AUDIT • TAX • ADVISORY

Not for Profit eNews

December 2021

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December 2021 eNews

Welcome to the last edition of eNews for 2021 from MHA.

In this edition, we reflect on 2021 and what issues will be key for charities to consider in 2022.

As one of the largest advisors to the not-for-profit sector, MHA has found that whilst some charities have struggled, many have published very buoyant results, with some reporting their best ever as well as high levels of reserves. However, as many also recognise, the 2021/22 financial year is likely to be far more challenging for charities due to emergency funding (eg: grants, relief awards, furlough etc.) being far less prevalent whilst costs will return in full. The economy also looks set to enter a period of higher levels of inflation and taxation which will drive up general costs and impact on wage demands.

Back in 2021 the world of charity news was more ‘normal’ than the reactionary measures we reported upon during 2020 when we tracked the measures from the pandemic fallout. We have covered a significant number of important areas in 2021 so this is a good time to take a breath and highlight those issues that will still be important to consider heading into 2022.

This eNews focuses on the management of risk, recruiting new trustees, trading effectively, as well as managing tax and capitalising on available reliefs, amongst others key issues. We hope this guidance will support your charity to take on 2022, managing your new-found reserve position whilst tackling the challenge of uncertainty.

For further advice regarding any of the topics discussed in this newsletter, please contact us at info@mha-uk.com or visit mha-uk.co.uk/contact/

Best Regards,

MHA Not for Profit team

Making Tax Digital for Corporation Tax: Charities

In 2026 charities may have to report to HMRC for Corporation Tax purposes under new Making Tax Digital rules, which may mean providing information on income/ expenditure to HMRC on a quarterly basis.

We understand from the Charity Tax Group that HMRC currently believe that most charities could need to file Corporation Tax returns to HMRC going forward.

Background information

Originally the government said that non-trading activities of charities would be outside of the scope of Making Tax Digital (MTD). However, they say that:

MTD for VAT has shown that, at least for larger charities, operating the MTD requirements has not proved to be more than difficult than for a comparable business. Moreover, discouraging some charities from joining MTD by in effect making it voluntary will mean many will not get the benefits of going digital that other entities will enjoy.

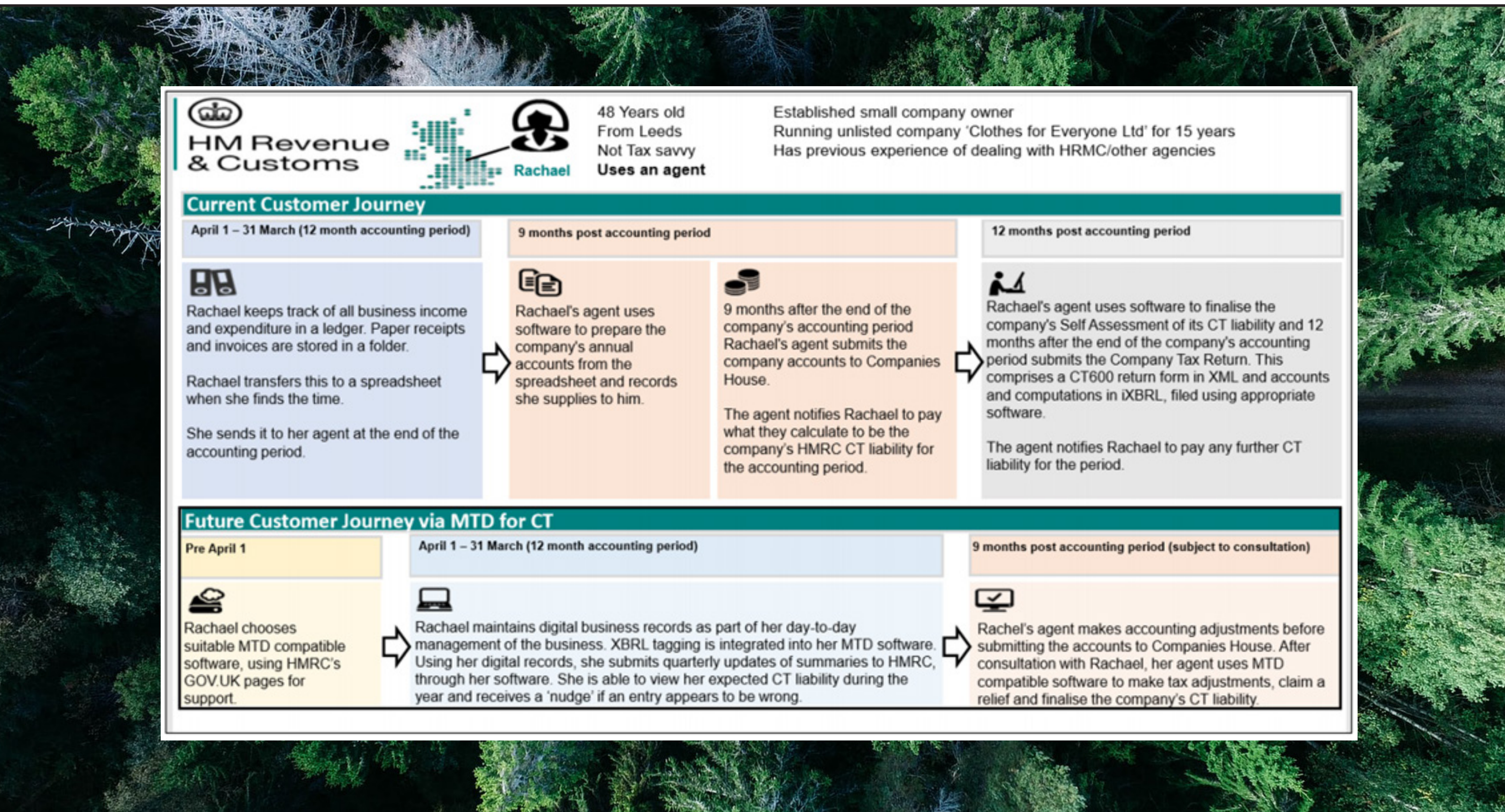
As a result, the government proposes to extend the scope of MTD for Corporation Tax to all charities that are within the scope of Corporation Tax and are required to file a tax return, not just trading subsidiaries.

What is MTD for Corporation Tax?

Whilst details have not been published on if/how MTD for Corporation Tax would apply to charities, for an average company it would involve:

- Ensuring records are maintained digitally.
- Using MTD software to provide quarterly summaries of income/expenditure to HMRC.
- Submit an annual Corporation Tax return in MTD compatible software.

More detail can be found here



When is MTD for Corporation Tax likely to be introduced?

MTD for Corporation Tax will not be introduced until 2026 at the earliest.

Whilst this is a long way off, HMRC are consulting now on various proposals, so now is our opportunity to feedback.

How might this impact on charities?

It is not clear how charities will be affected by this.
For example:

- Could irregular filing be abolished (i.e., meaning all charities would have to file a return annually)?
- Could charities be exempted from filing quarterly reports?
- How much will this additional administration cost in terms of time and software expenditure?

