Charity tax update

Ross Palmer

16 November 2023

SAYER | VINCENT

We will look at developments since September 2022 in charity taxation:

Gift aid

VAT

Business Rates

Corporation Tax

Employment Taxation

Gift Aid

- Gift aiding waived refunds and loans
- Donations via Facebook/Meta
- HMRC charities tax compliance consultation
- RGAS end of year letters

Gift aid: Waived refunds and loans

- If an event is cancelled, HMRC previously stated gift aid could only apply to refunds if first repaid to the purchaser and then paid back under gift aid
- April 2020 – HMRC accepted that charities could gift aid waived ticket refunds for cancelled events as long as the customer agreed to this and provided a Gift Aid declaration.
- Made permanent in January 2021 – applying to waived refunds as well as waived loan repayments.
- Evidence requirements:
  - For ticket refunds, HMRC say the purchaser must agree to waive in writing (letter, email, text etc.) and the charity must retain a copy
  - For loan waivers, HMRC expect there to be a legally binding agreement, which in practice means a deed
- Potential issues with loan waivers:
  - In England and Wales, deeds may only be drawn up by a solicitor if done for consideration, so charities may have to ask their solicitors to do this
  - HMRC think there is a problem with companies gift aiding waived loan repayments due to loan relationship rules – may be wise to avoid this until further clarification obtained.

Facebook/Meta

- There have been many problems with the ‘Facebook donate’ system, including:
  - Allows gift aiding of collections from third parties
  - Facebook reports do not reconcile to amounts received
  - Problems with donor names and addresses
- From 1 November 2023, Facebook/Meta no longer support UK charities through Facebook donate
- Meta has instead partnered exclusively with PayPal Giving Fund UK (PPGF)
- PPGF is a UK-registered charity that will receive charitable donations, claim gift aid if applicable, and then grant the funds to the recipient charity
- PPGF will deduct a processing fee and payments may take upto 90 days to arrive
- Some charities have expressed concerns over the PPGF terms and conditions re liability for rejected gift aid claims

Retail Gift Aid Scheme – end of year letters

- For sale of donated goods in charity or CASC shops. Mostly run under either:
  - Method A, for charity operated shops
  - Method B, for trading subsidiary operated shops
- Under both A and B methods – must send donor an ‘end of year’ letter, stating value of net proceeds gift aided – HMRC provide mandatory template letters
- If total net proceeds do not exceed £20 in a tax year – only need to send cumulative end of year letter at the earlier of:
  - Net proceeds in a tax year exceed £20, or
  - Every 3 years
- In May 2023 HMRC issued a new model for the end of year letter under the 3 year rule
- The model is radically simplified from the standard HMRC model letters
  - Shows a single gift aid amount for the whole 3 year period
  - The small print has been relegated to a separate section
- HMRC intends simplifying the other RGAS letters along similar lines in time for 2024

Charities tax compliance consultation

HMRC is consulting on amending a number of tax rules relating to charities. This is still in consultation – but very likely that some changes will be implemented following this.

- **Non-charitable expenditure rules** – to offset against non-taxable income (such as legacies) and carry back more than 6 years
- **Tainted Charity Donation rules** – to simplify as HMRC finds the current rules difficult to operate in practice
- **Qualifying charitable investments and loans rules** – to require all approved investments and loans to be for the benefit of the charity and not for the avoidance of tax
- **Make gift aid repayments conditional on a charity meeting its filing and paying obligations** – HMRC's intention is that if a charity is asked or obliged to submit an Income/Corporation Tax return and fails to do so within the specified timescale, it will be blocked from claiming gift aid until it submits the return and the return is accepted by HMRC

VAT

- New VAT penalty regime
- The VAT business tests
  - Cases – Paradise Wildlife Park
- Village halls
- Energy saving materials
- Reduced rate fuel & power
- Retained EU law
- Cases – Yorkshire Agricultural Society
- Cases – Derby Quad

VAT: New penalty regime

For:

- Late submission of VAT returns and late payment of VAT
- Effective for VAT returns or amounts of VAT due on or after 1 January 2023

Late submission of VAT returns

- For each VAT return submitted late you receive one penalty point
- Once a penalty threshold is reached, you receive a £200 penalty and a further £200 penalty for each subsequent late submission
- Penalties reduce to zero after a period of full compliance

