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Editor's welcome

I write this the day after we have gone into another lockdown. Unprecedented uncertainty presides over all of us, no one is unaffected by this pandemic and it is not going away anytime soon. The good news, for some, is that the government's Coronavirus Job Retention Scheme has been extended to the end of March 2021 providing a useful source of income for the charity sector.

Covid-19 has had a major impact on charities' sustainable income streams and just as some of these were getting going again shops, cafes and other non-essential trading activity has been brought to a halt.

It has therefore, never been more important to plan and be on top of your charity's financial position. The trustees are responsible for ensuring charities can continue as a going concern and that the financial position can be assessed with reasonable accuracy at any time.

I make no apologies, therefore, for reminding you of the importance of preparing forecasts of income and expenditure and cash flow under best, middle and worse case scenarios. Only by doing this will you be in a position to take strategic decisions to ensure your charity exists when we come out of this.

There has, at last, been a realisation of the importance of properly thought out, risk-based reserves policies. Many charities have been utilising reserves to help with survival. Whilst the Charity Commission made it clear at the outset that this was allowable, it is essential that this does not prevent difficult decisions being made and you will need reserves as a buffer going forward.

Finally, you must ensure you have up to date, accurate management accounts so the financial position can be monitored against forecast and action taken on a timely basis if things are not going according to plan.

I hope you will find the articles in this newsletter useful and as ever if you have any subjects you would like covered in further issues please do let me know.

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Trading subsidiaries - what does the future hold?

Rachelle Rowbottom looks at the challenges faced by trading subsidiaries, their ability to make Gift Aid payments to their parent charity and the potential tax impacts.

Many trading subsidiaries have been required to close or significantly reduce their operations during the pandemic which is having a massive impact on their financial situation.

Where subsidiaries are in a loss-making position in the current year, they need to consider whether they can legally make a Gift Aid payment to the charity for the previous year.

For example, a subsidiary with a 31 March 2020 year end will need to donate its taxable profits to its parent charity by 31 December 2020, at the latest, to avoid a tax charge. The Gift Aid payment is treated as a distribution for company law purposes which means that the subsidiary must have sufficient distributable reserves at the time that it wishes to make the Gift Aid payment. If the subsidiary has made losses in the current financial period, the distributable reserves held at 31 March 2020 may have been wiped out, in whole or in part, and if this is the case the full Gift Aid payment cannot be made.

Additionally, although a Gift Aid payment may be possible, some Boards are choosing to retain profits for working capital purposes and are therefore accepting that a tax charge will arise. Directors need to carefully consider their duties under company law and balance this with their obligations to the charity, for example if a deed of covenant is in place.

It may be possible for trading subsidiaries to submit provisional corporation tax loss claims for the current year to HMRC and carry back the losses to the previous year to reduce any corporation tax liabilities, however supporting evidence would be required to do this.

In the Covid-19 guidance for the charity sector, issued by the Charity Commission, the Commission recognised that there may be instances where the parent charity decides to temporarily support the trading subsidiary to help it through this difficult time. Where this is the case, the Trustees must consider and document why it is in the best interests of the charity to provide this support.

For further information please contact Rachelle Rowbottom
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Charity Commission's Business plan

Alyson Kimber reviews the Charity Commission's Business plan and what it means for the sector.

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Earlier this year the Charity Commission published its business plan for 2020/21. In this particularly difficult time, the Charity Commission is looking to ensure charities can thrive and inspire trust, so that people can improve lives and strengthen society. The business plan is aiming to do this through a commitment to represent the public interest in charities, this is reflected in the Commission's five key strategic objectives as per their Statement of Strategic Intent 2018-2023:

- holding charities to account
- dealing with wrongdoing and harm
- informing public choice
- giving charities the understanding and tools, they need
- keeping charity relevant

In the business plan the Charity Commission has identified it's priorities for 2020/21, it has stated that:

"In this, the second year of delivering our strategy, we will focus on 'being open for business' and 'being a better, more professional organisation."