Call for information

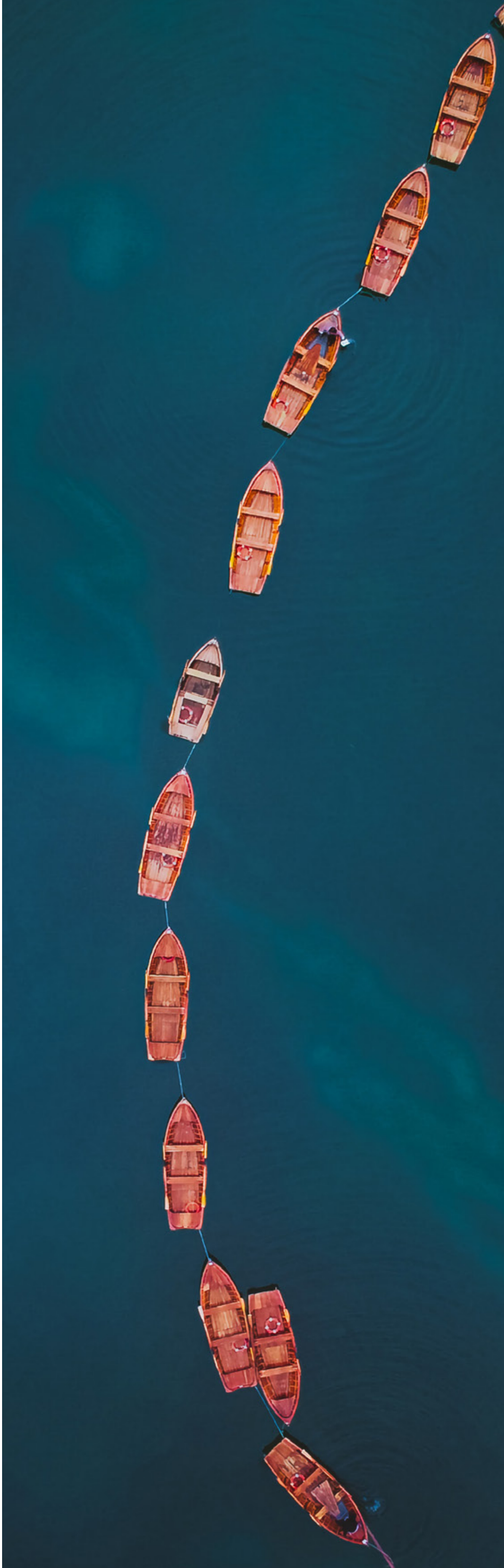
We intend to respond to the whole consultation document in writing. To assist with our response, we would like to ask our clients if they have any feedback on the charity specific questions. The consultation document can be found **here.**

Page 32/33 sets out the position for charities, CASCs and other NFP organisations. There are two key areas that HMRC are asking for responses to:

Within the

- Question 19: Should charities, CASCs and other not for profit organisations, be within the scope of MTD for Corporation Tax where they have income within the charge to Corporation Tax and required to complete a Company Tax Return? If not, please explain why you consider an
alternative approach is necessary for charities and what criteria should be applied to assess eligibility for this?
- The government welcomes views from charities, CASCs and other not for profit organisations on how MTD requirements might best be tailored to work for them.

If you have any comments or would like to discuss this further, please get in contact with your local MHA firm.



Regulator launches campaign to help charity trustees be “certain in uncertain times”

The Charity Commission has launched a campaign aimed at helping trustees refresh their knowledge of charity governance and be “certain in uncertain times”.

The last year has been unusual, unprecedented and (hopefully) a one-off set of circumstances. As a result, there have been a lot of questions asked by trustees as to what they should do in a number of different scenarios.

It seems that the Charity Commission may have also received its fair share of requests, and is now promoting 5 animated video guides (which launched in November 2020) which provide all the governance basics trustees need to know.

The campaign comes as part of the Commission’s commitment to helping busy trustees run their charities. In addition to being featured on the Commission’s social media channels, the messages will be targeted at trustees on LinkedIn, Facebook and Instagram to enable the messages to reach more trustees. Sector bodies will be sharing the campaign with their members and supporters.

The regulator’s approach to the campaign is informed by research into trustees’ knowledge and awareness of their responsibilities, and into trustees’ wider attitudes.

The campaign prompts trustees to consider their understanding of their key responsibilities by a posing question connected to each guide:

- Does every decision help your charity with its mission? **(Charity purposes and rules guide)**
- Could your charity be drifting into activities that your charity is not set up to do? **(Making decisions at a charity guide)**
- Is your charity reporting the right things at the right time? **(What to send to the Charity Commission and how to get help guide)**
- Could you spot a conflict of interest and manage it? **(Addressing conflicts of interest in a charity guide)**
- Is there more you can do to prevent fraud? **(Managing charity finances guide)**

More detail can be found here

Roadmap to Risk Management

Having a clear overall framework

The main cause of uncertainty in any organisation is risk, and therefore the importance of risk management is that it can help organisations identify what risks are causing this uncertainty and put processes in place to manage these risks before they impact on the organisation. If performed correctly, risk management can lead to a range of benefits such as better decision making and value for money, more effective use of resources and greater innovation together with fewer nasty surprises.

In recognition of the importance of this area we have decided to produce a new monthly series titled; “Roadmap to Risk Management”. Across the next few issues we will discuss the importance of key aspects of an effective risk management framework, some of the questions that you may need to consider in relation to this and possible actions to take for your organisation. This will include

- The importance of objectives in risk management
- Breaking down and understanding your risks
- Understanding your control environment
- The benefits of a dynamic assurance framework

We start though with the overall risk management framework itself, as having in place an agreed framework that is well understood by all a fundamental building block for ensuring an effective risk management framework and therefore the key first step in developing your arrangements. We have therefore set out below some of the key points to consider in developing such a framework and the type of stakeholders you may to involve in the framework development process.

Bring onboard the Board: Risk management works best when the process is well understood and there is clarity over the objectives of your risk management system and the structure and framework by which it is embedded throughout the organisation. Whilst the initial design of your arrangements can be assigned to one or two individuals it is important that the board is brought into the process at an early stage and is involved in the decision-making process as to how the final system will look like. Risk Management does not work well when it is something that is done to an organisation and needs to be something that is done with the involvement of the Board and senior managers in order that there is clarity and agreement regarding what you are looking for the process to achieve. The use of workshop and business development days can be useful forums to work with the board in developing and agreeing what this framework will look like, in addition to considering other factors such as how and where risks will be reported.

Keep it simple: There is a sometimes a tendency to build complex risk management structures as this is thought to provide the most effective solution. Often the simplest risk management processes are the ones that work the best as these are the easiest for everyone, from the board to operations, to understand and therefore has the highest chance of success. It is easier, once simple structures are embedded and operating effectively to add additional layers to the process, than to try and simplify a process which is too complicated and widely mis-understood.

Write it all down: It is important that your overall approach to risk management is documented within an overall Risk Management Strategy or Policy so that it is clear as to what the overall framework for risk management is, where responsibility sits, and what the process is for recording risks on the risk management system. Such a document should be easily available to staff via the intranet or similar.

Be adaptable to change: When you are developing a framework that needs to be bought into by a diverse range of stakeholders, it is inevitable that there will need to be an element of change from the framework which was originally envisaged. As detailed above, risk management frameworks work most effectively when they are easy to understand and there is buy in from everybody, and therefore an element of adaptation to accommodate different views across stakeholders is likely to bring dividends in the medium term. Such a flexible approach must also be maintained over time; as stuff happens your processes will need to be dynamic to respond to these changes.

