia UK
23 Cartwright Way
Beeston
Nottingham NG9 1RL

Date: 17 April 2009

Dear Mr Turvey,

Wiki UK Limited (operating name Wikimedia UK)

Thank you for your letter of 4 March 2009 and enclosures. I am sorry for the delay in replying.

I am aware that you have written to Nick Palmer MP {regarding delays in responding} - a reply to that letter will be sent separately to Nick Palmer MP.

The definition of a charitable company for tax purposes is contained at Section 506(1) Income and Corporation Taxes Act 1988 which states " 'charitable company' means any body of persons established for charitable purposes only". However, the determination of charitable status is a matter of general law.

To be a charity in law it is not sufficient that a company's activities or intended activities are charitable. The memorandum and articles of association of the company must declare objects that are charitable in law and be otherwise in acceptable charitable form so that the company could only carry out charitable activities.

The objects of Wiki UK Ltd are stated at clause 3 of its memorandum of association:

"The charity's Object is to aid and encourage people to collect, develop and effectively disseminate knowledge and other educational, cultural and historic content in the public domain or under a license that allows everyone to freely use, distribute and modify content, by means including (but not limited to):

[9 ways are them listed - for example 'acting as a voice and representative for the community of UK residents and citizens who use and edit such repositories']
"

In your letters of 23 November 2008 and 4 March 2009 you state that the primary purpose of setting up the company is to support the 'Wikipedia' website. {We actually said " support the "Wikipedia" website and the other projects of the Wikimedia Foundation, in ways that are compatible with UK charity law"}

The stated objects are not charitable in law. The production of an encyclopaedia is not the charitable advancement of of education and has not been accepted as such in law. In Re Shaw [1957] 1 WLR 729 Mr Justice Harman said "If the object be the mere increase of knowledge it is not in itself a charitable object unless it is combined with teaching or education". Nor is the support the Wikipedia, the stated primary purpose of Wiki UK Ltd, a charitable purpose.

Wiki UK Ltd is not established for charitable purposes only as required by the legislation and so is not a charity for tax purposes. The charity tax exemptions and reliefs (including Gift Aid tax relief) are not, therefore, available to Wiki UK Ltd.

To help us improve customer service, please quote our reference number and provide a daytime telephone number in any correspondence.

Yours sincerely,

Higher Officer, Technical