

## **Charity Law Association**

### **Tax Update – May 2021**

#### **1. Charity Tax Forum**

The minutes of the meeting on 19 January 2021 are now available:

[Charity Tax Forum - minutes 19 January 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/94440/charity-tax-forum-minutes-19-january-2021.pdf)

The next meeting is due to be held in May 2021.

#### **2. Legislation**

##### **2.1. Finance Bill 2021**

[Finance \(No. 2\) Bill - Parliamentary Bills - UK Parliament](https://www.parliament.uk/bills/2021/finance-bill-2021)

The Finance Bill published on 11 March 2021 contains a few measures that have specific relevance for charities:

- an extension of the current social investment tax relief (SITR) scheme for 2 years until 5 April 2023 (clause 20);
- a temporary extension of the period for which corporation tax trading losses can be carried back from 1 to 3 years to the extent that the losses arise in an accounting period ending between 1 April 2020 and 31 March 2022 and do not exceed £2 million (clause 18 & schedule 2);
- an extension of the current temporary 5% and 12.5% VAT reduced rates for hospitality and tourism sectors to 30 September 2021 and the introduction of a new 12.5% reduced rate for supplies made in the period from 1 October 2021 to 31 March 2022 (clauses 92 & 93) .

Clause 122 will amend Schedule 36 FA 2008 to provide HMRC with a new power to obtain information from organisations that are defined as “financial institutions” for the purposes of the OECD Common Reporting Standard. However, for the purposes of the new power the OECD definition is modified to exclude an organisation that falls within the scope of the definition solely because it is an “investment entity” for CRS purposes. Accordingly, the new power generally will not apply to a charity that is treated as an investment entity by the CRS.

### 3. Other developments

#### 3.1 R&D tax incentives

[R&D Tax Reliefs: consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/r-and-d-tax-reliefs)

The Budget 2021 measures announced on 3 March 2021 included the launch of a new consultation ending on 2 June 2021 on the future of the current R&D tax incentive schemes for both larger and smaller companies.

#### 3.2. Notification of uncertain tax treatment

[Notification of uncertain tax treatment by large businesses - second consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation)

HMRC has published a summary of the responses to its initial consultation in March 2020 on proposals to introduce a new requirement for larger businesses to notify HMRC of cases where they have adopted an uncertain tax treatment. At the same time it launched a second consultation on certain aspects of the proposals including the scope for exclusions from the requirement to notify. It is currently proposed to apply the requirement to companies and partnerships with either a turnover above £200 million or a balance sheet total over £2 billion. The consultation closes on 1 June 2021.

#### 3.3. VAT Partial Exemption and Capital Goods Scheme

[VAT Partial Exemption and Capital Goods Scheme - summary of responses \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/vat-partial-exemption-and-capital-goods-scheme-summary-of-responses)

[Revenue and Customs Brief 4: partially exempt VAT registered businesses affected by coronavirus \(COVID-19\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/revenue-and-customs-brief-4-partially-exempt-vat-registered-businesses-affected-by-coronavirus-covid-19)

On 23 March 2021 HMRC published a summary of the responses to the July 2019 call for evidence on a possible simplification of the PE and CGS regimes. HMRC will now make a number of administrative changes to simplify the current system:

- a centralised application point will be set up to direct all applications for a PE Special Method to the same HMRC team;
- a standard PESM application form will be required;
- all the current sectoral frameworks will be reviewed and the relevant HMRC guidance will be updated as required.

At the same time HMRC announced an accelerated process for businesses affected by the coronavirus to request temporary alterations to their current PE methods to reflect changes to their business practices which result in their current method no longer providing a fair and reasonable result. The same accelerated process will be available to businesses using the CGS to calculate input tax recovery on capital items used for business purposes (Revenue & Customs Brief 4/2021, 23 March 2021).

### 3.4 VAT on religious services

[VBNB44500 - VAT Business/Non-Business Manual - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

HMRC has updated its guidance on the application of VAT to charges for the provision of a religious service.