Does it answer the "So What?" Question. Risk management framework must have a defined purpose and provide beneficial outcomes to the organisation through improved awareness of the key risks faced by the organisation and the arrangements that are in place to manage these. If your framework is not going to achieve this then it probably needs reconsidering to ensure that it is delivering benefits in your ability to manage risks.

Pulling all of the above together should enable a consultative and inclusive approach to be taken to the development of your risk management framework, which ensures collective buy in from your board and leadership team and the development of a framework which can be embedded throughout the organisation.

In next month’s edition we shall consider the importance of your objectives in the risk management process and why these should be at the centre of any risk assessment exercise.

Charities running lotteries – Code of Fundraising Practice

The Fundraising Regulator sets and maintains fundraising standards across the UK. They ensure that fundraising is legal, open, honest and respectful. The Code of Fundraising Practice (the code) outlines the standards expected of charitable fundraisers across the UK.

What change to the code is being made and why?

A minor change to the current wording of standard 12.6.2 to reflect more accurately the legislation which underpins the standard on hosting a free draw for charitable fundraising purposes.

Standard 12.6.2 will be amended on two key points to remain in-line with the Gambling Act legislation:

- the inclusion of a letter by ordinary post (either first-class or second-class) as an acceptable free method of entry;
- the revision of the current wording on acceptable selection criteria for the draw.

Standard 12.6.2 of the code currently states:

To be a free draw the arrangement must either be completely 'free' to enter, as defined in the Gambling Act, or have a free method of entry, which must also be as accessible as and no less convenient than paying to enter. Anyone taking part using the free method must have the same chance of winning as they would if they paid to enter.

The new wording of standard 12.6.2:

To be a free draw the arrangement must either be completely free to enter or have a free method of entry. This free method of entry must either be a letter sent by ordinary post (first-class or second-class post) or another method of communication that is no more expensive and no less convenient than the paid method. The system for allocating prizes must not distinguish between entries made through the free or the paid method of entry.

Standards in the code where 'must' and 'must not' are in bold text indicate a standard based on a legal requirement (for example, a piece of law or case law).

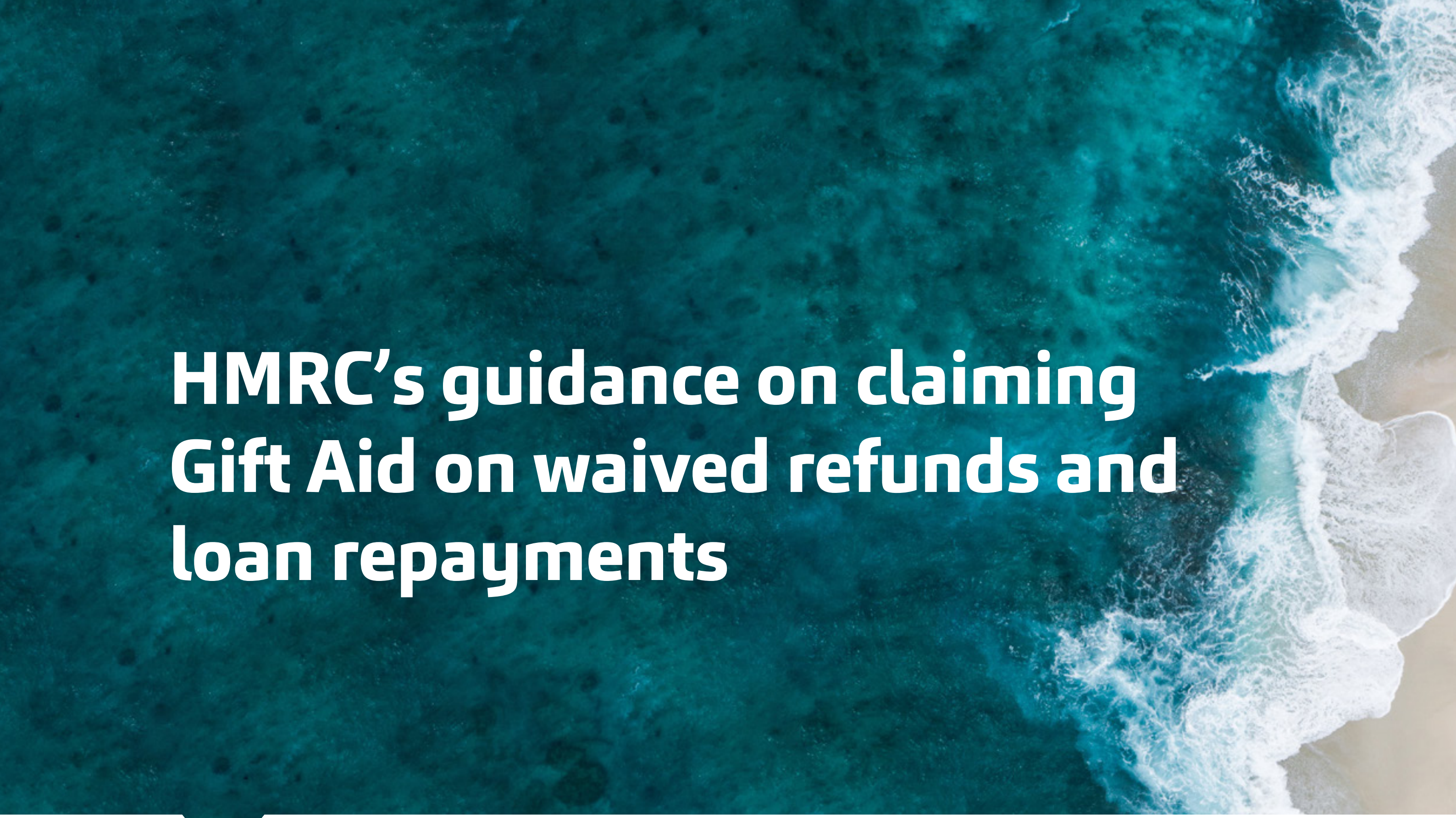
The change comes into effect from 4 June 2021. Note, that this change to the wording will not require fundraisers to achieve a greater standard than was already set out in the code.

The code for Lotteries, prize competitions and free draws.

SPOTLIGHT ON

Charity Financial Reporting - an essential update

Watch here



HMRC's guidance on claiming Gift Aid on waived refunds and loan repayments

Gift Aid on "payments of money"

In the past, it was not possible to claim Gift Aid on waived refunds and loan repayments unless the charity first repaid the monies to the donor, then the donor re-donated it. This is because usually a donation only qualifies for Gift Aid if it is a gift consisting of a "payment of money" by an individual who has/will pay sufficient UK tax, to a charity and it satisfies all of the following conditions:

- the gift is not subject to a condition as to repayment
- the gift is not a Payroll Giving donation
- the gift is not deductible from income for tax purposes
- the gift is not part of an arrangement for the charity to acquire property from the individual or a connected person
- any benefits associated with the gift are within the statutory limits

In addition, a charity may only make a Gift Aid claim if the following conditions are met:

- the charity must have a Gift Aid declaration made by the donor which covers the donation
- the charity must have evidence that they have explained to the donor the personal tax implications of making a Gift Aid donation - this can be done by including an explanation on the Gift Aid declaration or separately
- there must be an audit trail linking the donation to the donor and their Gift Aid declaration

New guidance

As a result of the coronavirus pandemic charity funding has been under extreme pressure, so in April 2020 HMRC agreed to introduce a temporary concession to allow waivers of refunds and loans to charities to be treated as donations upon which Gift Aid could be claimed. This concession was aimed at charities that had sold tickets for events that had to be cancelled due to coronavirus.