Frequency of returns	Points threshold	Point reduced to zero after full compliance for consecutive returns filed on time
Monthly	5	6
Quarterly	4	4
Annually	2	2

Late payment penalties

Days late	Penalty
Up to 15 days	no penalty
15 – 29 days	2% of balance outstanding on day 15
30 days or more	2% of balance outstanding on day 15 **Plus** 2% of balance outstanding on day 30 **Plus** daily rate of 4% per year for the duration of the outstanding balance from day 31 (equivalent to 0.011% per day on a simple interest basis)

For the first year only, to 31 December 2023, no penalty will be issued if all VAT due is fully paid by day 30

VAT: The business tests

- The business tests are used to decide if an activity is 'business' or 'non-business' for VAT purposes (or 'within the scope of VAT' or 'outside the scope of VAT')
- For a long time HMRC and the courts used the 'Fisher tests' which date from a 1981 case and were based on the direct tax 'badges of trade' tests
- Replaced in the 2018 Court of Appeal decision 'Wakefield College' – 'Wakefield tests' in contrast to the 'Fisher tests'
- The Wakefield tests are a two stage test – only if the answer to both tests is yes, is there business income for VAT purposes
  - **The supply test**: Is there a supply of goods or services for consideration?
  - **The business test**: Is the supply of goods or services for remuneration?
- **The supply test** asks if the consideration is in return for the supply – is there a 'direct link' between the thing supplied and the consideration received
- **The business test** asks if the supply is made for the purpose of obtaining income therefrom on a continuing basis

In Revenue & Customs Brief 10/22, issued in June 2022, HMRC announced that it had finally abandoned the Fisher tests for the Wakefield tests – policy was that this was effective from 1 June 2022

Cases – Paradise Wildlife Park (February 2023)

The Wakefield tests were applied by the First Tier Tax Tribunal. The Tribunal decided that admission charges to a charity operated wildlife park were business income as:

- Charges were calculated by reference to cost (even if they did not completely cover costs) rather than other factors (such as the payer's means)
- Charges were significant in absolute terms and made a significant contribution to costs, roughly 90% of income came from admissions
- There is a market where similar services are supplied by others on a commercial basis
- The activity is the principal function of the entity
- The activity is conducted in an organised, business-like manner over a long period and with prudent financial management

VAT: Village halls

- The construction of a village hall or similar building can be zero-rated – building doesn’t have to be used solely for non-business activities – it can be hired out to local groups and individuals
- Previously HMRC policy – building had to be owned, organised and administered by the local community– HMRC said trustee body had to be reps of local community groups
- In practice many village halls, community centres, church halls, community sports facilities etc. are owned and operated by a dedicated charity with a trustee body
- This HMRC policy has been repeatedly criticised by the Tax Tribunal – was finally updated in November 2022
- The new HMRC policy is:
  - the building must be constructed and managed by a charity (but not a CASC), and
  - it must be operated on a non-commercial basis (presumably this means cost reimbursement) for the benefit of a local community, and
  - it must be used solely (≥95%) to provide social or recreational facilities for that local community
- Should be slightly easier to zero-rate the construction of village hall type buildings

VAT: Energy saving materials

- For five years, from 1 April 2022 to 31 March 2027, the installation of qualifying energy saving materials (ESMs) in qualifying residential buildings is VAT zero-rated. Was previously reduced rate (5%) and will revert to reduced rate from 1 April 2027
  - This includes dwellings and Relevant Residential Purpose (RRP) buildings: care homes, children's homes, residential hospices, student accommodation etc.
  - Wide range of qualifying ESMs
  - Applies to supply plus installation only
  - If installed as a part of a wider project such as a complete building renovation, no relief applies
- In March 2023 HMRC issued a consultation on extending the relief for energy saving materials to installations in 'relevant charitable buildings'
- This means buildings used ≥ 95% for charity non-business activities, excludes village hall type buildings
- HMRC is also consulting on extending the range of eligible ESMs to include battery storage and other emerging green technologies
- **Not yet clear if the relief will be extended – awaiting outcome of consultation**