### 3.5. Scottish Budget 2021-22

[Scottish Budget 2021-22 - gov.scot \(www.gov.scot\)](#)

The Scottish Government announced its proposals for its 2021-22 Budget on 28 January 2021. These include:

- no changes to current income tax rates
- the starter and basic rate bands and the higher rate threshold will be increased by 0.5% (the rate of CPI inflation);
- no further changes to Land & Buildings Transaction Tax;
- the standard and lower rates of Scottish Landfill tax will increase respectively to £96.10 and £3.10 per tonne from 1 April 2021, but the credit rate for landfill operators' contributions to the Scottish Landfill Communities Fund will remain at 5.6% of an operator's tax liability;
- the basic poundage rate for non-domestic rates will be set at 49 pence;
- the 100% rates relief for day nurseries will be extended until at least 30 June 2023;
- the renewal of the Small Business Bonus Scheme which relieves qualifying businesses of their entire rates liability.

There are no further changes to the charitable or empty property business rates reliefs, but discretionary relief for amateur sports clubs will be subject to new statutory guidance to ensure that it supports affordable community based facilities.

### 3.6. IR35 - Application to larger private sector organisations

The Charity Tax Group has received confirmation from HMRC that for the purposes of determining whether an organisation is in scope the definition of turnover should exclude donations and grant income. This is consistent with HMRC's application of a similar turnover test in the context of the Senior Accounting Officer regime (CTG Newsletter, 9 April 2021).

### 3.7. Business rates

[Business rates: expanded retail discount 2021 to 2022 - local authority guidance - GOV.UK \(www.gov.uk\)](#)

The Ministry of Housing, Communities and Local Government published guidance for local authorities on the operation of the expanded retail discount scheme for 2021/2022 that was announced in Budget 2021. The guidance include examples of how the discount is applied to various types of premises including charity shops.

### 3.8. Northern Ireland charities

[Legal update | The Charity Commission for Northern Ireland \(charitycommissionni.org.uk\)](https://charitycommissionni.org.uk)

The Charity Commission for Northern Ireland has published an update on the legal and tax status of charities that have not yet been validly included in CCNI's charity register as a result of the Northern Ireland Court of Appeal's decision in the McKee case (Legal update, CCNI, 16 April 2021). The update confirms that CCNI continues to regard the affected organisations as charities in law and clarifies that HMRC will accept Gift Aid and other tax relief claims by these bodies if they have a valid letter of recognition from HMRC.

## 4. Recent cases

### 4.1. News Corp UK [2021] EWCA Civ 91

[Revenue and Customs v News Corp UK & Ireland Ltd \[2021\] EWCA Civ 91 \(28 January 2021\) \(bailii.org\)](https://www.bailii.org/uk/ew/casereferenced/2021/ewca/civ/91.html)

The Court of Appeal has reversed the UT's decision in this case, holding that the supply of digital versions of the taxpayer's newspapers prior to 1 May 2020 fell outside the scope of the provisions for the zero-rating of printed matter, which are limited to the supply of tangible items. The "always speaking" principle does not override the requirement for a strict construction of the scope of the zero-rating provisions, nor can the principle of fiscal neutrality be applied to extend these provisions.

### 4.2. St George's University [2021] UKFTT 13

[St George's University Ltd v Revenue & Customs \(Value Added Tax - education and vocational training\) \[2021\] UKFTT 13 \(TC\) \(22 January 2021\) \(bailii.org\)](https://www.bailii.org/uk/ftt/cases/UKFTT13TC20210001.html)

The taxpayer was a Grenada based university which supplied a 4 year medical degree course which included a one year programme at a UK university and clinical training at various NHS hospitals. HMRC decided that the taxpayer was making supplies of education in the UK that were taxable because the taxpayer was not recognised as a UK university. The FTT found that it was only the agreements between the taxpayer and the students that amounted to a contract for the provision of education. However, the course constituted a single complex supply that was organised in Grenada and therefore the place of supply was Grenada. Although it was not necessary for the FTT to decide the issue, it also held that, had the place of supply been in the UK, the taxpayer would have been liable for VAT on all the consideration paid by the students for their time spent in the UK.

