VAT Grouping - Establishment, Eligibility and Registration Call for Evidence

Response by the Charity Tax Group – 8 October 2020

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 sits as the charity representative on HMRC's Joint VAT Consultative Committee (JVCC).

Structure of Response

The Call for Evidence is divided into "three distinct areas" (or chapters) concerning VAT group registration rules. CTG does not believe that chapters 1 and 3 are relevant to charities in general terms. Therefore, our response is restricted only to Chapter 2.

Five questions have been asked in this chapter, but we believe that it would be easier to respond in general terms rather than limit ourselves to specific answers to these questions.

Two potential proposals

We understand there to be two proposals:

1. Mandatory group registration wherever the control criteria are met.
2. An 'all or nothing' choice between single entity registrations or a group comprising all entities where the control criteria are met.

We respond to each in turn.

Mandatory grouping

We are not in favour of mandatory grouping. We see no advantage in reducing choice. Even if the rules are more complex where a choice arises, we think that forcing the group approach is more likely to complicate administration of charities and their related parties. The problems identified are:

a) Joint and Several Liability across the group
b) The need to operate more than one chart of accounts for a group return, with the potential consequential complications for MTD
c) In (admittedly rare) cases where a company is controlled by a charity but has a minority shareholding by another party (such as another charity) the minority shareholder will be exposed to risk without any recourse to mitigate it
d) Inability of a separate entity that makes zero rated supplies, or exports goods/services, to choose separate registration to qualify for monthly returns
e) Potential implications for the POA scheme that would otherwise be irrelevant
f) In the (admittedly rare) cases where a company is either bought or to be sold by a charity, the administrative burden of de-grouping and re-grouping would be severe
g) The provisions relating to TOGCs into partly exempt VAT groups would be essentially unavoidable

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If this suggestion is taken forward (against the above advice), we suggest the following refinements:

i. Only to apply where a wholly owned subsidiary (including cases where the ultimate control is wholly common) is involved, leaving majority held entities subject to the elective right to join a group registration
ii. Remove the Joint and Several Liability rule
iii. Remove the self-supply for TOGCs into partly exempt VAT groups
iv. Mandate the representative member as solely being the party that controls the other members

All or Nothing option

For the same reasons, we would prefer this rule not to apply, as it reduces flexibility. We acknowledge, however, that as there is a choice not to group register at all, the perceived disadvantages of group registration would inevitably be offset by advantages. We can see, therefore, that this proposal has reasonable claims to be anti-avoidance in nature.

We believe that all of the above conditions/refinements should also apply, however, for the same reasons as given above.

Sector selection

Whilst introducing either of the above only for recognised and defined 'sectors' could cause boundary-line disputes, we do see the merit in any arrangement where charities and their subsidiaries would be specifically excluded from the selected sectors. We doubt that charities are in the minds of the authors of this consultation, so would approve their exclusion from any sector selection.

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