In support of these priorities the following five deliverables for 2020/21 are part of its business plan opposite:

The table opposite indicates that the Charity Commission is changing its emphasis to be more proactive, the new IT system aims to increase efficiency and allow improvement in the effectiveness of the Charity Commission's regulatory work focusing on the right cases and tidying up the register so only charities operating for the public benefit are registered.

There is a strong focus on communication and ensuring that relevant information is easily available to trustees through an improved website, regular publications and the planned online portal. The Charity Commission are taking steps to prepare for a fully digital service to support charities and their trustees.

The business plan was developed before the pandemic which the Charity Commission acknowledges has had a huge impact on the charity sector. The pandemic emphasises the importance of the Commission's plan and the development of a more resilient sector, as such the Charity Commission is determined to continue with its plans despite the setbacks that the pandemic may bring.

Given the enormous strain on the sector, it is comforting to know that the Charity Commission will continue to provide as much support as it can and that it will endeavour to deliver the strategic objectives, although these may not be delivered in the way the Charity Commission originally envisioned.

Key Deliverable	What the Charity Commission plan to do...
We have delivered improvements to the effectiveness of our regulatory work and have met our customers' expectations	• An improved IT system, Casework • Implement a technical competency programme • Develop & implement a Quality Assurance framework • Establish an intelligence group • Deliver agreed customer service standards
We have made full use of our regulatory powers to protect what makes charity special, and developed proposals for new powers to address deficiencies in the current legal framework	• Identify cases that provide opportunities to clarify the boundaries of the legal framework • Remove organisations no longer operating • Remove organisations not deemed as operating for public benefit • Improve charity annual account filling
We have delivered/revamped core guidance and an improved website, making it easy for Trustees to access what they need	• Improve the website so it is easier to find information and guidance • Update existing guidance and ensure more targeted and relevant for Trustees • Stress to Trustees the importance of charitable purpose • Quarterly publications
We have defined the future relationship we will have with Trustees and have begun to build services to support them	• Design and build an online portal to service a relationship with charities • Improve the registration process
We have implemented our new organisation design and delivered the improvements in infrastructure that are required to enable us to deliver our strategy and purpose	• Deliver the first year of the People Strategy, the workforce plan to ensure the Commission has the right people with the right skills • Implementing new IT systems and increasing cyber security

BHP's Charity Conference goes virtual!

In a temporary change to the usual BHP Charity Conference format, we will be hosting an online conference in January 2021.

We look forward to kick starting the new year with a packed programme, providing thought provoking sessions on important issues affecting the charity sector. Our experienced speakers will be drawn from both BHP's specialist charity team together with guest speakers from across the sector.

This free half day conference is open to all charities and full details will be issued shortly. However, if you would like more information at this stage, please contact Lucy Ellis (Lucy.ellis@bhp.co.uk)

We hope you will be able to join us.

VAT Round up

Simon Buchan provides an overview of some recent announcements from HMRC and how they may impact on charities.

Making Tax Digital (MTD)

From 1st April 2021 further MTD obligations come into force.

"Phase 2"of MTD introduces the requirement for digital links to be used for the transfer of digital data between software programmes and/or applications.

Until now HMRC have taken a relaxed attitude to non – compliance with MTD but they have also announced that they will start to impose penalties for non – compliance ie not filing VAT returns digitally, not keeping digital records and not using digital links. Penalties will apply to returns commencing 1st April 2021 onwards.

HMRC have also announced that MTD will become mandatory for all VAT registered organisations with limited exceptions from 1 April 2022 onwards. Currently only VAT registered businesses whose taxable turnover exceeds the VAT registration threshold (£85,000) are required to submit their returns via MTD.

VAT registered charities should take action to ensure that they can comply with all their MTD obligations from 1 April 2021 onwards.

E Publications

From 1 May 2020 HMRC announced that e publications such as newspapers, magazines, newsletters etc would be zero rated, like their hard copy counterparts. Prior to this date e publications were standard rated.

