charity tax group

[By e-mail: 3 April 2020]

[redacted]
Deputy Director – Head of Pensions, Savings & Charities Policy
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3C/07, 100 Parliament Street, London, SW1A 2BQ

Dear [redacted]

Thank you for taking the time to speak to the CTG team earlier this week. As discussed, it would be very helpful if we can continue this dialogue on a regular basis and, where appropriate, be introduced to the relevant policy holders so we can provide feedback to them directly.

During the call, I grouped the current issues facing our members into three categories. The issues are summarised below.

1) COVID-19 Response Activity

a. **Maximising the effectiveness of volunteers**

i. **Allow a worker to volunteer in a Covid-19 related response organised by their charity employer:** The Government has announced that furloughed employees can volunteer for the NHS etc, but not for their employers. We understand the concerns about fraud and misuse of the Scheme, but this makes less sense in a charity context where the worker could be put to good use as a front-line volunteer. Charities would therefore like to see a change to the guidance to allow furloughed charity staff to volunteer in a front-line COVID19 support role (not their day-to-day job) organised by the registered charity they work for. While many people would be interested in volunteering for another charity, volunteers may be most effective when supporting a charity they are familiar with and already have the associated training for and an understanding of processes (and, where appropriate, have already undertaken DBS checks for working with for that organisation).

ii. **Clarify the compensation mechanism for Emergency Volunteer Leave:** Provisions in the Coronavirus Act 2020 will *"enable employees and workers to take Emergency Volunteer Leave in blocks of 2, 3 or 4 weeks' statutory unpaid leave and establish a UK-wide compensation fund to compensate for loss of earnings and expenses incurred at a flat rate for those who volunteer through an appropriate authority".* We understand from charities that there has been a lot of interest in the scheme from businesses, but many have been reluctant to sanction workers to do this until it is clear what the compensation scheme looks like and what, if any, cost/tax implications there will be for employers.

b. **Repurposing charity buildings for Covid-19 response:** Charities would welcome urgent confirmation that the tax status of buildings (VAT, business rates etc) will not be jeopardised where charities temporarily reassign the use of a building to a business use in support of efforts to tackle the coronavirus. For example, without this confirmation, the unforeseen change of use could jeopardise the calculation of business rates and the 5% business use for the VAT relevant charitable purpose calculation in situations such as where a research charity were to agree collaborative work with a

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pharmaceutical company on vaccines or where a charity allows a building to be used or occupied by a third-party to provide respite/helpline support to front-line workers or victims.

c. **Clarify the definition of trading for the Business Interruption Loan scheme:** The business must have a minimum of £45m turnover and generate more than 50% of its turnover from trading activity to access the loan. Charities are uncertain how trading is defined and whether it includes service delivery contracts by charities – please could this be confirmed? Also, could the Senior Accounting Officer rules definition of turnover be adopted (as they have for the Tax Strategy and IR35 rules) so that donations and voluntary income are excluded from the definition of turnover? This could help to increase the number of eligible charities but it should be noted that there is a general reluctance among charities to take on loans given that their revenues have largely been lost rather than deferred.

2) Cashflow issues facing charities and possible solutions

a. **Confirm details of a charity support package:** We remain hopeful that the Government will support the sector's call for charity-specific funding package – including a "stabilisation" grant fund – which has been widely supported by MPs. We would be happy to provide further information on this issue where helpful.