HMRC have now confirmed that the April 2020 change is to be made permanent and have issued **guidance** on the matter.

In summary, the guidance states that the waiver will be eligible for Gift Aid provided there is a record of a formal waiver held by the charity and all other Gift Aid rules are met (i.e. the conditions set out above). Information on what is accepted as a formal waiver is set out in the guidance.

We would recommend that the guidance is read in full before making a Gift Aid claim on waived refunds and loans.

Community amateur sports clubs (CASCs) and outdoor hospitality

The current UK Covid rules have brought an opportunity for CASCs with a bar and plenty of outside space to earn income by serving drinks outside. With many traditional drinking establishments having limited outside space, this could mean that the club is accepting more social members than normal or is welcoming more non-members. Certainly, when driving past our local cricket club I have noticed a lot more picnic tables and parasols around the clubhouse!

Could your club be at risk of breaking the CASC rules? Or could you club be exceeding the small trading exemptions for Corporation Tax relief?

It has been some years since the CASC rules have changed, so now might be a good time to undertake a review of your activities to check that you still qualify.

Recap of the key HMRC CASC rules

In 2015 several changes were made to the CASC scheme. As reminder, set out below are some of the key rules:

- The club must be open to the whole community
- 50% of members must be participating in the sport
- CASCs can earn only income of up to £100k a year from non-member trading and property income (e.g. social membership fees, income from functions, bar sales, catering sales, rental income)
- Players can only be paid a total of £10k over a 12-month accounting period in total
- Restrictions on membership fees

Key Corporation Tax reliefs available from being a CASC:

- Trading profits if the turnover is less than £50k
- Property income where the income is less than £30k
- Interest received
- Chargeable gains

Other benefits from being a CASC:

- Claim Gift Aid on qualifying donations
- Mandatory 80% charitable rates relief

Risk 1 — 50% of the members are not participating in the sport

To be a participating member a person must participate in the sporting activities of the club on at least 12 separate days a year. Participating include volunteering to coach, officiating at games, or acting as a groundsman etc.

Risk: If your club has accepted an influx of social members, is the 50% rule still being met?

Recommendation: Review your membership lists.

You may need to consider having a "supporters club" separate from the CASC.

Risk 2 earning non-member trading income of over £50k

Supplies made to members are not normally considered to be trading income. HMRC give the following examples around the sale of food and drink which fall under the member exemption. The sale of:

- food and drink in a cafeteria to members of a multi-sports club as part of their participation in the sporting experience
- such as confectionery and snacks from a tuck shop to members of a gymnastics club as part of their gym session
- drink to members of a club in the bar before, during and after games and training
- food and drink to non-members in the bar after watching a game and being invited in for a drink by a member
- food and drink to visiting players and spectators using the bar after a game when invited to do so by members
- food and drink as part of a social event designed to encourage participation in the sport or to generate more regular sporting participation by club members

If non-members are just essentially using the club as a bar/restaurant, then the related income would be non-trading.

Risk: If total trading income exceeds £50k in an accounting period, the any profits arising on that income would be taxable. Furthermore, if trading income exceeds £100k the club would no longer meet the conditions of being a CASC.

With lockdowns only recently being eased, it is probably unlikely that non-member income from bars, catering, vending machines, function etc. would have already exceeded £100k for your 12-month accounting period. However, at least in the short term, it is likely that many people will want to reduce the risk of Covid by continuing to meet outside (especially as the summer is only around the corner). Therefore, is it possible that you will exceed the £50k within your 12 month accounting period?

Recommendation: Forecast your trading income. Difficult to do in these uncertain times, however, it might be obvious from these workings the likelihood of the limit being breached.

If it is likely that the £50k limit will be exceeded, you will need to take action to retain your CASC status. It is possible that setting up a trading subsidiary company, routing trading income through it and gifting profits to the CASC could be the solution.

Risk 3 does the CASC need to register for VAT?

The rules for whether a CASC needs to register for VAT are the same as for any other business. In short, if a CASC makes taxable supplies of more than the registration threshold (currently £85k, as at June 2021) it is required to register for VAT.

VAT rules are complex, but income from the following activities are examples of items that would count towards the £85k threshold.

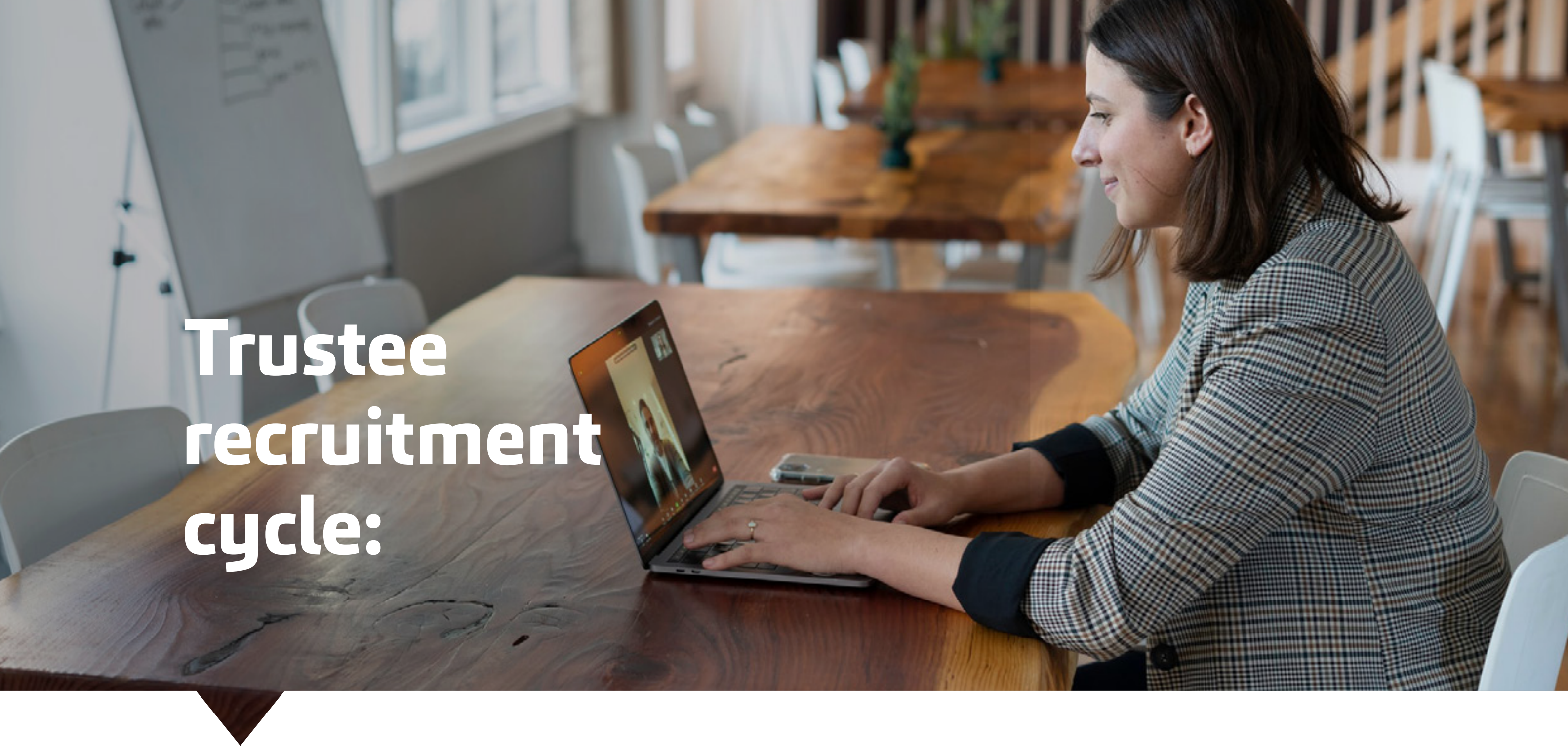
- Social or non-playing membership subscriptions
- Catering, bars, gaming machines and social functions
- Parking
- Sponsorship income