VAT: Fuel and power certificates

- A VAT reduced rate (5%) applies to supplies of fuel and power for ‘qualifying use’. Includes charity non-business use (e.g. use for grant funded activities)
- **Charities using buildings for non-business activities can either fully reduced rate (if at least 60% non-business use) or apportion between reduced and standard rated if less than 60% non-business use** – Charities seeking reduced rating should contact their energy suppliers
- In May 2023 HMRC introduced new certification requirements for energy suppliers – must obtain certificates from charities claiming full or partial reduced rating
- The certificate should include:
  - the amount of qualifying use expressed as an exact percentage, and
  - a declaration by a responsible officer as to the truth and accuracy of the facts given
- HMRC say charities providing an incorrect certificate may be liable to a financial penalty
- Not clear how often certificates should be updated

VAT: Retained EU law

- When the UK left the EU on 31 December 2020, the EU Withdrawal Act 2018 preserved the VAT case law of the CJEU and UK courts as it was on 31 December 2020
- To date UK courts and tribunals have carried on relying on pre-31 December 2020 VAT decisions of the CJEU, including their underlying principles such as proportionality, neutrality, certainty and conformity with EU law
- This is all set to change on 1 January 2024, as a result of the Retained EU Law (Revocation and Reform) Act 2023
- Former VAT judgments of the CJEU may remain binding on lower courts, however the general principles of EU law will no longer be part of UK law. Should instead have regard to the intention of the UK parliament
- Some EU principles will be retained

The Government is still consulting on whether the legislation achieves its intended effect(!)

Cases – Yorkshire Agricultural Society

- First Tier Tax Tribunal (May 2023) – decided that admission charges to the Society's 2016 and 2017 agricultural shows qualified for **VAT exemption under the charity fundraising exemption**
- One of the requirements of the fundraising exemption is that the primary purpose of the event must be the raising of money
- This has generally been seen as excluding primary purpose events (events undertaken directly in furtherance of the charity's objects), such as the Society's agricultural fairs.
- The Tribunal decided that, as there is no EU law requirement that the raising of money is the primary purpose, it is sufficient that it is **a main purpose** – this was found to be the case for the Society
- HMRC has appealed this decision to the Upper Tier tax Tribunal (UTT)
- This decision has been widely discussed in the charity tax advisor sector and many think it is wrongly decided as a matter of UK law, though the general conclusion is we should wait for the decision of the UTT, which is expected sometime in 2024
- Even if the UTT decision is favourable for the Society (possible, as it related to pre-Brexit shows) with effect from 1 January 2024, interpretation with EU law can no longer apply, so (as HMRC will presumably argue) the primary purpose test applies as originally intended by the UK parliament

- An arts charity sold admissions to its cinema where it showed live broadcasts of theatrical productions put on by theatres such as the RSC
- It claimed VAT exemption as a supply by an eligible body of a right of admission to a theatrical performance of a cultural nature
- HMRC argue exemption only applies to in person admission to the actual performance, not admission to live broadcasts
- The First Tier Tax Tribunal (27 October 2023) has agreed with HMRC
- Admission to a theatrical performance means admission to the venue where the performance takes place
- In 2005 the VAT Tribunal decided (in Chichester Cinema) that admission to a cinema showing recordings of theatrical productions did not qualify, this case extends that prohibition to live broadcasts
- This would also imply that online broadcasting of live events cannot qualify for VAT exemption under the cultural exemption

Business rates

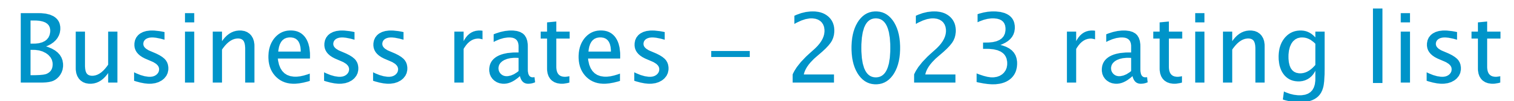
- The Supreme Court's Nuffield Health decision
- The 2023 rating list

