Charity Tax Group – update for Finance Special Interest Group October 2019

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 has since become the leading voice for the sector on this issue. Over the past 35 years, CTG has saved good causes over £8.3 billion in tax.

Making Tax Digital

From 1 April 2019, all VAT-registered businesses with a taxable turnover above the VAT threshold (£85,000) are required to comply with new HMRC Making Tax Digital (MTD) reporting requirements. This applies to all VAT registered charities although some will have their start date deferred to 1 October 2019 (HMRC has published an updated sign-up timeline for organisations - including charities - that had their MTD mandated start date deferred until October 2019 - Deferred sign up timelines - v1.0).

The information required and deadlines for sending VAT returns and making payments are not changing, but businesses will have to keep digital records and send the returns to HMRC using MTD-compatible software. HMRC believes that the move to digital integration will eliminate many of the existing paper-based processes, making the system more effective, efficient and easier for taxpayers to get their tax right.

CTG has published a “Mythbuster” that aims to dispel some of the common misconceptions surrounding Making Tax Digital.

VAT partial exemption and the Capital Goods Scheme

HMRC published a consultation on VAT partial exemption and the Capital Goods Scheme, which sought ways to improve the operation of partial exemption and the Capital Goods Scheme following the findings of the 2017 Office of Tax Simplification VAT review.

CTG held a meeting with officials in the HMRC deductions team, before submitting a detailed response to the call for evidence**.** The Government have not yet responded to the consultation.

Office of Tax Simplification VAT review

The Office of Tax Simplification has published an evaluation/progress report of the Government's response to its 2017 report on simplification of VAT, including comment on partial exemption consultation, VAT registration threshold and review of VAT rates.

The OTS also recommended that HM Treasury and HMRC undertake a comprehensive review of the reduced rate, zero-rate exemption schedules, including the possibility of listing zero-rated goods by reference to their customs code.

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It has now become clear that EU Member States may in future be given greater flexibility about using different rates of VAT.

Brexit and charities

CTG met a representative from the Office for Civil Society who confirmed that leaving the EU is the Government's top priority. He stressed that charities should be aware of no deal implications on 31 October, even though the Benn Act appears to preclude this, and referenced available guidance.

VAT domestic reverse charge for building and construction services

HMRC has confirmed that the implementation of the domestic reverse charge VAT for construction services has been delayed for a period of 12 months until 1 October 2020 to give users more time to prepare.

The new reverse charge legislation means that the customer (i.e. the party making payment for construction services) in the transaction, will now become responsible for accounting for VAT. HMRC has published its own detailed guidance for businesses affected by the Reverse Charge.

It is important that charities are aware of this change and whether it impacts their organisation in any way by establishing what is considered as "noncharitable" and "charitable" to ensure effective preparation can be put in place prior to 1 October 2020.

VAT treatment of energy-saving materials and heating equipment

HMRC has updated VAT Notice 708/6 *Energy-saving materials and heating equipment*, which explains when the installation of energy-saving materials and heating equipment is reduced rated. The Notice has been updated to include information about changes that take effect from 1 October 2019. These changes include the:

- reduced rate no longer being available for the installation of wind or water turbines in any circumstances
- reduced rate remaining fully available when certain social policy conditions are satisfied
- new 60% test where the social policy conditions are not met.

Gift Aid donor benefits

HMRC has updated its Gift Aid donor benefits guidance, specifically to chapters 3.18 to 3.25 of the HMRC Charities guidance, to clarify when and how donor benefits should be treated and how they are valued for Gift Aid limits.

VAT and charity advertising

CTG has been engaged in a dialogue with HMRC concerning its policy relating to VAT on digital advertising. Following extensive discussions with a coalition of affected charities and universities, we sought Counsel's opinion, which was favourable to our view, and which was sent to HMRC. Notwithstanding this advice, we have received a disappointing response from HMRC which is adopting a narrow interpretation of the VAT rules, and which confirms their previous views.

CTG will consider the position, in view of the considerable cost to the charity sector of HMRC's narrow interpretation of the legislation.