Risk: Is increased income from social-memberships and catering/bars pushing the CASC over the VAT registration threshold?

Recommendation: Carefully track your income for VAT purposes to ensure that you register for VAT at the appropriate time (unless you have voluntarily registered).

Conclusion

Covid has changed how the world operates. Now is a good time to review your trading activities and consider whether they may cause you tax issues or an issue with your CASC status. Early action now may mean that steps can be taken to prevent non-compliance or a tax liability.



Trustee recruitment cycle:

A website developed by Reach Volunteering in collaboration with Association of Chairs, Small Charities Coalition and Getting on Board. The website, called Trustee Recruitment Cycle, supports boards to recruit trustees in an effective and inclusive way.

Diversity gap:

Charity trustees are the people who share ultimate responsibility for governing a charity. Trustees oversee everything a charity does, from setting its strategy to being responsible for its work and finances. A lot more attention is given to diversity of boards by the media nowadays than ever before. There has been an observable increase in studies and research conducted on the topic of importance of board diversity.

Charity Commission research shows that over 70% of boards still recruit their trustees informally, using their own networks. This may mean that boards lack diversity. From the results, trustees are more likely to be male (64%), white (92%), of an average age between 60 and 62 years, and more affluent (75% are above the national median). The Trustee Recruitment Cycle has a purpose of supporting boards to overcome this diversity gap with guidance on the website separated into six distinctive stages which represent the recruitment cycle. The Trustee Recruitment Cycle aims to tackle lack of board diversity by promoting inclusive recruitment and by providing resources in the form of information and guidance on the website for each stage of the trustee recruitment process.

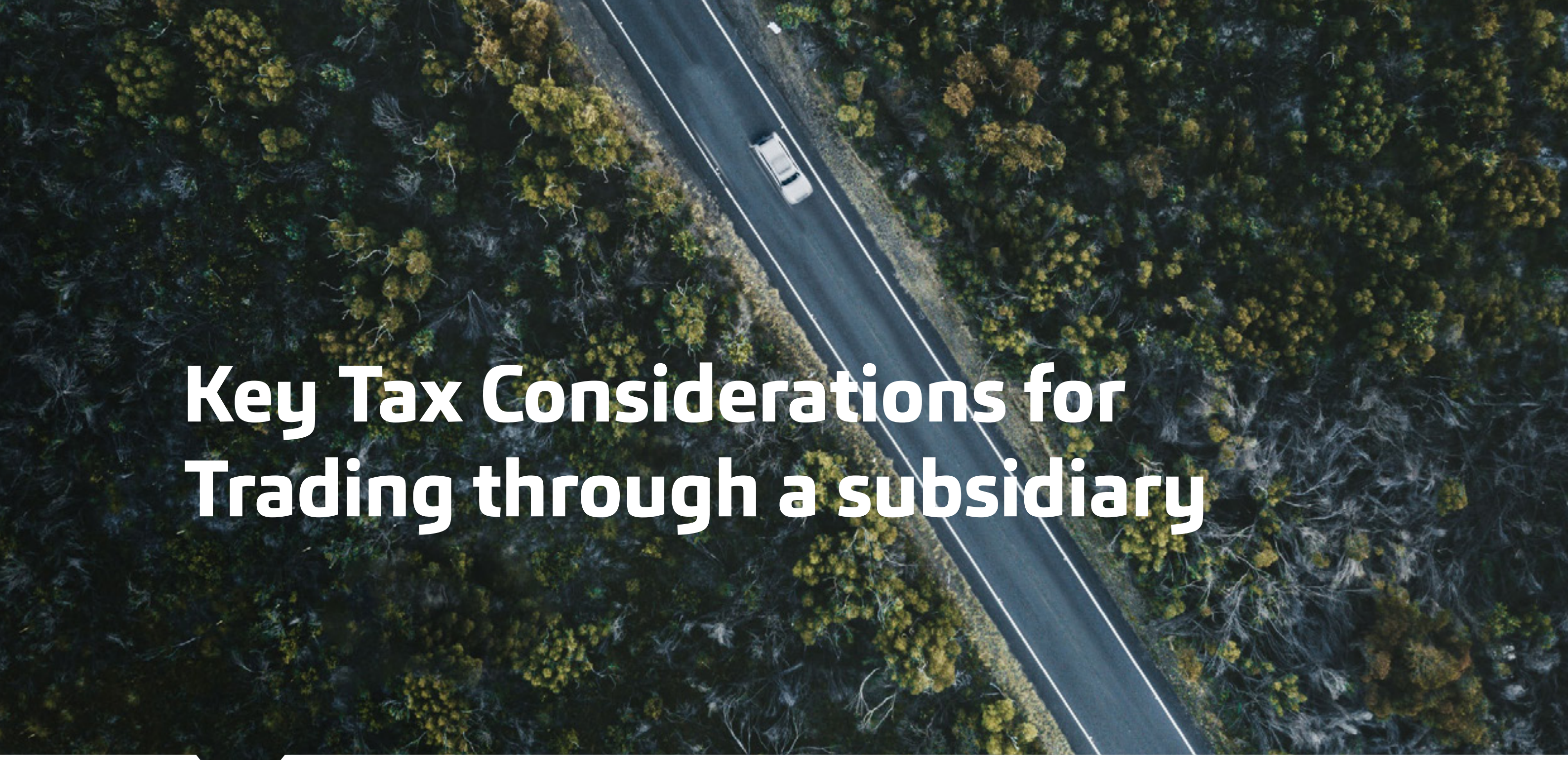
One additional matter that may form a significant part of the recruitment process is competency assessment, especially where the trustee is bringing some specialist expert skills to the board. Rita Chadha, chief executive at Small Charities Coalition, said: "Recruiting trustees can be a pivotal turning point for a small charity. Getting it right is so important, good trustees can make an organisation, bad trustees break one. This guide from Reach Volunteering is an essential and invaluable tool in making sure not only that the process of recruitment is done well, but also that it envelopes and expands an organisation's commitment to equality. No organisation should even consider recruiting without reference to this guide".

