charity tax group

CTG Charity Member briefing – January 2020

VAT updates	■ **Advertising**: CTG received a letter from HMRC officials in October, outlining their view on the VAT treatment of social media advertising. CTG disagrees with HMRC's view and is considering possible next steps (including a possible test case) and undertaking discussions with charities and agencies. More detailed information is available on request. ■ **Making Tax Digital:** MTD is now live for the deferred charities, although their first return will not be until 2020 if they report quarterly. Recent developments have included the publication of HMRC guidance on applying for an exemption to MTD and the extension of the soft-landing period if charities contact HMRC and can show significant reasons why implementing digital links is not possible (most likely software issues). CTG has produced a "mythbuster" and there is a detailed guidance page on the website. HMRC's approach appears to have been relatively light touch so far. ■ **Brexit updates and implications for VAT/customs:** CTG has posted a number of items on the website linking to Government no-deal advice (and advice on transitional customs measures). With the recent general election result, it would seem likely that the UK will leave the European Union by 31 January. CTG will continue to monitor any developments that may arise during trade negotiations with the EU. ■ **CTG research project to quantify the value of VAT reliefs for charities:** Following a pilot process, the VAT research survey was launched on 12 November and sent to a representative sample of 450+ charities. The information collected will help to inform the broader research on the socio-economic value of charity tax reliefs. CTG expects to report on the first stage of the project in the Spring. ■ ***University of Cambridge*** **case:** CTG understands that the Court of Appeal has decided that it does not consider it necessary to issue a judgment following the decision it referred to the CJEU. The case was discussed at some length at a previous Observer Member meeting, particularly in the context of the potential impact on the Church of England Children's Society case. CTG had asked HMRC officials how they would be responding to the Cambridge case at a meeting in September and they indicated that no formal position would be taken until after the Court of Appeal had reviewed the direction from the CJEU. CTG will monitor HMRC's reaction. ■ **VAT and reading material:** The Upper Tribunal has supported an appeal by *News Corp* that electronic newspapers are eligible for VAT zero rating. CTG's Technical Adviser Graham Elliott has produced a new commentary focusing on a number of practical considerations for charities that arise from the fact of this decision and the litigation overall. ■ **Review of other recent case law developments:** Judgments published in recent months include include: RSR Sports Limited, Westlow Cricket Club, Marites Salabit, Yeshivas Lubavitch Manchester, Immanuel Church, Eynsham Cricket Club, Lilias Graham Trust case. ■ **Seat naming:** CTG is aware that a charity has been challenged by HMRC where donors have included messages on seat plaque that are not donor names. This may include messages "in memoriam", or in support of a cause etc. HMRC's guidance is clear that the acknowledgment relates to a donor's name, but we are aware that practice among charities offering seat naming products is not always this prescriptive (in some cases simply having a character limit of say 25, rather than specifying it must be the donor's name). It remains to be seen whether it is a one-off, or indicative of a wider challenge.

