**Scope of VAT Grouping consultation – CTG response**

**27 February 2017**

**About the Charity Tax Group**

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

CTG welcomes the opportunity to respond to this consultation and would be happy to meet officials to discuss our answers in greater detail.

**Consultation**

1. ***Which entities should be excluded from joining a VAT group and why? Where possible please provide illustrative examples.***

We do not think it is appropriate for us to comment on which kinds of entities ought not to be allowed to group-register under these proposed changes. We are interested in ensuring that charities have the widest possible rights to take advantage of the VAT grouping provisions. However, we have comments concerning entities that ought to be included in grouping:

The key area of interest for charities is to allow unincorporated associations and charitable trusts to group-register with their trading subsidiaries. We would fully support the inclusion of unincorporated bodies which have control of subsidiary companies being able to group register.

However, since these, by definition, have natural persons as their trustees (since those held by corporate trustees appear to be accepted already by HMRC as being essentially corporate) the assets of such a charity are not technically distinguishable from the private assets of the trustees. This means that the trustees are open to unlimited liability for their private assets. This is one reason why such charities are more likely to use trading subsidiaries. It would be an unacceptable disincentive to grouping if the *private* assets of these came within the net of joint and several liability. These should be excluded.[[1]](#footnote-1) The assets held by trustees on trust for charitable activity would be accepted as being within the liability net, but not their private assets.

Therefore, we request a broadening of the entity criterion to include charity trusts and unincorporated associations, but whereby private assets of trustees are not included in the liability net.

1. ***How can we strike the right balance between the range of entities allowed to join a VAT group and an easily administered eligibility test?***

We cannot see any benefit in removing the current test. It should be preserved in its entirety. The only relevant issue is what extra permissive criteria might be applied (that is, where the rules allow extra bases on which a group may be formed).

We think that an additional basis could be devised which reflects the current one, but does not limit members to corporate bodies. For instance, an unincorporated charity which has ‘Companies Act’ control of an incorporated subsidiary company would pass the test for forming a group with its subsidiary company.

We acknowledge that, in theory, wider criteria could be set allowing links outside of those traditionally adopted being sufficient to fulfil the spirit of financial, economic, and organisational links. However, this would only arise for charities where they were not under common control, but worked so closely that the links would appear to apply. To give an example of where this might arise, some older institutions have an operational charity (operating a museum, theatre, college, and so on), and are supported by an independent fundraising or endowment charity, with separate trustees and total discretion (within the limits of their objects) to direct their charitable funds to any project. But these separate charities in practice fund the operating charity, and commonly are administered by the same people (though not with the same trustees). They have little financial or economic function separate from the operational charity. However, whereas such combinations of charities cannot currently form a group under UK law, and might do so under these wider criteria, it is not clear to us that either set of trustees would be comfortable with joint and several liability in such cases. One of the key features of their separateness is that they are indeed able to subsist without each other and do maintain actual independence. Therefore, we doubt that many charities in this situation would use a wider facilitation of the control criteria.

This is not to be confused with a ‘subsidiary charity’ situation arising from powers of the parent to remove the subsidiary charity’s trustees. This would be treated in effect the same way as the current control criteria treats them.

1. ***If we move away from the current eligibility test, what could be the impact on businesses that are currently VAT grouped?***

We think this is inadvisable, because the current rules (whilst too restrictive in terms of the entities allowed to form a group) are simple in terms of determining ‘control’, and can be applied with few difficulties. A more nuanced qualitative approach cannot be simple and cannot guarantee consistency between tax payers. We therefore think the current rules should be retained, even where they are added to.

1. ***What alternative tests could be employed that demonstrate both financial control, and economic and organisational links?***

For the reasons given above, we believe that there will not be all that much interest in our sector in the other potential tests. Our main concern is widening the entity qualification criteria.

1. ***How have the changes the UK introduced, following the Skandia CJEU decision, impacted business, both financially and operationally? Where possible please provide illustrative examples.***

***&***

1. ***Are there any other CJEU decisions that have impacted business in terms of UK VAT grouping, both financially and operationally?***

We do not think these questions have much application to charities. For the few charities that have international operations to which these could conceivably relate, they have no doubt provided their own responses to this consultation.

1. ***Do you have any views on the interaction between VAT grouping and CSE? In particular, what would be the impact on the CSE of widening eligibility for grouping?***

There should be no impact, as the two are unconnected. We have views on the working of CSE, but this review is not the place to express them. Suffice it to say that no discernible interaction between groups and CSE arrangements arises.

**Conclusion**

CTG is calling for a broadening of the entity criterion to include charity trusts and unincorporated associations, but whereby private assets of trustees are not included in the liability net. We believe this will ensure that charities have the widest possible rights to take advantage of the VAT grouping provisions. While we cannot see any benefit in removing the current eligibility test, an additional basis could also be devised which reflects the current one, but does not limit members to corporate bodies.

1. Private assets cannot be excluded from liability owing to fault on the part of a trustee. But unincorporated charities extend liability to trustee assets on a no fault basis, which we believe should not arise under VAT grouping. [↑](#footnote-ref-1)