b. **Clarify whether charities in receipt of central and local government funding will be able to make use of the Job Retention Scheme:** The detailed guidance is helpful, but there has been some uncertainty at the application of the rules for public sector organisations. This has been raised by charitable ALEOs in Scotland (such as those running leisure facilities with up to 50% (and occasionally more) funding from local Government) and schools and universities in receipt of Government money. They are unsure whether they are able to furlough workers despite services and sites being closed down and, in many cases, with staff not essential to the COVID19 response. On 3 April, we received an update from DCMS, via an e-mail to the charity Community Leisure UK: *"DCMS has been liaising closely with the Treasury and I can confirm that all UK-wide employers with a PAYE scheme are eligible for the Coronavirus Job Retention Scheme, this includes the public sector and charities. Employees can be on any type of contract, including zero-hour or temporary. If the funding for an organisation comes from a number of sources a judgement needs to be made on what that funding is for. If public sector funding explicitly covers staffing costs, then the money still exists to pay for staff and there is no need to furlough. If it does not cover staffing costs the organisation can furlough. Responsibility for that decision lies with the Accounting Officer of the organisation who pays the public funds so that they are clear there is no duplication".* This is welcome clarification, but we would request confirmation that this is HMRC's understanding. If so we recommend that this is published more widely, ideally via gov.uk, so this is clear to all charities receiving any public funding.

c. **Allow Gift Aid to be applied to cancelled events:** This proposal was outlined in CTG's letter to the Chancellor and has since received support from a number of charities, including the Arts Council. We were very encouraged to see the statement from the Cabinet Office (in response to a Parliamentary Question) that this would be allowed for theatres and other cultural venues. If this is the case, this is very welcome and we cannot see any reason why this should not apply to all charity events affected by COVID-19. We have prepared a model of how this could work in practice and attach this for discussion.

d. **Advise if HMRC has concerns about the audit trail for charities claiming Gift Aid on Facebook donations:** As discussed on the call, we have been frustrated by a lack of progress in clarifying that Gift Aid can be claimed on donations received via Facebook. A year ago (3 April 2019), CTG was advised by HMRC's Charities Outreach Team that charities should *"hold back on submitting any claims to Gift Aid in respect of donations made via Facebook"* subject to guidance from the policy team. This was followed by an exchange with a member of HMRC's Technical Policy team, in May 2019, in which he stated: *"HMRC accepts that donations received via Facebook are eligible for Gift Aid purposes. However, should a charity choose to claim Gift Aid on a donation received via Facebook, the charity must be able to provide HMRC with all the information that it requires to satisfy a Gift Aid audit. If the charity does not feel that it can satisfy the requirements of a Gift Aid audit, from the information it will receive from Facebook, it should not claim Gift Aid on donations received from Facebook"*. CTG informed HMRC that charities would find it easier to reach such a conclusion if HMRC confirmed its expectations for a future Gift Aid audit on such donations. Given that all charities receive information from Facebook in the same format, we believe that it should be very easy to agree a consistent approach and, if necessary, adjust processes accordingly (relevant exchanges attached for reference).

   It was therefore agreed that a meeting between Facebook and HMRC would take place in the autumn, but, six months later, no progress has been made and no meeting has been arranged. Charities inform us that, in their view, they do have an appropriate audit trail – based both on Gift Aid Declaration and banking information that they have received from Facebook and also on the reading of Chapter 3.7 of the Gift Aid guidance. They have, however, decided to hold off on making claims until the HMRC/Facebook discussions were completed, noting that any claim could be made within four years of the receipt of the donation. Given the immediate pressure on cashflow as a result of the COVID-19 crisis, charities now wish to start claiming Gift Aid on donations received via Facebook, as this would result in an immediate uplift in the amount of Gift Aid that they can claim. If HMRC requires charities to be able to provide evidence of the audit trail in advance of payments being made, they would be happy to provide this information and, where necessary, take part in an urgent meeting between the HMRC audit team and Facebook. If you do not think that this is necessary, they will assume that there is no impediment to the Gift Aid claim being processed and will start submitting claims. So, we should be grateful if you could confirm as a matter of urgency whether or not you think this step is necessary. We wish to inform our members of this position as soon as possible.

e. **Confirm that simplified audit processes can be used for Gift Aid on text donations:** As outlined in the letter to the Chancellor, HMRC officials recently decided that guidance that they had issued to AIMM in 2016 on a simplified audit process was no longer valid. We urge HMRC to review this decision urgently as it undermines the working practices that many charities and payment operators have used for the last four years and risks reducing the value of text/SMS donations at a time when their usage is likely to increase because of the number of people based at home and not participating in face-to-face fundraising.

