**HMRC Consultation: Penalty for participating in VAT fraud**

***Response by the Charity Tax Group – 11 November 2016***

**About us**

The Charity Tax Group (CTG) has over 500 members of all sizes representing all types of charitable activity. We were set up in 1982 to make representations to Government on charity taxation and have since become the leading voice for the sector on this issue.

CTG is represented at the Joint VAT Consultative Committee (JVCC) by its technical Adviser Graham Elliott, who commented on this consultation at the last meeting. We would be happy to discuss these representations in further detail if that would be helpful

**Possible unintended consequences for charity trustees**

Overall, CTG welcomes the intention of this proposal and supports strong penalties for those that know that their transactions are connected to fraud.

However, we do have some concern about the scope of the proposals in respect of charities, particularly in relation to the liability on officers who ‘should have known’ about the fraud.  This is designed to catch company officers which allow their company to benefit financially from the fraud of others by turning a blind eye to their possible fraud when it suits them not to ask searching questions.

While we welcome the intention of this proposal, it appears too easy for volunteer charity trustees to be drawn into the net of liability by reference to a principle that they ‘ought to have known’ when their non-executive status limits their direct involvement in the day-to-day activities of the charity. The vast majority of charity trustees are unpaid and volunteer their time on a part-time basis, so are distinct from most non-executive directors. Unfortunately, we cannot assume that charities will never be hijacked for fraudulent purposes and that innocent trustees may be in the firing line.

CTG would welcome clarification of the kinds of circumstances it is envisaged this approach applying. CTG would also call on HMRC to exclude the ‘should have known’ test from applying to volunteer trustees, with liability only applicable where actual knowledge is proved.  Otherwise, this risks becoming another disincentive for people to agree to serve as volunteers.

**CTG**

**November 2016**