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## Editor's welcome

As I write this editorial the 31 October deadline for the UK to exit the European Union has just passed and we are now in the run up to a general election before Christmas. Yet more uncertainty looms for us all.

Fortunately, the charity sector is used to dealing with uncertainty and continues to get on with what it does best in providing benefit to the public, although times are very challenging for some. The Charity Commission has not stood still either and as you will see there is lots of guidance to update you on since our summer newsletter. The VAT tribunals

have also been busy and Simon Buchan looks at two important cases which are relevant to the charity sector. The Charity Tax Commission's findings give us some indication of the direction of travel for Gift Aid, Rates Relief and VAT.

We congratulate Rachelle Rowbottom on her promotion to partner and look forward to seeing you all at our 2019 Charity Conference which has now sold out!



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## VAT update

Simon Buchan reviews two recent VAT cases - the decisions of which were released in the summer.

### University of Cambridge

To recap, for those who have forgotten or were unaware of the issue, the dispute centred on the level of VAT recovery available to the University on the VAT suffered on the investment managers' fees incurred in the course of managing their investment portfolio. The First Tier (FTT) and Upper Tribunals (UT) found in favour of the University but the Court of Appeal had its doubts and referred the issue to the European Court (CJEU) who in turn have ruled in favour of HMRC.

HMRC's view was that no recovery was available as the fees were a direct cost of managing the investment portfolio alone, which in this case did not involve the making of taxable supplies and was therefore, essentially, a "private" or non - business activity. The University's view was that the "proceeds" of the investment activity were used in their wider business activities and therefore the fees were an overhead cost with partial recovery according to their partial exemption position.

The consequence of this judgement for charities that have submitted

claims based on the decisions of the FTT and UT is that they can expect HMRC to reject these claims.

It will also be interesting to see whether HMRC seek to apply the decision of the CJEU to VAT suffered on fundraising costs.

It has been accepted since the decision of the High Court in The Children's Society way back in 2005, that the VAT suffered on professional fundraisers' fees incurred in the course of soliciting donations used for the general purposes of the Society are overhead costs with partial recovery, according to their partial exemption position, rather than direct costs of fundraising (a non - business activity) with no right of VAT recovery as argued by HMRC.

The parallels between the two cases are striking - watch this space!

### Eynsham Cricket Club

The Club had appealed to the Upper Tribunal (UT) against the decision of the First Tier Tribunal that the construction of its new pavilion did not qualify for zero rating as a new building used for a relevant charitable



purpose or in the alternative as a village hall or similar.

There were several interesting arguments in this case including consideration of legislation dating back to the reign of Queen Anne but ultimately the club's appeal failed on the basis that it was a Community Amateur Sports Club (CASC) not a charity with the UT confirming HMRC's view that CASC's cannot benefit from the VAT reliefs available to charities.



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## Breaking News

The valuable Listed Places of Worship Grants Scheme has been extended until 31 March 2021.

# What does the future hold for charity tax reliefs?

Rachelle Rowbottom considers the proposals.

The Charity Tax Commission was created in October 2017 to undertake a review of the tax reliefs available to charities, which are currently worth about £5bn a year to the sector. Prior to this, a review had not been undertaken for 20 years and given ongoing technological advancements it is clear that the reliefs need to move with the times. The report states that “bold and ambitious thinking” is required in several areas.

The Commissions' report was published in July 2019 and I detail below the main findings, which are separated between recommendations for short-term reform and ambitions for the future. Of course, further research and consultation will be required.