3) Practical administrative issues for charities including tax reporting requirements and deadlines

a. **Administrative issues for charities meeting HMRC deadlines:** As with all organisations, furloughed workers and closed offices mean that normal processes are almost impossible because the relevant staff will not be available to perform their duties. Charities are not alone in this issue but there are some deadlines that are specific to charities which we urge HMRC to take into account when looking at possible relaxation of filing deadlines. In the current circumstances, we ask that HMRC follows the lead of Companies House which has agreed to extend deadlines for filing financial accounts which are necessary in order to complete tax returns and many other filing requirements. We also ask that HMRC takes steps to prevent the automatic issuing of penalty notices etc during this period of lockdown and where deadlines have been extended. In particular:

   i. **Retail Gift Aid Scheme Year End Letters:** It will not be practical to generate these letters particularly where letters have to be sent by post.

   ii. **Corporate Gift Aid Payments By Trading Subsidiaries:** Legislation states that Gift Aid payments by a charity's trading subsidiary must be made within nine months of the year end. On the basis that tax computations are unlikely to be available because accounts will not necessarily exist (see above) let alone audited accounts, it will be impossible to calculate the Gift Aid payment or confirmation of sufficient distributable reserves. It is therefore essential that this deadline is extended beyond the period of lockdown.

   iii. **VAT Deferral:** This is a helpful measure but the detail published is limited at present. We have learned via the JVCC that HMRC will offset repayments against any debts existing before this announcement but not against any VAT deferred as a result of this announcement. This is useful and practical information that is not yet public and we very much hope that it can be made public as soon as possible.

   iv. **Accounting Requirements for the Creative Industry Tax Reliefs:** These reliefs are contingent upon audited statutory accounts for the entities but, in the current climate, auditors are saying that this will delay audits if they are unsure over the going concern principles - assuming audits are able to continue in the first place. One option is to disclose differently in the accounts but another option could be for HMRC to relax the requirement for this and issue interim payments.

   v. **Common Reporting Standard:** The 31 May 2020 reporting requirement needs to be extended for the reasons stated above.

   vi. **Corporation tax returns:** Corporate and trust tax return deadlines and any other tax elections for all entities should be extended.

   vii. **Gift Aid Four Year Time Limit and GASDS Two Year Time Limit:** Charities that were intending to make claims at the end of the eligible claim periods may be unable to do so during this current crisis. Again, these deadlines should be extended.

b. **Relax the Gift Aid Small Donations Scheme (GASDS) rules during the crisis:** As a result of the COVID-19 crisis, many small charities and churches are facing severe financial pressures as traditional income streams from lettings and face-to-face fundraising have dried up. Concerns have been raised about the operation of GASDS during the coronavirus crisis, given that many eligible cash donations could be lost. Donors that would ordinarily make small donations each week are asking if they can keep aside the individual donations that they would normally give and make them separately once the crisis is over, above the standard £30 limit. Receiving cash donations by post does not provide a solution as charities (often run by volunteer treasurers) are not able to bank any cash donations received during the lockdown due to restrictions on gatherings and essential travel. CTG urges HMRC to introduce some temporary flexibility in the operation of the GASDS scheme by accepting multiple cash donations of £30 or under that have been saved up during the crisis. Alternatively, a simpler solution could be to grant charities the amount of relief claimed under GASDS in the previous tax year and suspend GASDS reporting requirements for a year. Ultimately the cap on eligible donations would remain at £8,000, so there would be no additional cost to the Exchequer.

Finally, we welcome the decision to postpone the mandation of digital links for Making Tax Digital for VAT. The delay in the implementation of the IR35 rules for private bodies will also give some larger charities more time to prepare.

Please let me know if you require any additional information. We look forward to our next conference call, which I have asked the CTG Secretariat to organise.

Best wishes.

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