

Subsidy control: designing a new approach for the UK

Consultation response from the Charity Tax Group – 31 March 2021

Introduction

1. The Charity Tax Group (CTG) has over 800 members of all sizes representing all types of charitable activity. It was set up 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 is an active participant in HMRC's Charity Tax Forum and has played a leading role in discussions with BEIS and MHCLG officials to maximise charity access to COVID business grants.
2. CTG welcomes the opportunity to respond to this consultation and would be pleased to participate in discussions with officials as the design of the subsidy control regime develops. CTG was a signatory to a joint letter from charity sector bodies in response to the consultation outlining the key principles that should underpin the design of a new subsidy control regime for the UK.
3. CTG is not a charity itself and receives no funding that we would expect to be regarded as a public subsidy. However, our response is based on our general knowledge of the position of many charities.

Overview and key principles

4. The UK charity sector plays a significant role supporting the UK economy. According to the most recent statistics there are approximately 166,592 voluntary organisations in the UK, employing over 900,000 staff and managing over 19 million volunteers. The charity sector receives funding from a wide range of sources, including from the Government in the form of direct grants, tax relief and fees for contracted services.
5. State aid restrictions have always been an important consideration for charities, but there has been a lack of clarity about when they apply and whether this is appropriate for charities, given the nature of their activities for the public good. The COVID-19 pandemic highlighted the crucial role that charities play in our society and in many cases their continued operation was only possible due to Government grants and loans. This was particularly important for charities with large property portfolios which were required to close, losing out on important income, while still incurring significant fixed costs.
6. The Government's decision to increase state aid limits and subsequently business grant allowances was welcome, but the time that was taken to reach these decisions and the practical difficulties that this caused for efforts to support the COVID response was regrettable. The chance to contribute to the design of a new UK subsidy control regime is a positive development, which can help ensure that the key role of charities within the economy and wider society can be properly taken into account.

The voice of charities on Tax

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While all efforts are made by the Charity Tax Group to give assistance to its members, it is not qualified to give technical advice on fiscal matters and cannot therefore be liable in any way for any such advice given.

7. We emphasise six key principles for the design of the UK subsidy control regime.
- I. **The position of charities needs to be clear in published guidance.** It is unfortunate that the key role of charities to the UK economy charities is not directly mentioned in the consultation document and impact assessment. This is particularly so given the important role of state funding and support for charity-led provision of research, social care, education and many other activities.
 - II. **There should be a general presumption of charities not being subject to subsidy controls where their activities are not business.** Where appropriate, we also believe this principle should apply to public grant givers. One of the characteristics of a subsidy, set out in the consultation document is that *“The award of the subsidy must confer a benefit on persons supplying goods or services in the course of a business, which would not be available under commercial terms”* (our emphasis). The large majority of the work of charities is not-business and undertaken for the public good. As a result, we do not believe it is appropriate for funding for these activities to be subject to subsidy controls. The consultation document also notes that public authorities will need to assess the material effects on competition and international trade or investment and judge whether the benefits of the subsidy are greater than the harmful impacts of providing the subsidy. In all cases where the charity is not undertaking business activities there will be no such distortions.
 - III. **There needs to be certainty wherever possible on how subsidy control affects charities’ activities that may be regarded as being in the course of a business.** There are charitable activities that would fulfil this definition. But in determining how this applies the nature of the charity sector needs to be understood. For example, in the particular case of most charity shops charities are converting donated goods to cash. This is a fundraising activity and not a business activity. Where charitable activity is subject to subsidy control rules, it is important that there is charity specific guidance. This for example should cover the fact that charitable activity can be carried out by one of the charities wholly-owned trading subsidiaries.
 - IV. **Subsidies granted temporarily to address a national or global economic emergency should be exempted from the rules on prohibited subsidies.** We strongly support the proposal outlined in the consultation document. COVID-19 demonstrated the need for flexible funding and grant support at short notice. Charities will always play a leading role in response to national and global emergencies. It is important that the new UK subsidy control regime allows immediate and unrestricted support in exceptional circumstances so that their work can be done when it is needed most.
 - V. **Where charities are subject to subsidy controls the highest permitted allowances should be applied.** We welcomed the Government’s decision to use the highest permitted threshold of 325,000 Special Drawing Rights over a three-year period for the Small Amounts of Financial Assistance Allowance (in the context of COVID support grants). We see no reason why this should be reduced. Where charities are subject to subsidy control, we also believe there is a strong case for them being recognised as providing Services of Public Economic Interest as their work is exclusively for the public benefit.
 - VI. **Confirmation is needed that funding and tax reliefs previously regarded as not being subject to EU state aid rules will be treated in the same way under the UK subsidy control regime.** This certainty will help charities plan ahead in the knowledge that subsidy control rules will not disadvantage them. For example, mandatory charity business rates relief has never been deemed to be subject to EU state aid rules. This is also the case for other charity tax reliefs and tax refunds.