"

Penny Wilson, chief executive of Getting on Board, said:

This will help charities recruit the trustees they need to thrive, a key part of which is to build a diverse board which has personal experience of the issues a charity is seeking to tackle".

Charities looking for new trustees should also consider looking at the resources available, including **here**



Key Tax Considerations for Trading through a subsidiary

Recently we have seen a lot of our charity clients ask for tax advice around their expansion plans. This article, whilst not an exhaustive list of issues to consider, looks as some of the key tax matters to consider when looking to commence trade through a subsidiary company.

Making the decision to trade through a subsidiary

There are a number of reasons why you might consider incorporating a trading arm, these include:

- To perform an activity outside the charity's primary purpose (which may otherwise become subject to tax if the charity carried these out and exceeded the Non-Primary Purpose limit)
- To perform an activity not in the public benefit (e.g.: it may exclude people due to price)
- Legal/contractual reasons
- Risk reduction – the limited liability status of a separate trading company may protect charitable funds in the event of an accident

However, to incorporate a subsidiary company, the Trustees of the charity must ensure that they are happy that the subsidiary will be financially viable as soon as possible. It is therefore important that a business plan is produced which clearly shows when the subsidiary is forecast to become profitable and to assess progress against the business plan. Where the subsidiary is not forecast to be profitable within 2 years consideration should be given to the appropriateness of the planned activity.

This is because in most cases it will be the charity which is funding the operations of the subsidiary. Trustees must ensure that charity funds are used appropriately, furthermore should the charity make a non-qualifying investment, a Corporation Tax charge can arise on the value of the investment. In practice it is not common to see non-qualifying investment charges arise, and a number of factors are considered in relation to them. However, we would stress the importance of having clear business plans in place before the subsidiary commences trade, so that the basis of the decision to incorporate a subsidiary is well documented.

Furthermore, should the charity be funding the subsidiary via a loan, a proper loan agreement should be drawn up with commercial rates of interest charged (and paid over).

Corporation tax

A key driver of trading through a subsidiary is the ability to reduce Corporation Tax to nil by making "Gift Aid" donations to the parent charity within 9 months of the year end.

However, for this to work in the long term there needs to be no difference between accounting profits and taxable profits. Examples of where differences can arise:

- **Fixed assets –** if the subsidiary holds fixed assets, there might be disallowable depreciation charged on assets where no tax relief is available from Capital Allowances
- **Disallowed expenses** – the subsidiary may incur expenditure which is disallowable e.g.: third party entertaining, legal fees which are capital in nature

Gift Aid donations are akin to dividends, and therefore must be made out of distributable profits. In simple terms, should the taxable profits exceed the accounting profits then it would not be possible to cover the whole taxable profit with a Gift Aid payment.

However, like most things, it isn't always that simple. It may be that the subsidiary has distributable reserves brought forward, or that within 9 months of the year end additional profits have been made which enable the distribution to be made.

VAT

Trading through a subsidiary can have VAT implications, positive or negative depending upon the fact pattern. Therefore, we would always recommend taking advice specific to your circumstances to consider issues such as:

- Will the subsidiary be required to be VAT registered? If not, would it still be beneficial to register?
- Will the transactions between the charity and the subsidiary be VAT-able?
- Should the charity and the subsidiary be VAT grouped?
- Are there any implications for the VAT recovery rate within the charity?
- Could there be implications on the VAT recovered on capital items through the Capital Goods Scheme?

Employment taxes

There are a number of ways in which staff might be employed:

- Through the charity
- Directly through the subsidiary
- Joint contracts of employment with the charity and the subsidiary

Depending upon how you structure this you may need to make recharges for staff time between the charity and the subsidiary and/or set up a separate payroll for the subsidiary company.

We would always recommend that you take legal advice around contracts of employment.

Other issues to consider

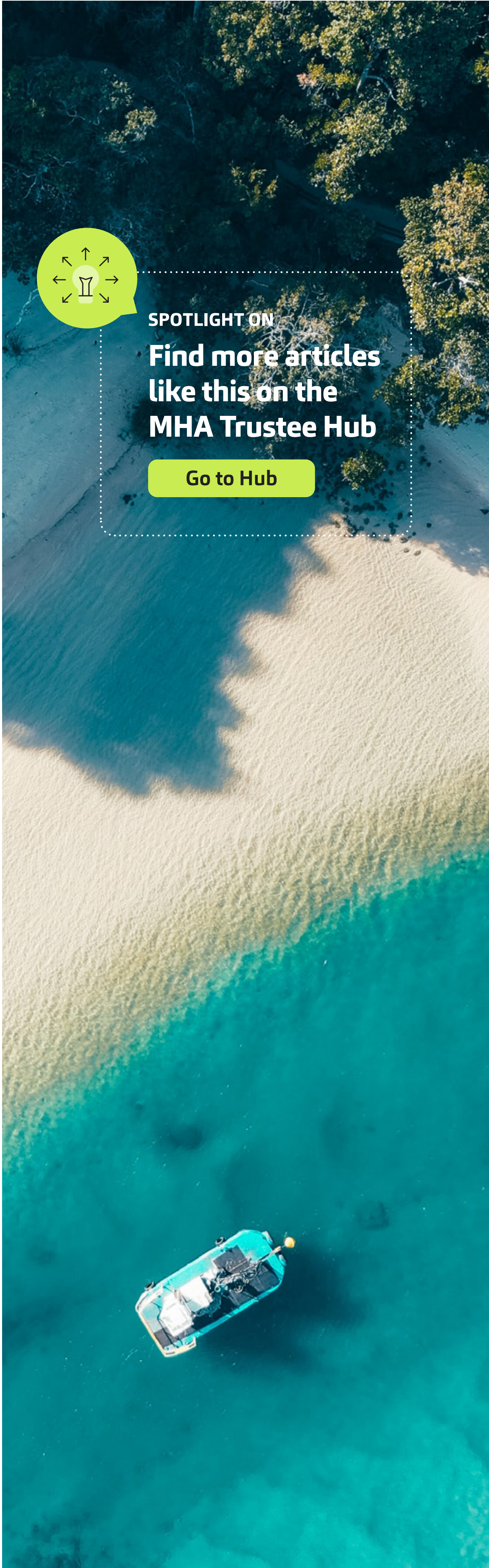
Some addition items to take into account when considering setting up a subsidiary company include:

- It will create a more complex structure with additional costs (e.g.: audit, professional fees, additional accounting software licenses etc.)
- Possible loss of rate relief for the subsidiary's activities
- Staff time will be spent administering the subsidiary
- The subsidiary must operate at an "arms-length" to the charity (i.e.: recharges should be made at a commercial rate for services provided between the two).

Conclusion

For many charities setting up a trading subsidiary company, it is the correct course of action as it enables them to achieve objectives which are not possible or are more costly/risky through the charity.

However, we strongly recommend taking the time to carefully document the reasons for incorporating a subsidiary company, and to look in detail at the wider and long-term implications.



Cybercrime alert from HMRC's Head of Cyber Security Operations

Fraud consists of 40% of all crime, with an increasing proportion being committed via online platforms.

