

## **Minutes of the Charity Tax Forum meeting on 7 June 2018**

Held at HMRC, 100 Parliament Street, London

### **List of attendees**

R Baldwin	Sport & Recreation Alliance
P Bater	Charity Law Association
R Bray	Cancer Research
S Cattell	Institute of Chartered Accountants of Scotland
K Russell	Stewardship
J Hemming	Wellcome Trust
T James	Association of Church Accounts & Treasurers
C Lane	Charity Tax Group
A O'Brien	Charity Finance Group
S Siddall	Institute of Fundraising
N Montagu	Charity Tax Commission
D Nesbitt	Society of Trust & Estate Practitioners
J Pepin	Philanthropy Impact
E Hutchins	Association of Charitable Foundations

J Gibson	HMRC (Chair)
D Hook	HMRC
P Sears	HMRC
J Vambe	HMRC
H Dodia	HMRC
C James	HMRC
R Vause	HMRC
G Jones	HMRC
G Cobbett	HMRC
H Howell	HMRC
A Bottone	HMRC

### **Welcome and introductions**

1. The Chair welcomed the Forum and thanked them for offering agenda items for discussion. HMRC reported that a copy of the letter sent to charities who had claimed Gift Aid but not GASDS had been provided for them to take with them and provide feedback by emailing [charitypolicy.taxteam@hmrc.gsi.gov.uk](mailto:charitypolicy.taxteam@hmrc.gsi.gov.uk).

### **Work of the Charity Tax Commission**

2. Nick Montagu gave a brief overview of the Charity Tax Commission's work. The Commission was still in its infancy and its objective was to be as open and as consultative as possible. It was currently running a consultation looking at a full review of the impact of the tax system and

this was due to close on 6 July 2018. The Commission was also preparing to hold several public sessions around the country to stimulate conversations in which written responses to the consultation would be invited. Also planned were roundtable/dinner discussions to follow up the call evidence with tax experts and wider stakeholder groups which would help to test and shape any conclusions made.

3. John Pepin reported that his organisation would be happy to offer its premises as a venue for one of these sessions and to assist and share any research that might be helpful.

### **Overview of Corporate Criminal Offences**

4. Richard Vause from HMRC gave an overview of the Corporate Criminal Offences legislation which holds organisations liable for failing to prevent the facilitation of tax evasion. In this respect, the legislation was focused on the tax affairs of third parties, rather than an organisation's own tax affairs. Organisations could be found liable for the behaviour of an 'associated person' (those providing a service for or on behalf of an organisation) who criminally facilitates tax evasion. The offences were applicable cross-sector and targeted deliberate behaviour to facilitate tax evasion (rather than accidental errors).
5. The penalties for non-compliance could be significant. It was discussed that the defence against the offences was for an organisation to demonstrate that it had 'reasonable procedures' in place to prevent associated persons criminally facilitating tax evasion. Organisations could prepare by creating prevention procedures now. It was important for procedures to be risk-based. The individual circumstances of each case would be taken into consideration along with sufficient evidence of reasonable action taken by organisations to prevent tax evasion.
6. Guidance on how the offences operate had been produced by the Government. This also explained guiding principles for reasonable prevention procedures. The guidance could be found at: [www.gov.uk/government/publications/corporate-offences-for-failing-to-prevent-criminal-facilitation-of-tax-evasion](http://www.gov.uk/government/publications/corporate-offences-for-failing-to-prevent-criminal-facilitation-of-tax-evasion).
7. Discussion focused on queries from Forum members about the classification of associated persons, and concerns around the costs of implementing risk-based procedures for charities. Richard Bray raised the possibility of producing specific guidance for charities. Richard Vause explained that HMRC had produced general guidance on the offences (link above) and as such had no plans to produce its own sector-specific guidance. Sector specific guidance had been produced in other sectors by rep bodies and could be approved by the Chancellor.

8. It was agreed that Forum members could email questions and suggestions to [charitypolicy.taxteam@hmrc.gsi.gov.uk](mailto:charitypolicy.taxteam@hmrc.gsi.gov.uk) where they would be collated and forwarded to Richard Vause for consideration.

### **Intermediaries**

9. HMRC asked for Forum members' views on the operation of the intermediaries legislation as it had been in operation for 12 months. Members reported that the legislation had not gone as far as it was originally hoped in terms of being forward looking and being able to deal with Gift Aid declarations in respect of current and future ways of donating, including the use of SMS text messages. It was agreed that this was an issue already being considered by the GA review working group. HMRC was also aware that there were several technology companies already working in this area and was hopeful that progress would soon be made.
10. On the issue of fees being charged by intermediary fundraising platforms it was reported that it was easier to register as an intermediary than a charity, and that there seemed to be little involvement of HMRC in their operation. HMRC was encouraged to take more interest in the growth of intermediaries as the cashless society became ever more prevalent. On the issue of intermediaries charging fees on Gift Aid as well as on the donation itself, no great concern was expressed and seen as a commercial matter, although it was pointed out that the Fundraising Regulator was consulting on transparency in this area.