Responses to the consultation questions

We have only responded to the questions that are directly relevant to our members' interests.

Question 1: What type of subsidies are beneficial to the UK economy?

Subsidies that support research, support for struggling communities (including "levelling up") and sectors in need of stimulus and support (for example COVID-19 business grants) are very beneficial to the UK economy. A significant proportion of work undertaken by charities would need to be fulfilled by the public sector if charities did not exist, so preferable tax and funding arrangements make economic sense and result in a high return on investment.

Question 3: Do you agree with the Government's objectives for a future subsidy control regime? Are there any other objectives that the Government should consider?

We support the Government's objectives for a future subsidy control regime. Providing flexibility to enable the Government to make targeted interventions to support work for the public good is essential and charities can play a major role in this respect, particularly where their activities are not "in business".

Question 6: Do you agree with the four key characteristics used to describe a support measure that would be considered a subsidy? If not, why?

Greater clarity in guidance on which bodies are a 'public authority' and what is deemed a financial contribution would be very helpful.

The second characteristic notes that "*The award of the subsidy must confer a benefit on persons supplying goods or services in the course of a business, which would not be available under commercial terms*". In our view there should be a general presumption of charities not being subject to subsidy controls where their activities are not being provided in "the course of a business".

In our view forgoing of revenue should not apply to tax reliefs that apply to entire sectors or types of business activity as there is no inherent advantage as a result.

For the avoidance of any doubt, we seek confirmation that funding and tax reliefs previously regarded as not being subject to EU state aid rules will be treated in the same way under the UK subsidy control regime. This certainty will help charities plan ahead in the knowledge that subsidy control rules will not disadvantage them. For example, mandatory charity business rates relief has never been deemed to be subject to EU state aid rules. This is also the case for other charity tax reliefs and tax refunds.

The fourth characteristic should be refined so that it is clear that for something to be defined as a subsidy it needs to have a demonstrable impact on trade or investment rather than merely a theoretical one.

Question 7: Should there be a designated list of bodies that are subject to the new subsidy control regime. If so, how could that list be constructed to ensure that it covers all financial assistance originating from public resources?

Clarity over which bodies are subject to new subsidy controls and which financial assistance it relates to would be helpful. There needs to be certainty wherever possible on how subsidy control affects charities' activities that may be regarded as being "in the course of a business".

There are charitable activities that would fulfil this definition. But in determining how this applies the nature of the charity sector needs to be understood. For example, in the particular case of most charity shops charities are converting donated goods to cash. This is a fundraising activity and not a business activity. Where charitable activity is subject to subsidy control rules, it is important that there is charity specific guidance. This, for example, should cover the fact that there can be reasons why charitable activity is carried out by one of the charity's wholly-owned trading subsidiaries which will then almost invariably gift aid its profits to its parent charity. These funds will then be available to the charity to use for the public good.

Question 10: Do you agree with the inclusion of an additional principle focused on protecting the UK internal market by minimising the distortive effects on competition?

This is a sensible proposal, although we would emphasise again that in all cases where the charity is not undertaking business activities and working to fulfil its public benefit requirements there will be no such distortions.

Question 12: What level of guidance or information would be helpful for public authorities to assist with their compliance with the principles?

It would be useful to have a glossary with definitions of key terms in the guidance, particularly where implementation and monitoring of subsidy control limits is undertaken by local authorities. In this respect we would also encourage an approach where local authority practice is consistent when applications are made for any form of public assistance. A principled system will require effective delivery of the funds that it makes available. Our experience of the administration of COVID-19 grants suggests that there could be considerable improvement in this area.