Business rates – Nuffield Health

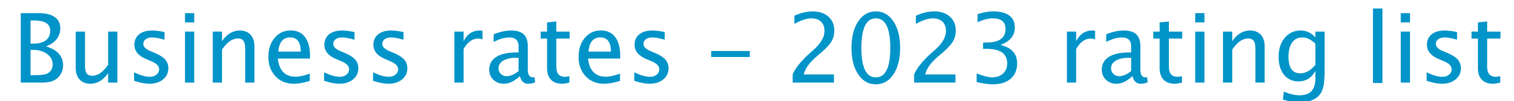
- Charities occupying property in England, Wales and Scotland are entitled to an 80% relief from business rates if:
  - the ratepayer is a charity, and
  - the property is used wholly or mainly for charitable purposes
- In Nuffield Health v London Borough of Merton, Merton argued that a gym owned and operated by Nuffield Health was not used wholly or mainly for charitable purposes because its use was not charitable

The Supreme Court (June 2023) decided that:

- If the ratepayer is (like Nuffield Health) a registered charity, that is the conclusive proof that the ratepayer is a charity
- The second test is not whether the purposes of the ratepayer are charitable. If the ratepayer is a registered charity, its purposes are irrebuttably presumed to be charitable
- The second test asks whether the property is in fact being used wholly or mainly for the charity's purposes, or used for other activities which do not directly serve those purposes
- As the operation of the gym was in direct furtherance of its objects, it qualified for business rates relief



- The government’s current intention is to review rateable values every 3 years.
- Rateable values are generally (though not always) based on the market rental value of a property two years prior to the date the new list goes live
- The last revaluation took effect from 1 April 2023, based on property values on 1 April 2021
- However on 1 April 2021, large parts of the UK economy were in lockdown, including most catering and retail premises, theatres, museums etc. means that market rental values are likely to have been impaired on 1 April 2021
- In order to derive the 2023 rating list, the Valuation Office has taken the (aborted) rating valuation on 1 April 2019 and applied a percentage multiplier



Business rates – 2023 rating list

- In many cases 2023 rating valuations based on market rental values on 1 April 2021 are likely to be too high
- Some large retail businesses (such as operators of shopping centres) are getting up to 60% reductions in rating valuations by disputing the 2023 valuations, on the basis of impaired rental values on 1 April 2021
- However smaller high street retailers such as charity shops are potentially losing out by not challenging
- The general advice from rating experts is to review 2023 rating valuations for commercial premises such as shops and cafes to see if there is scope to challenge
- **Especially if they have increased as a result of the 2023 list**
- Experts in this field are typically chartered surveyors (RICS)

- Creative Industry Tax Reliefs
- Corporation Tax rates
- Annual Investment Allowance & First Year Allowances

- Theatres Tax Relief (TTR), Orchestra Tax Relief (OTR) and Museums and Galleries Exhibitions Tax Relief (MGETR)
- Corporation Tax only reliefs, paid as a tax credit
- To help providers recover from the COVID pandemic, the government introduced TTR, OTR and MGETR rate increases from 27 October 2021

From 1 April 2024 several changes will be made to TTR, OTR and MGETR including:

- Clarify the exclusion of capital expenditure
- Require apportionment of costs incidental to productions
- Clarify the playing of roles condition for TTR
- Require physical admission to exhibitions for MGETR

Additionally – All TTR, OTR and MGETR claimants will be required to complete and submit an online information form

- With effect from 1 April 2023 the main rate of corporation tax increased from 19% to 25%
- A small profits rate of 19% applies to taxable profits of upto £50,000
- The marginal relief fraction for profits between £50,000 and £250,000 is 3/200
- Financial limits are divided by the number of associated companies
- For example, for a charitable company with one active trading subsidiary, the above limits are £25,000 and £125,000
- HMRC guidance on how to perform the computations is at https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm03900

Annual Investment Allowance (AIA)

- With effect from 1 April 2023 this is set permanently at £1 million
- The AIA allows full deduction for capital expenditure on most items of qualifying plant and machinery
- Businesses can treat most purchases of plant and machinery upto a total of £1 million per financial year as business expenses and avoid having to operate capital allowances

First year allowances

- Companies can now claim a 100% first year allowance on all main rate plant and machinery purchases and a 50% rate on special rate expenditure
- Applies to purchases between 1 April 2023 to 31 March 2026
- This replaces the 'super deduction' regime that ended on 31 March 2023. There are special disposal rules for assets that were subject to super deduction – see HMRC's Guidance on disposing of a super deduction or special rate first year allowance asset