### 4.3. Liliash Trust [2021] UKUT 31

[The Liliash Trust v Revenue and Customs \(Rev 1\) \[2021\] UKUT 36 \(TCC\) \(18 February 2021\) \(bailii.org\)](https://www.bailii.org/uk/ut/cases/UKUT31TC20210001.html)

The charity operated a residential assessment centre where it observed and provided child welfare advice to parents. The UT held that the provision of accommodation was ancillary to and therefore eligible to be treated as part of the exempt supplies of welfare services.

#### 4.4. Westow Cricket Club [2021] UKUT 23

[Westow Cricket Club v Revenue and Customs \[2021\] UKUT 23 \(TCC\) \(10 February 2021\) \(bailii.org\)](#)

The UT reversed the FTT's decision that the club did not have a reasonable excuse for the issue by a CASC of a zero-rating certificate for the construction of a new pavilion. The UT held that the club's treasurer honestly believe that he could issue the certificate after reading VAT Notice 708 and it was objectively reasonable for him to have done so.

#### 4.5. Eynsham Cricket Club [2021] EWCA Civ 225

[Eynsham Cricket Club v Revenue & Customs \[2021\] EWCA Civ 225 \(23 February 2021\) \(bailii.org\)](#)

The Court of Appeal confirmed the UT's decision, holding that there was no indication that the new definition of a charity for tax purposes introduced by FA 2010 was intended to allow CASCs to benefit from charity tax reliefs. Consequently, the construction of a new pavilion was not eligible for zero-rating.

#### 4.6. Wellcome Trust (Case C-459/19, CJEU Judgment 17 March 2021)

[Wellcome Trust \(Harmonisation of fiscal legislation - Place of supply of services to a taxable person acting as such - Judgment\) \[2021\] EUECJ C-459/19 \(17 March 2021\) \(bailii.org\)](#)

The CJEU has held that the definition of a business customer for the purposes of determining the place of supply is broader than the definition of a business activity for input tax recovery purposes, notwithstanding that both definitions refer to a "taxable person acting as such". Services which are supplied for a non-economic activity, such as the management of non-EU equity investments in this case, should be treated as B2B supplies and are subject to the reverse charge.

#### 4.7. Balhousie Holdings Ltd [2021] UK SC 11

[Balhousie Holdings Ltd v Revenue and Customs \(Scotland\) \[2021\] UKSC 11 \(31 March 2021\) \(bailii.org\)](#)

The court allowed the taxpayer's appeal against a VAT clawback charge on the sale and leaseback of a care home, the acquisition of which had been zero-rated. The court held that the sale and leaseback transaction did not amount to a disposal of the taxpayer's interest in the property.

#### 4.8. OSCR v New Lanark Trading Ltd & New Lanark Hotels Ltd [2021] UK CSIH 7

[OFFICE OF THE SCOTTISH CHARITY REGULATOR AGAINST A DECISION OF THE UPPER TRIBUNAL CONCERNING \(1\) NEW LANARK HOTELS LIMITED and \(2\) NEW LANARK TRADING LIMITED \[2021\] ScotCS CSIH 7 \(29 January 2021\) \(bailii.org\)](#)

The Court of Session rejected OSCR's appeal against the UT's decision that the two trading subsidiaries of the New Lanark Trust charity met the charity test for registration by OSCR as Scottish charities. The court held that OSCR had failed to apply the public benefit test correctly; where all of the activities were primary purpose trading the fact that they raised money would not of itself deprive them of public benefit. The decision has been accepted by OSCR which has now registered both companies as Scottish charities.

#### 5. Other news

##### 5.1. Beacon Collaborative philanthropy report

[REPORT: The UK as a Centre of Excellence for International Philanthropy \(beaconcollaborative.org.uk\)](#)

The Beacon Collaborative has published a report making several recommendations for the promotion of the UK as a centre for philanthropy.

##### 5.2. Charity tax relief statistics

[UK charity tax relief statistics - GOV.UK \(www.gov.uk\)](#)

HMRC published its update of UK charity tax relief statistics for the year ended April 2020 on 25 February 2021.

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