

CHARITY **comment**

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Charities and VAT registration: to be or not to be?

A common comment I hear when meeting an FD of a smaller charity is "we're not VAT registered at the moment thank goodness but I suppose we'll have to be at some point. "

My response is that any charity that is not VAT registered should consider two questions:-

1. Are you sure you are not yet required to be registered?
2. Are you sure that you wouldn't benefit from VAT registration?

There is of course no relief from the obligation to register for VAT simply because a body is a charity. If turnover liable to VAT (including at the zero-rate) exceeds the VAT registration threshold (currently £64,000 per annum) then the charity has an obligation to register for VAT unless HM Revenue and Customs permit otherwise.

Charities do face a particular difficulty in establishing whether income is "taxable". For example, the increasing use of Service Level Agreements to document an award of public funds means that distinguishing between a grant (which is outside the scope of VAT) and a contract for services can be difficult. Further, the provision of some services, e.g. in the fields of education, sport, welfare or culture among others by a charity could be exempt from VAT subject to detailed conditions.

In some instances, the way in which a charity undertakes its activities determines the VAT treatment. Taking one narrow example, the VAT treatment of admission charges, two recent cases involving the Bournemouth Symphony Orchestra and Longborough Festival Opera went all the way to the Court of Appeal. The structure and organisation of the bodies directly influences the VAT treatment; thus the LFO can exempt its charges; the BSO cannot.

It follows that unless a charity actively plans for VAT it is less likely to obtain the optimum VAT treatment. We have helped several charities review their position. Some simply want confirmation

that they are not required to be VAT registered. Others also need confirmation that their activities are "non-business" so that they can qualify for reliefs from VAT, in particular for property expenditure.

Where a charity finds itself with a potential VAT liability, pro-actively approaching HMRC gives the best chance of arguing that VAT is not, in fact chargeable. Even in the worst case it also offers the best chance of managing penalties, and negotiating time to pay.

However, while many charities feel that there is no "upside" to VAT registration, in some instances, it can actually be of benefit. For example, the sale of donated goods via a charity shop can be zero-rated, meaning that no VAT is due on sales but VAT on related expenditure, including a referable proportion of overheads may be recoverable.

VAT law also recognises the act of exporting goods outside the EU by a charity as zero-rated. Thus a charity undertaking say famine relief in Africa may be able to recover VAT on distribution and storage costs, together with some VAT on general expenditure.

Where the zero-rate of VAT is not available, charging VAT on some income but being able to recover VAT on related expenditure can also be beneficial. In particular where substantial capital expenditure is to be undertaken; where the "customer" is a business or local authority that can recover VAT charged, or, in certain cases, where expenditure exceeds fee income and deficit funding via grant is received.

In conclusion, a charity needs to be clear on whether it is obliged to register for VAT. Even if the answer is "no," many charities have benefited from voluntarily registering for VAT and thereby receiving refunds of VAT on expenditure. A charity may have to change its systems slightly e.g. to record VAT separately, or to undertake apportionment calculations. However, this is not usually an insurmountable issue. Indeed we have assisted clients achieve a retrospective registration and repayments backdated up to 3 years, even where apportionments of VAT are required or where the charity has historically recorded expenditure on a VAT inclusive basis.

If you think you might be affected by this and for intelligent VAT planning please contact Steve Chamberlain, Director of VAT, on 01865 261160 or email schamberlain@critchleys.co.uk