

CTG Expert Insight Session – Charity Tax round-up (16 November 2022)

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Today's session – Issues in Charity Tax

- VAT developments
- Gift Aid and giving developments
- Other tax issues
- The role of the Charity Tax Group
- The tax landscape
- Practical tips to improve your tax affairs



Business/Non-Business: HMRC announcement

- R&C Brief 10(2022) issued on 1 June
- Has retrospective effect on policy except for childcare charities (applicable 1 June)
- HMRC manuals updated same day, except as regards childcare charities (updated several weeks later)
- Charities Notice (section 4) only updated in September

The 'Two-stage Test'

- Test 1: Is the activity performed in return for 'consideration'?

(If not, then not a business activity)

- Test 2: Is the activity for 'remuneration'?

(If not, then not a business activity)

- What is 'for remuneration'?

The meaning of “for remuneration”

- “carried out for the purpose of obtaining income”
- N.B. This is not a ‘primary’ purpose or underlying motive, but merely one of the purposes
- It is also an objective test, i.e. it must be determined from the outside observer’s standpoint, and not based on subjective views of the charity

- What are the observable characteristics?

The 'ingredients' of the income purpose

- Covered only in the manuals. You will need to refer to the manuals for the HMRC interpretation
- A purpose other than to instil a sense of value (but to offset costs)
- Isn't "much lower" than the true value of the supply
- Organised on "sound business principles"
- Not a one-off or very small in scale (income or activity)
- Operating in a marketplace

Lord Fisher tests have gone (?)

- A number of these new principles are reminiscent of *Lord Fisher*
- And it is acknowledged that the old tests might be applicable to interpretation of the replacement test
- But *Lord Fisher* cannot be applied as such, even though little seems to change from what was originally the test
- It is basically the use, by large semi-commercial charities, of the old tests that has been halted
- “The more things change, the more they stay the same” (?)

Impact on reliefs for non-business activity

- Despite the possibility that it returns the position to the old status quo (20 years ago), there is a risk of HMRC applying a much reduced scope to 'relevant charitable purpose'
- How might we revive the scope of the RCP reliefs?

Should we seek a new RCP definition?

- Possible new definitions:
 - Any Primary Purpose activity (very broad scope...)
 - The above but minus some categories (potentially divisive...)
 - Any PP *and* loss-making activity use (based on existing 'profit' concepts applicable to social exemptions)
- Or do we seek to argue that the revised test covers many scenarios and undergo the inevitable litigation of individual interpretations?

The Input Tax battle

- HMRC's view of 'business' is highly atomised and they see 'non-business' arising alongside business, and accordingly seek to disallow purchase VAT accordingly.
- *Towards Zero Foundation* is the most recent case on this point
 - TZF carried out uncharged actions but these were intended to lead to fee earning work.
 - HMRC tried to disallow the input tax on the 'free' activity, but the tribunal allowed the taxpayer's appeal

What is a single cohesive business?

- Charities should consider resisting HMRC when the following apply
 - Any free offer is a 'taster' for a charged activity (*Towards Zero Foundation*)
 - Where a cost allows free access but also gives access to a commercial offer such as goods sale (*Durham Cathedral*)
 - Where free access is secondary to a commercial operation (*Will Woodlands*)

The supply side

- Concerns arising on traditionally non-business areas being treated as business transactions
- Example: whether grant funding leads to 'commissioned research'

CTG campaign for a charity input tax rate

- Since leaving the EU it is possible to change VAT rates without constraint (aside from international trade)
- Charity reliefs are strictly applied and many costs have full VAT
- The standard rate is very high and could well go higher
- Charities are disproportionately impacted by irrecoverable VAT
- So we ask for a lower charity rate to reduce VAT's impact

Gift Aid: Acknowledging Major Donors

- Between 2019 and 2022 Chapter 3 (Gift Aid) included a policy that any naming of a building after a donor could be a valuable benefit if the donor asked for acknowledgement
- Following discussion with HMRC, this was removed and replaced with the policy that any business promotion arising would cause a valuable benefit
- Nonetheless, it is wiser to avoid 'naming rights' contracts which present naming as a contractual bargain.
- Better to have an agreement where the donor allows the charity to acknowledge the donation by naming the building after the donor (but still avoid business promotion)

Gift Aid: HMRC policy allowing loan waivers (etc) to be qualifying donations

- Must have involved a monetary payment to the charity
- Gift deemed to arise at the time of the waiver
- Waiver must be irreversible and binding
- No benefits arising from the waiver
- Applicable only to capital and not to interest
- Updated HMRC guidance published
- CTG working on some documents to assist charities with the above

Other Gift Aid updates

- HMRCs Gift Aid online service project
- Retail Gift Aid end of year letters
- Transitional relief for Gift Aid no longer required – at least for now
- Experiences of HMRC claims – have you faced delays?
- Cleansing data – insights from JustGiving
- Third party fundraising platforms – engagement with organisations including Facebook, Enthuse and PayPal Giving Fund
- Gift Aid Awareness Day – useful resources available

Gift Aid: longer term issues

- Value to the sector
- A Relief in need of reform
- How Gift Aid could be made a more valuable tax relief for the charity sector
- The Future of Gift Aid Project

Employment taxation

- Health and Social Care Levy scrapped
- IR35 (off-payroll working) rules. Will they stay or will they go?
- Employee tax status determinations in general
- Implications of remote and hybrid working – OTS review
- The dangers from employees working overseas
- Salary sacrifice including electric vehicles

Other issues

- Times of change – remembering the tax angles
- Business rates – will there be change?
- MTD for Corporation Tax – what will the future hold?
- Energy Bills support

The role of the Charity Tax Group

- Representative body for charities on tax issues
- Over 1000 Charity and “Observer” members
- Represented on HMRC Charity Tax Forum and Joint VAT Consultative Committee
- Co-ordinates active working groups on practical Gift Aid and VAT issues
- www.charitytaxgroup.org.uk provides access to regular newsletters, Expert Insight events and consultation and case law trackers
- Funded membership offer for London charities

The tax landscape and how to navigate it

- Time of great uncertainty – Autumn Statement tomorrow
- Government focus is elsewhere
- More important than ever to maximise and safeguard charity tax reliefs; and
- Avoid tax bear traps
- Assess tax risks
- The need to take professional advice at the right time.

Practical tax tips for charities

- Be proactive when it comes to tax – plan ahead wherever you can!
- Carry out a tax health check – are you fully compliant and maximising tax reliefs?
- Engage with CTG and other sector bodies to share experiences and receive updates
- Watch webinars including CTG’s “Expert Insight Sessions”
- Take professional advice on an issue where you need to
- Claim Gift Aid regularly and ensure that the data on the claim is reviewed appropriately
- Consider salary sacrifice/ new salary sacrifice arrangements

Questions

For more information please contact
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website www.charitytaxgroup.org.uk