	■ **Partial exemption/CGS consultation:** CTG submitted a response to the consultation following a meeting with HMRC officials in September 2019. The Government's response is awaited. ■ **VAT status of DfID grants and other similar funding:** CTG hosted a meeting in December to discuss a ruling from HMRC (in 2013) on the VAT status of funding from DfID to humanitarian aid charities and whether this reflects current practice within the sector. A meeting with HMRC is planned. ■ **Changes to tax rules for call off stock arrangements between Member States:** HMRC has published an explanation of changes to EU Law relating to the VAT rules for cross-border transactions between member states and published draft legislation and guidance. The Government intends to include this measure in the next Finance Act. Read more here.
Giving updates	■ **Future of Gift Aid subgroup:** A subgroup of the Future of Gift Aid working group met HMRC officials in November to look at the potential of technology, including Open Banking, blockchain technology and HMRC Personal Tax Accounts, to allow for greater automation of Gift Aid and in theory remove the need for the Gift Aid declaration to be taken at the time the donation is made. CTG will submit a "proof of concept" proposal to build future Gift Aid capabilities into the new payments architecture. ■ **Facebook Donate:** Facebook offers a Gift Aid function, which is helpful, but HMRC has expressed some reservations about whether Gift Aid can be claimed, on the basis that the charity must be sure it has an audit trail between the donor and the claim being made. The result has been a stalemate and uncertainty with many charities not claiming Gift Aid worth millions of pounds. Encouragingly, following representations by CTG, a dialogue has been established between HMRC and Facebook on this issue and we are hoping to participate in a meeting with HMRC and Facebook soon. ■ **Retail Gift Aid letters – £20 *de minimis* limit:** Members will recall that the Government has introduced a non-mandatory £20 *de minimis* limit for letters to donors, for charities operating methods A or B of the Retail Gift Aid scheme. Currently, a letter must be issued annually making the donor aware that they are responsible for the tax to cover, regardless of the amount of **net** If a charity decides to adopt the new limit, then from April 2019, a letter only need to be issued once **net** sales have reach £20, or every three years, whichever comes first. There is a brief mention of this new process in the HMRC guidance, but officials have informed us that there is currently no resource available to provide a more detailed overview. In the meantime, CTG has details of worked examples and HMRC FAQs on its website and hopes to provide template letters to members shortly. ■ **Gift Aid donor benefits:** CTG has expressed frustrations with HMRC's review of the donor benefit guidance, which did not tackle concerns about the correct meaning of the *in consequence* rule and the operation of split payments. HMRC has now closed down this working group, but CTG is looking for examples of difficulties charities encounter with these rules.
Other issues	■ **Business rates:** The value of charity business rates relief (including mandatory and discretionary relief) across the UK has increased by £60m to £2.2bn per annum. There is no indication that charity rates relief will be reviewed, but there has recently been increased scrutiny. The Non-Domestic Rates (Scotland) Bill, which will exclude mainstream independent schools from eligibility for mandatory charitable business rates relief, will soon begin its Stage 3 process in the Scottish Parliament. A controversial amendment proposed at Stage 2 by Andy Wightman MSP (which was accepted) would devolve non-domestic rates to local authorities, a move which First Minister Nicola Sturgeon opposes. The sector has expressed concerns this move risks the creation of a two-tier status for charities, with tax reliefs applicable only to the most "deserving" charities.

Meanwhile, in Northern Ireland, a "full and comprehensive" review of business rates, with all exemptions facing scrutiny, has closed. CTG made a short response following liaison with the CRA.

- **Business rates case law:**
  - **Derby Teaching Hospitals NHS Foundation Trust**: A recent ruling found that "Derby Teaching Hospitals NHS Foundation Trust [and, therefore, the other NHS Foundations Trusts] is not a charity for the purposes of section 43(6) of the Local Government Finance Act 1988" – so it is not eligible for the 80 per cent charity reduction. A spokeswoman for the Charity Commission said it welcomed the decision noting: "This was a significant case: charity has a distinct status in law, and it also has a special meaning in the eyes of the public. It is crucial that this special status is protected for the benefit of the public."
  - **Royal Albert Memorial Museum and Art Gallery**: An appeal by the Valuation Office Agency against the Royal Albert Memorial Museum and Art Gallery in Exeter has been dismissed by the Upper Tribunal (Land Chambers). This litigation follows the important York Museums case from 2017.
  - **Centric Community Projects**: In this recent case, a charity was successful in a judicial review action challenging a Scottish council's decision to deny charity rates relief on the basis that the charity was not using a property "wholly or mainly" for charitable purposes.

- **IR35 (Off-payroll working):** Off-payroll working will be a major change for larger charities when it is introduced in April 2020. Charities should hopefully already be preparing for this important change. and CTG is encouraging charities to get in touch with their payroll system provider - what are they doing to ensure that the charity's systems will be ready for the change and how do they expect this to operate?

  The new rules will mean that operating IR35 becomes the responsibility of the organisation, not the worker. The rules will only apply to larger organisations that meet two of the three following criteria: turnover above £10.2m, a balance sheet total over £5.1m; 50 or more employees. CTG has secured confirmation that the turnover test excludes donations and other voluntary income. CTG has extensive guidance on IR35 here.