Queen's Speech 2019

The Queen's Speech on 14 October 2019 outlined the Government's forthcoming legislative agenda. The full text of the speech, as well as the background briefs for each of the Bills proposed for the session and a "what it means for you" brief, are available online. The full list of proposed legislation can be found below:

- Agriculture Bill
- Air Traffic Management and Unmanned Aircraft Bill
- Animal Welfare (Sentencing) Bill
- Divorce, Dissolution and Separation Bill
- Domestic Abuse Bill
- Employment (Allocation of Tips) Bill
- Environment Bill
- European Union (Withdrawal Agreement) Bill
- Extradition (Provisional Arrest) Bill]
- Financial Services Bill and Private International Law (Implementation of Agreements) Bill
- Fisheries Bill
- Foreign National Offenders Bill
- Health Service Safety Investigations Bill
- Immigration and Social Security Co-ordination (EU Withdrawal) Bill
- Pension Schemes Bill
- Police Protections Bill
- Prisoners (Disclosure of Information About Victims) Bill
- Sentencing Bill
- Serious Violence Bill
- Telecommunications Infrastructure (Leasehold Property) Bill
- Trade Bill.

MPs will be debating the contents of the Queen's Speech over the next few days. With the Government effectively having no majority at present, it remains to be seen whether a vote backing this legislative agenda will be successful.

Charity Tax Commission

The Charity Tax Commission published its report R*eforming charity taxation – towards a stronger civil society*, following a Call for Evidence last year. A press release summarising the main recommendations can be read here. CTG's response to the Charity Tax Commission Call for Evidence can be read here.

Gift Aid on donations received via Facebook

Facebook Donate allows people to donate directly on social media pages through donate buttons inserted into page headers or posts, such as videos, photos or text.

HMRC officials told CTG: *"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 continues to press HMRC for clarification as to how charities can claim Gift Aid on Facebook Donate donations in a way that will satisfy an HMRC Gift Aid audit inspection. As soon as this is clarified we will make a further announcement.

CTG's Future of Gift Aid Working

CTG recently met with officials from HMRC to discuss the potential opportunities in Gift Aid over the next decade or so. The Working Group will explore whether topics such whether improved technology could turn the paper-based Gift Aid process into a digital and automated process, whereby all the required information is automated via a centralised database.

Budget 2019

The Chancellor has announced that he plans to present Budget 2019 on 6 November, saying: "The Government is committed to securing a deal and leaving on 31 October. In the event of no deal, the Government would act quickly to outline our approach and take early action to support the economy, businesses and households. *This would be followed by a Budget in the weeks thereafter*" [emphasis added]. The last line of the statement suggests that if the UK leaves the EU with no deal, the Budget could be delayed.

Fundraising Regulator update

The Fundraising Regulator has announced changes to its annual levy that will mean that smaller fundraising charities move up the scale more gradually. From September 2019, the levy will:

- continue to be based on total fundraising expenditure
- decide which levy banding a charity falls into based on the information they provided in their most recently filed accounts (previously the Regulator used fundraising spend data from 2014 accounts)
- introduce two extra bandings at the lower end of the levy. Charities with a fundraising spend of £200,000 - £350,000 a year will be asked to pay £500, and charities with a spend of £500,000 - £750,000 will be asked to pay £1,000.

Registered charities in England, Wales or Northern Ireland with fundraising costs of £100,000 or more, will need to pay the annual levy to be registered on the Fundraising Regulator's directory.

Additionally, the Fundraising Regulator's revised Code of Fundraising Practice is now in effect. Changes include:

- consolidation of the former code, rulebooks and legal appendices so that all standards can be found in one code
- clearer navigation by restructuring the standards in to three parts, so that users can clearly identify which standards apply depending on the type of fundraising they do
- clarification of where there are differences in law in England and Wales, Northern Ireland and Scotland
- simpler language, following an independent review by the Plain English campaign, which gave the code a Crystal Mark standard.

IR35/off-payroll

From April 2020 the rules for engaging individuals through personal service companies are changing. The responsibility for determining whether the off-payroll working rules (sometimes known as IR35) apply will move to the organisation receiving an individual's services.

Small companies will be exempt, meaning a large number of charities will be excluded. The Companies Act definition will be used, which means that to be small a company a charity must meet two of the following conditions

- annual turnover must be not more than £10.2 million
- the balance sheet total must be not more than £5.1 million
- the average number of employees must be not more than 50.

CTG published a commentary on the topic of IR35/off-payroll, which can be read here.

Scottish Parliament

The Scottish Parliament has voted for the Non-Domestic Rates (Scotland) Bill to proceed on its legislative path, after also being approved by Scotland's Local Government and Communities Committee. The Bill would make changes to some charities' charitable relief.

The Scottish Parliament also passed the Transport (Scotland) Bill which, among other things, will allow all Scottish councils the power to impose a levy similar to a scheme in Nottingham, where employers offering more than 10 spaces are charged £415 a year for every space.

Other resources

- **VAT Case Law Tracker**
- **Commentary archive**
- **CTG monthly reviews**