- Income tax rates and thresholds
- The £6 homeworking allowance
- IR35 set offs

Income tax rates and thresholds

- In Autumn Statement 2022 the government announced that most income tax rates and allowances in England would be maintained for 4 years until April 2028
- However some allowances were reduced (in red):

	22/23	23/24 – 27/28
Personal allowance	£12,570	£12,570
Basic rate	20% to £37,750	20% to £37,750
Higher rate	40% to £150,000	40% to £125,140
Additional rate	45% above £150,000	45% above £125,140
Savings allowance	Basic rate: £1,000, higher rate: £500, additional rate: £nil	Basic rate: £1,000, higher rate: £500, additional rate: £nil
Dividend allowance	£2,000	£1,000 in 23/24 £500 from 24/25
CGT exempt amount	£12,300	£6,000 in 23/24 £3,000 from 24/25

£6 homeworking allowance

Reimbursed by employer

- Exemption for the extra costs of heating, lighting and phone calls when an employee regularly works from home under a homeworking arrangement with their employer
- Can be paid on a cost basis with receipts, or a flat rate basis of £6 per week from 6 April 2020, £4 per week before, no receipts required

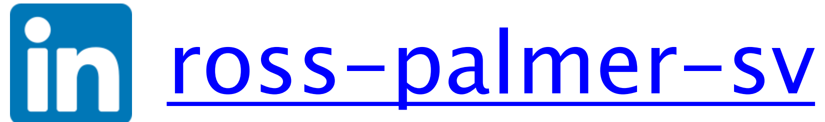
Not reimbursed – allowance claimed by employee

- During the COVID pandemic (tax years 20/21 and 21/22), an easement was introduced to allow employees who worked from home as a result of the COVID pandemic
- It is still possible for an employee to claim £6 per week for the extra costs of heating, lighting and phone calls directly from HMRC though this is now under much stricter conditions
  - there are no appropriate facilities available on the employer's premises, or
  - The job requires the employee to travel an unreasonable distance to and from the employer's premises on a daily basis, or
  - the employee is required under government restrictions to work from home
- For example:
  - where the employer has no suitable workplace nearby, or
  - where the employer has no workplaces

- IR35 (or the 'intermediaries legislation') is a special tax regime for persons who work via a personal service company (PSC)
- From 6 April 2021, if the engager is medium or large or a public sector body, the engager must decide and if it applies deduct PAYE and NICs from payments to the PSC
- Doesn't apply if small – means at least two of turnover ≤ £10.2m, gross assets ≤ £5.1m; average employees ≤ 50, **exclude grants and donations** from turnover
- If the engagement is subject to IR35 when the engager decided it was not, the engager is liable for any PAYE and NICs that should have been deducted
- This created a significant potential liability for engagers – incentivises treating the engagement as subject to the rules
- But the PSC or worker is likely to have paid Income Tax, NICs and / or Corporation Tax
- There is currently no right to a set off for amounts of tax deduced by the PSC or worker, however one is to be introduced with effect from 6 April 2024. This should result in a reduced financial risk for engagers.
- For IR35 assessments made before 6 April 2024, HMRC is now offering taxpayers the option of withholding assessments until after 6 April 2024, so offsets can be taken into account

Further guidance

Ross.Palmer@sayervincent.co.uk



ross-palmer-sv

www.sayervincent.co.uk

Publications

- *made simple guides*
- *SV newsletter*

In this month's SV newsletter:

Welcome to our October newsletter! As usual we have all the latest news relating to finance, tax and risk for charities. We also have all the details you need for booking your place at the 2023 running of the Charity Accountants' Conference (this year at the slightly later date of November).

Latest news and updates:

Pension scheme terminology – are you getting it right?

HMRC highlighted in a recent employer bulletin their concerns that many employers are confused by the HMRC terms used for employee pension contributions and are making incorrect entries on their RTI employer records. In particular the distinction between:

- Net pay pension schemes – when the employee pension contribution is deducted before operating PAYE
- Relief at source schemes – when the employee pension contribution is deduction after tax and NI

Annual returns via 'My Charity'

The Charity Commission's new 'My Charity' portal went live on 31 July. From now on all annual returns are required to be submitted through the portal. The previous digital filing system has been discontinued.

We are aware that many charities are experiencing delays in registering for the new portal. According to Civil Society (23 August), the Commission has confirmed that all charities will receive a link prior to their submission deadline.