Question 13: Should the threshold for the exemption for small amounts of financial assistance to a single recipient replicate the threshold in the UK-EU Trade and Cooperation Agreement at 325,000 Special Drawing Rights over a three-year period? If not, what lower threshold would you suggest and why?

Where charities are subject to subsidy controls, we consider that the highest permitted allowances should be applied. We welcomed the Government's decision to use the highest permitted threshold of 325,000 Special Drawing Rights over a three-year period for the Small Amounts of Financial Assistance Allowance (in the context of COVID support grants). We see no reason why this should be lower, as it provides the Government a greater opportunity to provide targeted support where it is required.

Question 14: If you consider the small amounts of financial assistance threshold should replicate the UK-EU Trade and Cooperation Agreement, should it be fixed at an amount of pound sterling (GBP)?

A fixed amount in GBP would provide more clarity, but could be diluted by inflation and other currency fluctuations. A periodic review would therefore be appropriate. If tied to Special Drawing Rights it would be useful to have a clear link to a calculator to determine the GBP equivalent.

Question 15: Do you agree that subsidies under the proposed small amounts of financial assistance threshold be exempt from all obligations under the domestic regime, except for the WTO prohibitions? If not, why?

Yes. Any related administration should also be kept to a minimum.

Question 16: Should relief for exceptional occurrences be exempted from obligations regarding principles, prohibitions and conditions in the subsidy control regime?

Yes

Question 17: Should subsidies granted temporarily to address a national or global economic emergency be exempted from the rules on prohibited subsidies and any additional rules set out below?

Yes. COVID-19 demonstrated the need for flexible funding and grant support at short notice. Charities will always play a leading role in response to national and global emergencies. It is important that the new UK subsidy control regime allows immediate and unrestricted support in exceptional circumstances so that their work can be done when it is needed most.

Question 18: Should the threshold for the exemptions for Services of Public Economic Interest replicate the relevant thresholds in the UK-EU Trade and Cooperation Agreement at 750,000 Special Drawing Rights over a three-year period, and for transparency obligations at 15 million Special Drawing Rights per task? If not, what lower threshold would you suggest and why?

Yes. Where charities are subject to subsidy control, we also believe there is a strong case for them being recognised as providing Services of Public Economic Interest as their work is exclusively for the public benefit.

Question 19: If you consider the SPEI thresholds should replicate the UK-EU Trade and Cooperation Agreement, should they be fixed at an amount of pound sterling (GBP)?

See our response to Question 14.

Question 24: Should public authorities be obliged to make competition impact reviews public? If not, why?

This could be helpful, particularly if it helped to dispel any misconceptions about charities appearing to be in competition with other businesses when in fact their work is undertaken for the public good to raise funds for that purpose.

Question 25: Should public authorities be permitted to override competition impact review e.g. in the case of emergencies? If so, why?

It would be undesirable for any emergency funding to be held up as a result of unnecessary red-tape and speed of response is vital. However, appropriate procedures must remain in place to ensure public accountability. But these need to be measured and proportionate.

Question 27: Could additional measures help ensure that lower risk subsidies are able to proceed with maximum legal certainty and minimum bureaucracy? What should be included within the definition of ‘low-risk’ subsidies?

Any financial assistance regarded as a subsidy to charities should be regarded as low risk, given the lack of distortion of internal or international competition. Preferential treatment on this basis could therefore be helpful.

Question 30: Which sectors or particular categories of subsidy (such as for disadvantaged areas, R&D, transport, skills etc) would benefit from tailored provisions or specific guidance on subsidy control? If so, why, and what should the nature, extent and form of the provisions be?

In our view there should be a general presumption of charities not being subject to subsidy controls where their activities are not “business” in nature. Charity-specific guidance would be very helpful to support charities where any activities are regarded as being in the course of a business. We support tailored provision for subsidies for disadvantaged areas, R&D, skills and other types of support for the public good.

Question 31: Do you agree with the proposed rules on transparency? If not, why?

Transparency is important. Clear guidance from the outset should ensure that organisations comply with the permitted allowances and make any relevant declarations at the appropriate time.

CTG
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