## Recommendations for short-term reform

- Gift Aid - The redirection of higher and additional rate relief to charities with an opt out available for donors.
- Gift Aid - The creation of a universal Gift Aid database which means that donors would be able to complete a single enduring declaration that would apply to all future donations to charities – HMRC considered this a few years ago but the idea was ‘dropped’ at the time.
- Incentivising giving – Mandatory operation of a Payroll Giving Scheme by employers in order to increase take up.
- Business rates relief – Trading subsidiaries are not generally eligible for mandatory business rates relief and one proposal is to consult on extending the relief to trading subsidiaries who raise vital funds for charities.
- VAT – A review of VAT rules for shared facilities to avoid irrecoverable VAT.
- VAT – A requirement for public bodies to determine the VAT status of the funding that they provide to charities based on clear guidance from HMRC.
- VAT – removal of VAT from the fees for writing wills which include a charitable donation.
- Improving data and openness – Improvement of the statistics that are produced by government, but also there

is a suggestion that charities with over £1m of income should disclose in their annual reports the benefit that they obtain from Gift Aid, business rates relief, and, with the caveat of ‘where possible’, VAT relief.

## Ambitions for the future

The report acknowledges that further information and research is needed, but specifically recommends that a long-term review of business rates relief is required, together with a comprehensive review of VAT for charities. In addition, the report has suggested that the distribution of Gift Aid should be revisited, acknowledging that Gift Aid is more accessible by certain types and groups of charities, in certain areas.

It will be interesting to see how these recommendations are taken forward.



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# Exempt charities - updated guidance (CC23)

An exempt charity has charitable status but cannot register with the Charity Commission (CC) and is not directly regulated by the CC but instead has another principal regulator. It is possible however for another regulator to ask the CC to investigate an exempt charity under a memorandum of understanding between the CC and each of the principal regulators.

The CC can also provide advice to exempt charities after consultation with the other regulator, on matters

such as trustee conflicts of interest and ex gratia payments.

The responsibilities of a trustee for an exempt charity are not different to those for a registered charity, and much of charity law is also relevant, including the requirement to produce proper accounts.

Exempt charities include educational charities such as universities and academies, certain museums/ galleries, charitable benefit societies and friendly societies and Church

of England and Methodist Church investment funds.

The updated guidance gives information about which body is the principal regulator for each type of exempt charity.

[www.gov.uk/government/publications/exempt-charities-cc23/exempt-charities](http://www.gov.uk/government/publications/exempt-charities-cc23/exempt-charities)



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# Changes to off-payroll rules

Christine Robinson considers the impact of the changes to the off-payroll rules, [aka IR35] from 6 April 2020.

Draft legislation was issued at the end of summer, to extend the off-payroll legislation for public authorities to the private sector. The purpose of the legislation is to charge tax and National Insurance Contributions, (NICs) on payments to workers who provide their services through a personal service company, (psc) if the worker would have been an employee if he or she had contracted directly with the end client. The legislation introduces a requirement to provide a status determination statement which must include the reasons for the determination, and an appeals process. Both of these requirements will apply to the public sector as well. The new rules will apply to payments made on or after the 6 April 2020.

## Who is affected?

1. The new rules apply to end clients. These are the businesses that want the worker's services. The end client gives the business they contract with and the worker, a Status Determination Statement, (SDS).
2. The end client must pass the SDS on to the business it contracts with. If that business is not the fee-payer, it is known as an 'agency' for this legislation.
3. Each agency in the supply chain must pass the SDS on to the next agency in line until it reaches the fee-payer.
4. The fee- payer is the business that pays the worker's psc.

Not all private sector businesses that commission services will be affected as the rules will only apply to companies that are medium or large, according to the Companies Act definition of size.

For unincorporated businesses, the definition is based on turnover only, of more than £10.2m.



## The Status Determination and appeals process

The end client decides if the way the worker provides the services will be as an independent business or if the worker will be treated like an employee. To decide, businesses can use HMRC's Check Employment Status Tool, (CEST) which considers the key areas or they can carry out their own status review.

If the worker or the fee-payer disagree with the status determination, they can appeal to the end client. There is no time limit to appeal. The end client has 45 days to respond.

## If the new rules apply

The fee-payer must administer payments to the worker's psc through its payroll, deduct tax and employee's NICs from the payments and pay employer's NICs on top of the payment as well. The payments will count towards the fee-payer's apprenticeship levy but do not confer employment rights to the worker, so the fee-payer does not have to provide a workplace pension, deduct student loans or pay statutory payments such as SMP or SSP.