### **Updating the presentation of UK Charity Relief Statistics**

11. HMRC asked Forum members about changes proposed to the publication of UK Charity Relief statistics in June. Forum members requested that most of the current information be retained with the exception of maps and some of the graphs which were seen as repetitive. The deadline for Payroll Giving relief was now too late for publication, so it was agreed that HMRC would estimate the cost of this relief for the most recent tax year rather than publish the actual cost. There were also calls for statistics on how many charities had claimed Gift Aid but not GASDS to be included, for VAT relief to be estimated, the commentary sections to be more concise and for a summary of key points. It was agreed that further comments could be emailed to the [charitypolicy.taxteam@hmrc.gsi.gov.uk](mailto:charitypolicy.taxteam@hmrc.gsi.gov.uk).

### **Gift Aid Research Findings and update on the Gift Aid Working Group**

12. HMRC gave an overview of the Charitable Giving and Gift Aid research. This found that overall, 25% of the value of donations did not have Gift Aid added where the donor was eligible, contributing up to £560m of potential missed income for charities. It was reported that

the Gift Aid Working Group at its first meetings had already started to address the lack of knowledge and understanding highlighted in the research as reasons for individuals not recognising their eligibility to be a taxpayer and Gift Aid their donations.

13. The research had also highlighted that 8% of donations had Gift Aid incorrectly added by ineligible donors generating a tax gap of up to £180m. HMRC reported that it would not approach charities to cover any shortfall in tax paid by donors to cover any Gift Aid declared, as legislation does not permit this. Any shortfall in the amount of tax paid was the responsibility of donors who might be contacted directly by HMRC. Any action would be taken in the context of HMRC's "Promote, Prevent, Respond" compliance strategy, with the emphasis on the promotion of the correct use of Gift Aid. Consideration was being given to any "response" element where the amount involved was small to simply issue "nudge" letters in the first instance. HMRC guidance would be clarified to reflect this approach and also to advise charities that Gift Aid claims should include full forenames rather than the sole use of initials.
14. Forum members called for the language around tax to cover to be looked at due to lots of donors being put off by the current lines used in declarations. There were also calls for guidance on tax to cover more generally and, in particular, to prevent HMRC being effectively paid recovering the tax twice from both the donor and charity.

#### **AOB**

15. HMRC reported that plans to develop a joint portal for the registration of charities with HMRC and the Charity Commission for England and Wales (CCEW), announced in 2013, would no longer be taken forward. The proposal for a joint portal had been specifically made to improve information sharing between HMRC and CCEW as well as to reduce the burden on charities.
16. Subsequently, the NAO had recognised in their most recent assessment of CCEW, that the co-operation between HMRC and CCEW was now much improved. Furthermore, it was reported that on average, a charity did not register with HMRC until around nine years after it had registered with CCEW. A joint portal was therefore unlikely to benefit the majority of charities.
17. HMRC gave an update on the status of the changes to the donor benefits rules following the announcement at Autumn Budget 2017 in the Summary of Consultation Responses. The next step was publication of the draft legislation on L-day on a date yet to be announced by the government. Forum members would notice there were no provisions for the Extra Statutory Concessions (ESC's) in the draft legislation. During the drafting process it had become clear that it was not necessary to legislate for them. HMRC's view was that the

ESCs provided a practical approach to get at a fair and reasonable value of the benefits provided to donors. This did not affect HMRC's policy on Gift Aid and donor benefits around the four areas covered by concessionary practices – split payment rule, averaging method, lifetime membership benefits and provision of promotional literature. The Donor Benefits Working Group would continue to review the donor benefits guidance and take into account any changes needed for not legislating the ESC's.

18. Forum members raised the following items:

- The paucity of Making Tax Digital (MTD) software and charities being forced to buy bridging software was seen as a concern, with the introduction of MTD for VAT only a few months away. It was agreed that these would be fed back to MTD colleagues in HMRC.
- There was a call for an update on the Employer Provided Living Accommodation consultation.
- A concern was expressed that HMRC seemed to be adopting a tighter definition of what it meant to be an employee for IR35 purposes, but no public announcement of a policy change.
- There was also conflicting information about the treatment of sleeping hours for the purpose of the National Minimum Wage. Andrew O'Brien agreed to set out the precise concern in more detail.

#### **Date of next meeting**

19. The next meeting will be held on 15 October **2018** at 1.00 pm at HM Treasury, 1 Horse Guards Road, London.

**Charities Policy Team  
HMRC  
July 2018**