

Charity trading, tax and VAT

A refresher

Chris Rowse, Russell-Cooke
Phil Salmon, Hays Macintyre

Ways to raise money

- Fundraising



- Trading



or...

- Trading – sale of goods or services
 - Primary purpose – *directly furthers a charity's purposes*
 - Ancillary – *complementary to a charity's purposes*
 - Non-primary purpose – *everything else*

Primary purpose trading

- Contributes directly to one or more of the objects
- Consider the activity first, not the use of profits
- Exemption from tax

Ancillary trading

- Complementary to the objects
- Treated as part of primary purpose trading
- Consider level of ancillary trading

Non-primary purpose trading

- Intended to raise funds for the charity
- Consider risk
- No general exemption from tax

Some examples to consider...

- The sale of Christmas cards by a hospice charity
- The payment of a social care charity to provide home help services to the elderly
- The sale of cakes made by disabled people who are beneficiaries of a disability charity
- The sale of drinks in a theatre bar
- A collecting bucket at a supermarket checkout

Tax exemption for small scale trading

Total incoming resources of the charity	Maximum permitted turnover
Under £20,000	£5,000
£20,000 to £200,000	25% of charity's total incoming resources
Over £200,000	£50,000

VAT

- Trading not a VAT term
- VAT chargeable on “supplies” of goods and services
- A supply is something done for consideration (including non-monetary consideration)
- The distinction in VAT is between business activities and non-business activities
- If business, is it taxable or exempt?
- Only taxable supplies count for the purposes of recovery of VAT on costs

Donated goods (1)

- Sale of donated goods is not trading
- But the sale of bought-in goods is
- Sale of donated goods is a business activity
- A taxable supply, but taxable at the zero-rated
- Applies to goods donated for sale, letting, or export
- Applies not only to supplies by the charity, but also by a “profits-to-charity” person
- Only applies where the goods are made available to the general public, or two or more specified persons

Donated goods (2)

- Zero-rating does not apply where the sale/letting takes place as a result of any arrangements entered into before the goods are made available between either the parties of the donor and either or both of the parties to the sale
- Retail gift aid – no longer the sale of donated goods

Sale of other goods

- The default position is that taxable supplies are taxed at the standard-rate
- The zero-rate applies to:
 - Printed matter
 - Most food and drink
 - Certain supplies of aids for the disabled
 - Children's clothing

Reduced rate

- Women's sanitary products
- Children's car seats
- Contraceptive products
- Smoking cessation products

Services

- Supplies of services can be taxable at the:
 - Zero-rate
 - Reduced-rate
 - Standard-rate
 - Or they can be exempt from VAT

Tax exemption for events (1)

- Event must be organised by charity or subsidiary and promoted as fundraising
- Exemption from direct tax on profits and from VAT on goods and services sold during the event
- No more than 15 events a year of the same kind in the same location (events raising less than £1,000 don't count towards the total)

Tax exemption for events (2)

- Qualifying events
- Accommodation not more than 2 nights
- Can be event accessed by means of electronic communications
- Tax exemption applies to income generated by the event, but not items sold afterwards
- Zero-rating takes precedence over other exemption – partial VAT recovery

Corporate sponsors

- Sponsorship is where a charity does something in return for a payment
- For example a charity displays a sponsor's name prominently
- Is a service, but not primary purpose trading
- Unless is covered by an exemption will be a VATable supply and taxable

Watch out for tax and VAT

- Will the business get anything in return for a payment to your charity?
 - a right to use the charity's logo
 - endorsement of products or services
 - display of the sponsor's logo
- If so, and the payment doesn't fall within an exemption, it may be subject to tax and VAT
- Consider splitting the payment from the business between a pure donation and a fee subject to VAT

Lotteries

- Trading
- Profits are exempt from corporation tax
 - Promoted in accordance with Gambling Act
 - Profits must be applied for purposes of charity

