charity tax group

CTG Observer Members Meeting briefing

VAT updates

- **Advertising**: CTG received a letter from HMRC officials, outlining their view on the VAT treatment of social media advertising. CTG is considering possible next steps and undertaking discussions with charities and agencies.

- **Making Tax Digital (MTD):** MTD is now live for the deferred charities although their first return will not be until 2020 if they report quarterly. Main recent developments have been the announcement of an 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".

- **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), although the deadline for leaving (and the nature of Brexit) is now less easy to predict.

- **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. The deadline for responses is the first week of January and CTG expects to report on the first stage of the project in the Spring.

- ***University of Cambridge* case:** This was discussed at some length at the 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.

- **Review of other recent case law developments:** Judgments published since the previous Observer Member meeting include: Marites Salabit, Yeshivas Lubavitch Manchester, Immanuel Church, Eynsham Cricket Club, RSR Sports Ltd case, and Lilias Graham Trust case.

- **Seat naming:** As flagged in a recent newsletter, CTG is aware that a charity has been challenged by HMRC where donors have included messages on seat plaque that are not donor names – including 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. It remains to be seen whether it is a one-off, or indicative of a wider challenge. CTG may contact HMRC to gain further clarity.

- **Partial exemption/CGS consultation:** CTG submitted a response to the consultation following a meeting with HMRC officials in September 2019.

- **VAT status of DfID grants and other similar funding:** CTG will be hosting a meeting on 10 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.

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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 now be submitting a "proof of concept" proposal to build future Gift Aid capabilities into the new payments architecture. CTG hope to comment on wider Gift Aid reforms, including changes to the guidance, in early 2020.

- **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 hopeful that this important income stream will be unlocked in the near future. A scheduled meeting between Facebook, HMRC and charities was postponed because of the election – CTG awaits confirmation of a rearranged date.

- **Data protection and third-party fundraising platforms:** GDPR issues need to be considered in the context of Facebook Donate, and other platforms. Following discussions at the Gift Aid working group a paper on this issues has been published.

- **Update from HMRC outreach team:** HMRC updated working group members about ongoing about donor education in relation to individual fundraising and Gift Aid. HMRC acknowledge that charities have made some changes to their websites and fundraising packs but suggested that in many cases there had been no changes or changes had not gone far enough. Officials have expressed particular concern about "pay in your fundraising" pages on charity websites that were not clear enough that Gift Aid was not eligible where the money being paid was not the donor's own donation, but instead a collection. CTG's Gift Aid working group has recognised that more could be done but noted that HMRC had declined to publish proposed guidance by HMRC in support of these changes. The lack of formal tailored guidance from HMRC on requirements made it more difficult for such changes to be prioritised. It was also noted that the wording proposed was in many cases inappropriate and could be improved. In addition, many charities were in the process of making changes but were restricted by website functionality limits/contracts, meaning that the changes had a longer lead time. CTG is planning to work with HMRC to prepare a letter giving a clear steer on the expectations for the Gift Aid education in fundraising materials. This could include examples of income from supporters not eligible for Gift Aid.

- **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.

- ***Routier* case:** The Supreme Court has decided that the relief from inheritance tax for "gifts to charities" contained in s.23 IHTA could not be confined to gifts to UK charities. There is a commentary on this case on the CTG website.

- **Tapered annual allowance for pensions:** CTG has expressed concerns that while adjusted and threshold income can be reduced by gifts of shares, securities and property to charity and payroll giving donations it does not apply to Gift Aid. HMRC has been asked to comment.

Other tax updates

- **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. It is not clear whether this increase is because of an increased number of charity claims, or because rates have increased, but nevertheless it shows how valuable this relief is to the sector. Charities therefore need to alert to wider debates on the appropriateness of business rates in the wider market where online operations are increasingly taking precedence. There is no indication that charity rates relief will be removed, but there has been increased scrutiny in the past year.

  The Non-Domestic Rates (Scotland) Bill which will exclude mainstream independent schools from eligibility for mandatory charitable business rates relief continues its passage through the Scottish Parliament. 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. Stated Labour Party policy is to do the same in England. Meanwhile, in Northern Ireland, a "full and comprehensive" review of business rates is currently underway, with all exemptions facing scrutiny – CTG made a short response following liaison with the CRA.

  In a 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 and an extract from an article for the Charity Finance Yearbook by CTG Vice-Chairman Richard Bray can be viewed here.

- **Charity tax returns:** During the year, 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:** The consultations on Pillar One and Pillar Two of the OECD's proposals to address digital economy tax issues are now closed and CTG submitted a response to both. CTG made a specific call for a charity carve-out for the Global Base Eroding Proposal.

- **5MLD and Trust Registration Service (TRS):** HM Treasury has also been seeking feedback on the transposition of 5MLD into national law 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. Further consultation was expected in the summer, but has been delayed, but this is certainly something that charities should be looking out for in 2020.

- **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.

- **Probate fees:** The Government had planned to alter the charging structure for probate fees. However, following objections from parliamentarians and the charity and legal sectors, the Government reversed its position, announcing that probate fees will instead be reviewed as part of the annual assessment of charges in family and civil courts.

- **Corporate Criminal Offence – implications for incorporated small charities:** A briefing was prepared by Trevor James (Association of Church Accountants and Treasurers) and Richard Baldwin (Sport and Recreation Alliance), following discussions at the Charity Tax Forum and is hosted on the CTG website with their permission and at HMRC's suggestion.

- **Taxation of cryptoassets**: A new policy paper explains how HMRC will tax transactions involving cryptoasset exchange tokens that are undertaken by companies and other businesses (including sole traders and partnerships). It does not apply to the issue of tokens under initial coin offerings or other similar events. Although HMRC recognises other types of cryptoasset, this paper deals specifically with the tax treatment of exchange tokens (for example, bitcoin). Guidance has been published on the tax treatment of bitcoin disposed by a company to a charity. Tax relief is not yet available for donations of bitcoins by individuals to charities, presumably, in part, because of concerns about valuation. This is an emerging form of fundraising and will need to be watched.

- **Election manifestos:** CTG has published a summary of the tax-related manifesto pledges from the main political parties. The election will take place on Thursday 12 December 2019.