This has been accelerated during the pandemic, with tax-related scams doubling in the last year according to Mike Fell, HMRC's Head of Cyber Security Operations.

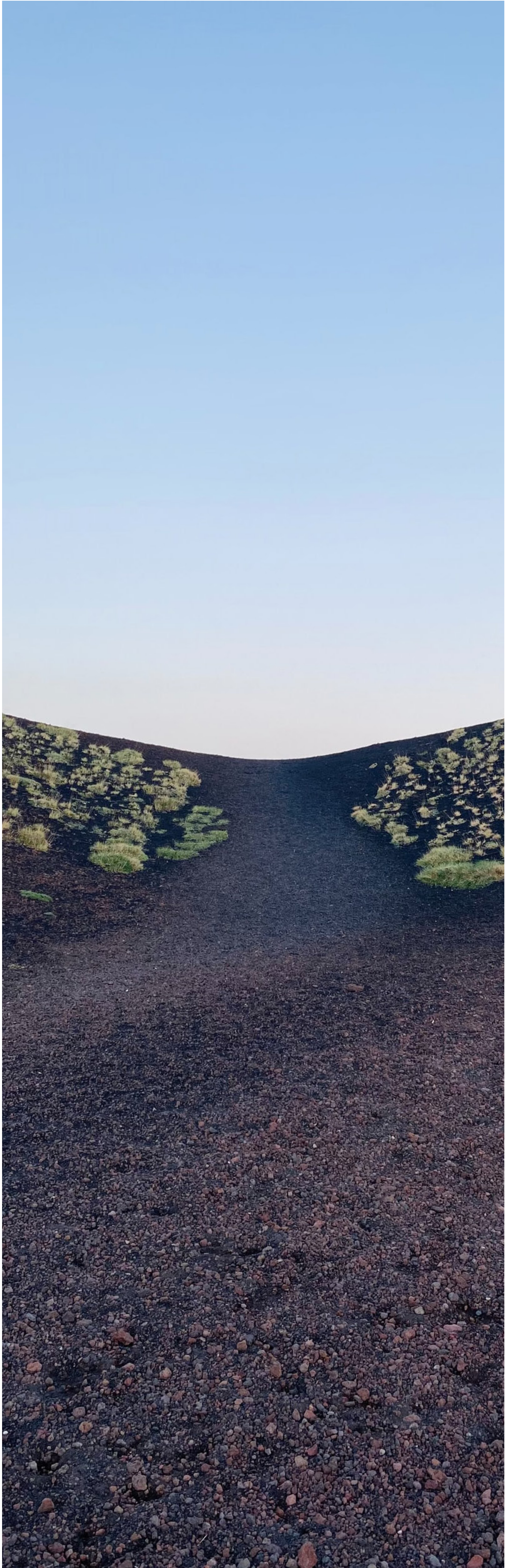
This is particularly prevalent in charities, with an estimated 1 in 25 charities believed to fall victim over the two-year period between 2019 and 2021. As a result, HMRC encourages the voluntary sector to report HMRC-branded scams directly to HMRC.

There are many platforms available that offer advice on how charities can better protect themselves against fraud and cybercrime, including the Charity Commissions **eight** guiding principles, and the National Cyber Security Centre's cyber security **Board Toolkit** which sets out to encourage communication between the board and staff surrounding cyber security.

In addition, the Head of the Fraud Advisory Panel, Mia Campbell, will be hosting a webinar titled 'Managing the risk of fraud and financial crime – an overview of charities' on 18 October as part of the "Charity Fraud Awareness Week". This will be available to members of the Charity Finance Professionals Community.

For more information or to request a supporters pack, please contact Mia Campbell at the Fraud Advisory Panel on

E: mia.campbell@fraudadvisorypanel.org
or visit www.preventcharityfraud.org.uk



Health and social care levy

In September the Chancellor announced an increase of 1.25% to both the main and additional rates of Class1, Class 1A, Class1B and Class 4 National Insurance contributions (NICs) for the 2022/23 tax year.

After that date the rates of NIC will reduce back to their 2021/22 levels, but a new "Health and Social Care Levy" of 1.25% will be introduced instead.

The revenue raised from this measure will go directly to support the NHS and equivalent bodies across the UK.

The table adjacent shows the current NIC rates compared to the revised rates:

	Current rate	Temporary rate
EE NIC on earnings between £9,568 and £50,270	12.00%	13.25%
EE NIC on earnings over £50,270	2.00%	3.25%
ER NIC on earnings over £8,840	13.80%	15.05%

Clearly the introduction of the Health and Social Care Levy will increase payroll costs for charities and the not for profit sector. The table below sets out some example salaries and the impact on both take home pay and cost to the employer:

Example salary	15,000	25,000	35,000	45,000	55,000	65,000
Current take home pay	13,862	20,662	27,462	34,262	35,561	41,361
Revised take home pay	13,794	20,469	27,144	33,819	34,993	40,668
Reduction in take home pay	**68**	**193**	**318**	**443**	**568**	**693**
Current ER cost	15,850	27,230	38,610	49,990	61,370	72,750
Revised ER cost	15,927	27,432	38,937	50,442	61,947	73,452
Increase in cost	**77**	**202**	**327**	**452**	**577**	**702**

Following the announcement there have been no further technical details released by the government. If you would like to discuss this further please don't hesitate to contact us.

Creative sector tax reliefs and Covid

With theatres and museums now reopen, thoughts are turning to the impact of Covid on the availability of Theatre Tax Relief (TTR) and Museum and Galleries Exhibition Tax Relief (MGETR). We have set out below some of the hot topics we have been discussing with our not for profit clients. Please note, in all cases, advice should be taken to confirm how the rules apply to your specific circumstances.

Theatre tax reliefs

Abandoned production

One of the conditions for TTR is that the presentation of live performances is the main object, or one of the main objects, of the company's activities in relation to the performance. HMRC state:

At the beginning of the producing phase a company must intend that all or a high proportion of the performances of the production will be live. A performance is 'live' if it is to an audience before whom the performers are actually present.

Due to Covid, some productions were either postponed or cancelled all together. Where a production was cancelled it would be treated as being "abandoned". In such cases TTR can still be claimed, subject to the normal rules, up to the point where a decision was made that there would be no live performances of the production.

Recorded productions – could they qualify for a relief?

Some theatres either live streamed productions or filmed them for viewers to watch in their own time. Is there any relief available? In short, if the original intention was that the production would be performed in front of a live audience, but then wasn't (perhaps it was live streamed instead), then the production would be treated as an "abandoned production".

This means that expenditure up to the point where the intention changed, and the recording became the main object, would still be eligible under the normal rules. However, any expenditure after that point would not be eligible for TTR.

Could it be eligible for Film Tax Relief instead? The answer is probably not. One of the conditions for Film Tax Relief is that the film is intended for "Theatrical Release". This means the intention must have been that the film would be shown to the paying public at the commercial cinema.

What if a tour was disrupted?

The rate of TTR is 20% for touring productions and 25% for non touring production, with normally 80% of expenditure qualifying, this means the effect rate of relief if either 16% or 20%. If the original intention was that a production would go on tour, and this planned tour met the requirements of being a "touring production" for the purposes of TTR, if the plan changed due to unforeseen circumstances such as Covid then this may not affect the production's status as "touring".