Loss from non-primary purpose trading

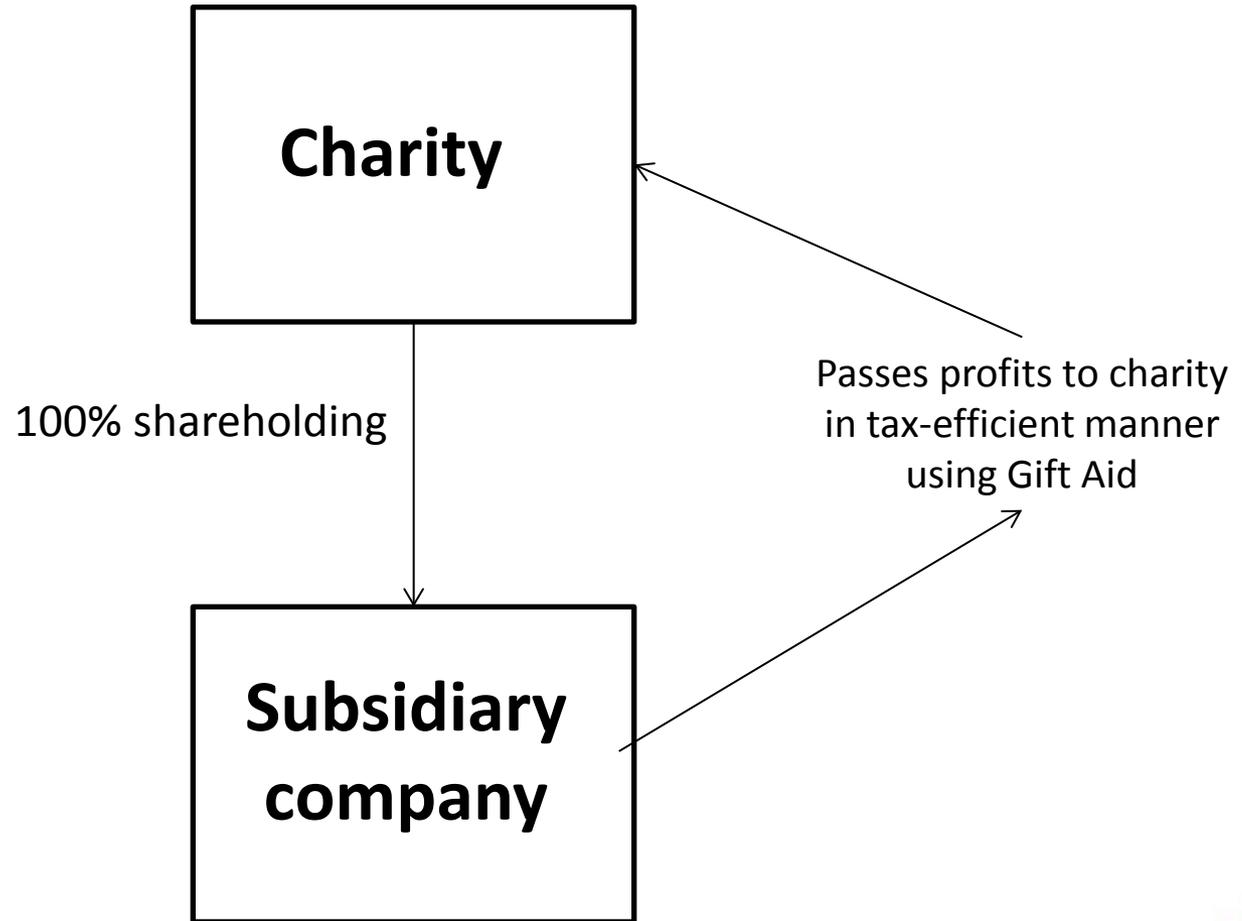
- Will be regarded as ‘non-charitable expenditure’
- Could result in restriction of the charity tax exemptions
- Only breach of trust if loss incurred irresponsibly
- No breach of trust if:
 - Rational expectation trading would be successful
 - Reasonable for charity to have carried out trade
 - Expenditure was within powers available

Are you ready to trade?

- Skills on board
- Approach to risk
- Refresh staff skills
- Liability and status of charity

When to use a trading subsidiary

- Small trading exemption exceeded
- Ring fencing risk
- Joint ventures



Trading – choosing the legal form

- Company limited by shares
- Community interest company
- Company limited by guarantee

Pros and cons of trading subsidiary

- Protect charity's assets from risk
- Create a business-focussed division
- Reduce tax liabilities

BUT

- Cost of setting up and operating
- Not same benefits as charity (rates and SDLT)

Funding a trading subsidiary

- Usually by parent charity
- Share capital and/or loan capital
- ‘Arms-length’
 - No donations in cash or kind
 - Charity can’t settle debts

Support for trading subsidiary

- Staff
- Premises
- Databases and intellectual property
- Need agreement with charity- fair charge for use of charity's resources

Tax and sharing resources

- If charges from charity to subsidiary for support (staff time etc) = taxable supply
- Look out for VAT registration limit
- Consider group VAT registration

Investment in trading subsidiary

- Must be justified as an appropriate investment
- Must reasonably consider to be in charity's interests
- Consider financial viability
- Consider taking advice
- Loan terms – interest, repayment, security

Loan – tax issues

- Avoid non-charitable expenditure
- Satisfy HMRC – purely for charity’s benefit and not for avoidance of tax
- HMRC not happy if:
 - No proper provision of repayment
 - Unsecured loan but company has assets
 - Rate of return does not reflect risk
 - Loan would be written off by parent charity

Governance

- Overall responsibility of charity trustees
- Trading subsidiary board – separate agenda/meetings/minutes
- Governing document of subsidiary:
 - Appointment/removal of directors
 - Conflicts of interest

Contact Details

Chris Rowse, Senior Associate

+44 (0)20 8394 6438

Chris.Rowse@russell-cooke.co.uk

Phil Salmon, VAT Partner, Haysmacintyre

+44 20 7969 5611

psalmon@haysmacintyre.com