## What if the rules are not followed?

The legislation transfers the responsibility to account for PAYE to the agency that failed to pass on the SDS. Additionally, if the tax and NICs are not paid over to HMRC, the liability can be transferred to the agency the end client contracted with, or the end client itself, if payment is still not made.

## To get ready for the changes

- Decide who will be responsible for this work in your organisation
- Get them skilled up for the work
- Identify where psc's are used in your organisation
- Review current contracts and identify any where payments may be made from 6 April 2020
- Set up a process to issue SDS's and reasons for doing this
- Set up an appeals process



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# Latest news from the Charity Commission

In our regular feature, we look at the latest news from the Charity Commission.

## Improvements to reporting charity fraud

Charities continue to fall victim to common types of fraud such as phishing and CEO fraud where fraudsters use manipulation or impersonation to dupe their target. Scams are becoming more sophisticated and harder to detect which is putting charity's funds, infrastructure and reputation at risk.

The Charity Commission recently published a new online form to report serious incidents in your charity. This makes it much easier to report cases of fraud and cyber crime. It is important for charities to speak out and report fraud to enable the Charity Commission to better identify fraud risk and help others across the sector.

## Simple steps to protect your charity's funds

Recently, over 3,300 charities took part in a research study about fraud awareness, resilience and cyber security which highlighted many charities are not doing the basics to protect themselves.

The results of the survey can be found here: <https://www.gov.uk/government/publications/preventing-charity-fraud-insights-and-action>

The findings show charities are not always recognising how vulnerable they are and that basic checks and balances are not always in place.

The Charity Commission highlights these simple steps which can protect your charity's funds:

- Introduce and enforce basic financial controls (for example have at least two signatories to bank accounts and cheques, undertaking regular bank reconciliations)
- Make sure no one single individual has oversight or control of financial arrangements

- effective segregation of duties is a crucial method of preventing and detecting fraud

- Encourage staff, volunteers and trustees to speak out when they see something they feel uncomfortable about

## Reporting of related party transactions in financial statements

It is a requirement of the Charities SORP that charities disclose the complete picture of transactions with trustees and related parties in their financial statements. A complete picture also means disclosing the fact that no related party transactions have occurred, if this is the case.

The Charity Commission published a study in August 2019 that found less than two thirds of charities, with income less than £1 million, had fully disclosed related party transactions. The results suggest trustees and senior management, are not aware of the scope of related party transactions and what the reporting requirements are.

Charities preparing accruals (SORP) accounts must disclose:

- Trustees' remuneration and benefits
- Trustees' expenses
- Transactions with those persons and entities that are closely connected to the charity or its trustees, referred to as related parties

Public trust in charities depends on transparency and it is therefore important for good governance that trustees identify all related party transactions and handle any conflicts of interest properly.

## If your charity last did an annual return before 12 November 2018

The Charity Commission changed its systems on 12 November 2018. If you have not submitted an annual return

online since then, you'll need to do things differently.

Before you can start your annual return you must confirm all your charity's details are correct, including all trustees' contact details.

You cannot start your annual return until you've confirmed your charity's details. It might take you a while to collect any missing information, for example all trustees' email addresses and phone numbers.

## What your charity needs to do

We recommend you:

- Check you can log in to your charity's account.
- Collect information and use the service to confirm your charity's details.

You will then be in a position to start your annual return.

## Updated guidance on independent examination of charity accounts

If your charity's income is over £25,000, the trustees must arrange for an independent person or accountancy firm to carry out an audit or independent examination of the charity's accounts.

To help trustees the Charity Commission have updated their guidance 'Independent examination of charity accounts' - guidance for trustees [CC31], to make it easier to read and more accessible.

<https://www.gov.uk/government/publications/independent-examination-of-charity-accounts-trustees-cc31>



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