Museum and galleries exhibition tax relief

Abandoned production

Like theatres, museums were forced to close in 2020 due to Covid. Some exhibitions were postponed or cancelled all together. Similar to TTR, under the MGETR rules only exhibitions which are intended for public display qualify for relief. However, again, there are "abandonment" provisions in relation to cancelled exhibitions i.e. relief can still be claimed for qualifying production expenditure up to the point a decision was made to cancel the exhibition.

What if a touring exhibition was disrupted?

Similar to TTR, should a tour of an exhibition have been disrupted by Covid then this may not affect the exhibition's status as "touring".

The end of MGETR?

The MGETR legislation is currently written so that claims can only be made in relation to qualifying expenditure up to 31 March 2022. There fore there is a possibility that museums are in their last accounting period for MGETR.

The government has promised to review the MGETR legislation.

We are hopeful that MGETR will be extended, however, there has been no recent update from the government or HMRC on this topic.

If you would like to discuss Creative Tax Reliefs further please don't hesitate to contact Louise Cottam.

Gift Aid Donations from subsidiary companies

As the end of 2021 approaches, so does the deadline by which subsidiaries of charities with March year ends need to make their Gift Aid payments to their parent charity. Fortunately for most our clients which are subsidiaries of charities this is not a problem, they have sufficient reserves and sufficient cash to make the donation within 9 months of the year end. However, for some, things are not quite so straight forward.

What is the issue?

Since October 2014, the guidance issued by accountancy regulators has confirmed that Gift Aid payments have been considered to be distributions. Therefore, as is the case with the payment of dividends, Gift Aid payments can only be made out of distributable reserves otherwise they are unlawful.

As such prior to making a Gift Aid payment it is important that the company directors review the level of distributable reserves both at the year end and from review of the latest management accounts (e.g. the management accounts from the month prior to the month in which the Gift Aid payment is made). Furthermore, the directors must be satisfied that after making the Gift Aid donation the company has sufficient funds to pay debts as they fall due. We would recommend that this review is also documented by the directors.

Distributable reserves

Factors which may impact on whether there is a mismatch between available reserves and taxable profits include:

- **History –** the company might have been loss making previously, but for some reason has not got available tax losses carried forward, therefore can not make a Gift Aid payment and must pay tax.
- **Fixed assets –** where a subsidiary company holds fixed assets there is a danger that the NBV of the assets will differ to the tax written down value, in terms of not all fixed assets qualify for capital allowances. Where this is the case depreciation will be charged in the P&L, which is added back for tax, but there may not be sufficient relief from capital allowances, leading to a greater taxable profit than accounting profit.
- **Disallowables –** like any company, expenses such as entertaining, capital related legal costs etc are disallowable for corporation tax purposes. Against having disallowables in a subsidiary company will generate a greater taxable profit compared to the accounting profit.

The problem

In the short-term having insufficient reserves at the year end to make the necessary Gift Aid payment may not be a problem, just as long as those profits can be generated in the following nine months.

Example

For example: Charity A's subsidiary has profits chargeable to tax of £150k for the year ended 31 March 2021. As at 31 March 2021 the subsidiary had distributable reserves of £80k. However, in December 2021 the directors review the management accounts to November 2021, they confirm that the company now has distributable reserves of £175k, as such the company is able to make the Gift Aid payment of £150k in full to reduce taxable profits for the period ended 31 March 2021 to £nil.

In the longer term, the gap between the Gift Aid required to reduce taxable profits to £nil and the available distributable reserves to £nil may get too large. In which case it is likely that no (or a reduced) Gift Aid payment would be made, leaving the subsidiary with a corporate tax liability.

Can anything be done if the taxable profits exceed distributable reserves?

As always it depends on the specific situation.

Some ideas include:

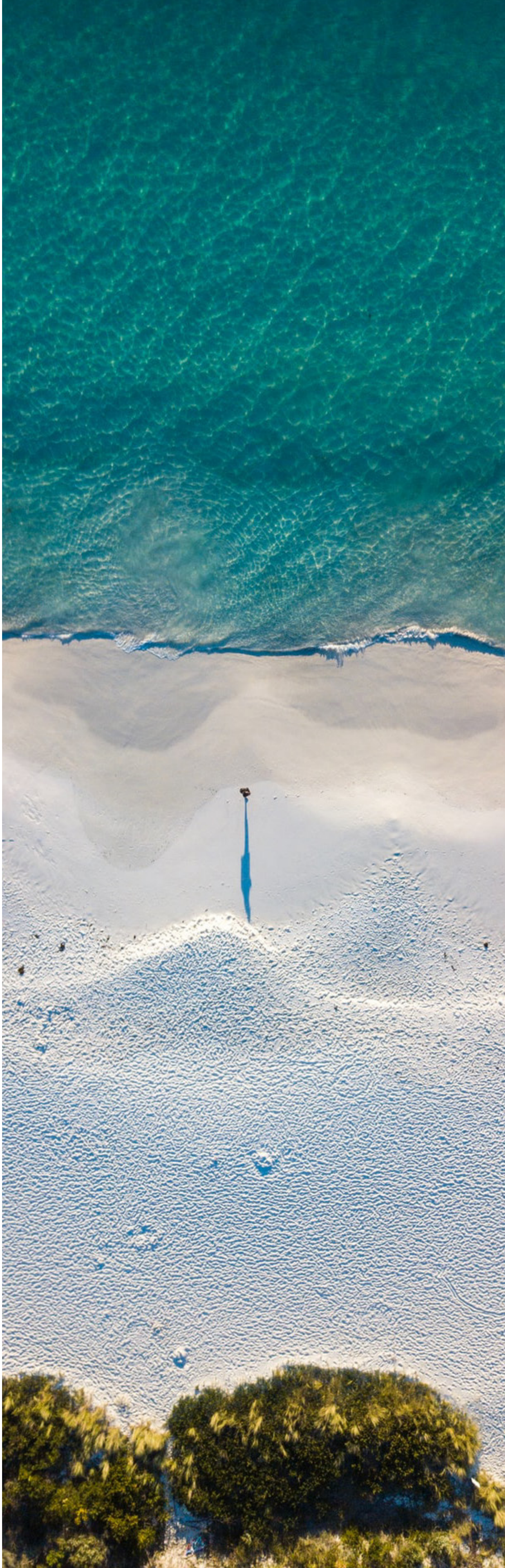
- Generate further distributable profits by a reduction in share capital or share premium – not generally an option however, as many subsidiaries of charities have a low share capital and no share premium
- Transfer/sell fixed assets to the charity parent then lease them back – this may or may not be a viable option. There could be consequences for VAT, CT (for the charity) and perhaps grant clawback (if perhaps the assets were grant funded). However, where this is possible, it would mean that going forward there would be no depreciation charge, instead there would be an allowable lease cost.

In short, it can be a difficult issue to resolve, however, it is possible that a solution may be available.

Summary

In summary, prior to making Gift Aid donations, please give sufficient consideration to the distributable reserves position of the company to avoid making an unlawful distribution.

If your subsidiary company has insufficient reserves please don't hesitate to contact us to see if we could suggest any actions that could help improve the position going forward.



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