Charities who distribute magazines, newsletters etc to supporters in e format for a charge, perhaps as part of a membership subscription should now revisit the VAT treatment of these charges going forward.

Running alongside this change is the long running litigation between HMRC and Newscorp – the publishers of the Times and other newspapers. The position currently is that the Upper Tax Tribunal has agreed with Newscorp that some of their e newspapers should be zero rated and not standard rated as contended by HMRC who have appealed to The Court of Appeal.

If Newscorp are ultimately successful this may open the way for retrospective claims. Charities who account for standard rated VAT on e publications should consider submitting protective claims for the last 4 years to protect their position.

Digital advertising

Zero rate VAT applies to advertising services supplied by a third party to a charity when the advert is aimed at the general public. However, advertising services are excluded from the zero rate if a member of the public has been selected by or on behalf of the charity to receive the advertising.

Accordingly, an advert placed in a newspaper or on TV will meet these criteria whilst an advert e mailed to a specific e mail account will not.

HMRC have long considered that digital advertising will struggle to qualify for zero rating due to the level of "selection" involved in the process. However, following a review of a range of digital advertising HMRC now accept that more digital advertising will qualify for zero rating than was previously thought.

Charities who purchase digital advertising should review their position to check whether VAT has been correctly charged by the supplier and if not, seek a refund from the supplier for the last 4 years.

Hospitality – temporary reduced rate

As part of his support package to combat the effects of Covid-19 the Chancellor introduced a temporary reduced VAT rate (5%) which applies to hospitality businesses including for example cafes operated by charities.

The rate applies to:

- supplies of hot and cold food and drinks (not alcohol) consumed on the café premises
- hot take away food and drink for consumption off the premises but not cold take away food and drink or alcohol.

The reduced rate applies for the period 15 July 2020 – 31 March 2021.

For further information please contact Simon Buchan
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Latest news from the Charity Commission

In our regular feature, Nicola Adams looks at the latest news from the Charity Commission

New online register of charities

On 3 September 2020, the Charity Commission launched an improved public register of charities which makes more information about individual charities available to donors and the public.

One of the key aims of the new register was to increase transparency. The new display shows any regulatory action taken or underway, financial information on staff earning above £60k per annum and whether trustees are paid for their services to the charity. It also shows whether charities work with professional fundraisers and what policies are in place, including those on safeguarding.

The new display and functionality also make it easier for users to access and update the data held. It allows potential donors or grant makers to search for charities in their area or those which promote a certain cause.

The Commission is keen to receive feedback on the new register from members of the public, funders and charities themselves.

Be fraud aware. Strengthen your defence – is the message from the Charity Commission.

Charities have reported being victims of fraud or cybercrime 645 times since the start of the pandemic in March, amounting to £3.6m in total losses to charities. These figures are believed to be much higher, as fraud often goes under reported.

The pandemic has created new environments that are enabling charity fraud. Increased virtual activities, remote working and charities' tendencies to place trust in individuals is making them particularly vulnerable. Recent frauds reported to the Charity Commission include insider fraud, likely brought on by economic hardship, and fraud which prays on new fears and anxieties because of the pandemic.

The Charity Commission is warning trustees and donors to strengthen defences to keep their charities safe. All organisations should be fraud aware, ensuring trustees, staff and volunteers know how to spot and report fraud. It is a good time to ensure financial controls are robust and these are being enforced. Any changes in financial controls due to changes in working practices should be assessed against fraud risk.

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Remember, if you have been the victim of fraud, you should report it to the Charity Commission and Action Fraud.

Covid-19 Guidance

We are still seeing a number of enquiries from charity clients seeking clarification on how to deal with the impact of the pandemic on charity operations, from the convening of AGMs to guidance on using reserves.

Back in April 2020 the Charity Commission issued guidance to help with running a charity during the coronavirus outbreak which includes responses to most commonly asked questions.

This guide is being continually updated and is a useful tool for charities to access guidance in these uncertain times. The guidance can be found at - https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector

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