  The Government is launching a review of changes to off-payroll working rules to address any concerns from businesses and affected individuals about how they will be implemented (this is **not** a consultation on whether it will happen or not). The review will determine if any further steps can be taken to ensure the smooth and successful implementation of the reforms, which are due to come into force in April 2020. CTG attended an HMRC stakeholder event in January and supported calls for additional guidance notes and consideration of a soft landing period.

- **Charity tax returns:** During 2019, a compliance review by HMRC resulted in 3,000 charities being asked complete a tax return. For many charities this was the first time that they had been asked to do so in many years, resulting in additional administration and software costs. It remains to be seen whether the Government will repeat such an exercise in future years, but sector representative bodies have already asked HMRC to refine the scope of information requested to avoid duplication with other reporting requirements.

- **Tax and trading:** A paper had been produced by Crowe UK proposing the removal of tax obstacles to bringing trading within the main charity, largely removing the need for trading subsidiaries. The paper presents an interesting proposition but some concerns have been raised about the potential risks for charities. The Charity Tax Commission had made alternative proposals that charity trading subsidiaries should have access to rates relief.

- **OECD consultations:** Consultations on Pillar One and Pillar Two of the OECD's proposals to address digital economy tax issues. While most charities will be unaffected due to their structure and the nature of their operations, some organisations, particularly in the education sector could be affected.

- **5MLD and Trust Registration Service (TRS):** The EU's Fifth Money Laundering Directive (5MLD) was transposed into UK law by regulations published just days before Christmas. An HMRC policy paper on the regulations, is reproduced in full on the CTG website. A commentary on the proposals to date can also be found here.

  As outlined, in the commentary, there had been concerns about the proposed changes to the Trust Registration Service (which would expand the scope of the requirement for trust registration to all "express trusts" [including charitable trusts], regardless of whether or not they incur a tax consequence), with further consultation planned. However, as noted by the Law Society: *"While there had been indication via the consultation paper that there may be changes to the trust registration regime, these have not been included in this legislation. We anticipate HM Government may seek to implement changes at another time".* CTG will maintain a watching brief and seek further updates at the next HMRC Charity Tax Forum meeting in February.

- **Employment Allowance:** CTG submitted a short response to the consultation noting that charities reliant on a large workforce will no longer benefit from this relief, adding to the cumulative burden of taxation facing the sector. The CTG response also noted that for those charities with NICs liabilities below £100,000, they will in future need to consider their overall state aid limit, particularly if they are in receipt of other reliefs subject to State Aid, such as the Retail Discount. This legislation was included in a draft Finance Bill in the last Parliament, so it is not yet clear whether it will be retained.

- **The Queen's Speech**: The Government's commitment to "conducting a fundamental review of business rates" [in England] is the most eye-catching of the charity tax announcements and will need to be monitored closely. The Government will also progress legislation to bring forward the next business rates revaluation [in England] by one year from 2022 to 2021 and move business rates revaluations from a five-yearly cycle to a three-yearly cycle. The Government will also set out further proposals to tackle tax evasion and avoidance. In good news for charity shops, the Government is committed to increasing the retail discount from one-third to 50 per cent (although this income is subject to State Aid restrictions). Read more here.

- **Budgets 2020**: A reminder that the Chancellor has confirmed that the next UK Budget will be held on Wednesday 11 March 2020. The Budget 2020 representations portal is now open and HM Treasury is accepting representations until 7 February 2020.

  Separately, Scottish Government Finance Secretary, Derek Mackay MSP, has announced that the Scottish Budget will be published on 6 February 2020.

  The Welsh Budget 2020-21 narrative repeated (para 4.21) the intention to "consult in the near future on the eligibility of independent schools and hospitals for charitable rates relief". The document also notes: "From April this year, some £5bn of devolved and local tax revenue is raised in Wales and stays in Wales. This gives us the ability to consider how our tax policies can contribute to our wider ambitions for Welsh public services. We will not raise Welsh Rates of Income Tax in 2020. At this stage in the budget process I do not intend to make any changes to Land Transaction Tax rates and bands, but I will keep them under review".