

Tax penalties and public benefit failure

In a landmark announcement, HM Revenue and Customs (HMRC) has decided that charities that fail the Charity Commission's public benefit test will not be immediately stripped of their tax benefits - providing they eventually retake and pass the test. Many charities had feared that a temporary lapse of public benefit could have had serious tax repercussions.

Of particular concern was that some tax reliefs were reliant on not only the organisation itself being regarded as charitable, but that its properties were also used for charitable purposes - which could have led both to tax reliefs being revoked and HMRC reclaiming several years worth of previous reliefs.

A joint announcement from the Charity Commission and HMRC stated that HMRC would not seek to penalise charities whose properties were not judged as being used for charitable purposes, and that organisations that fail the public benefit test would be given an undisclosed amount of time to reorganise before retaking the test.

However, a charity must respond and react if it has been deemed not to be working for the public benefit. Inaction can still lead to the charity being removed from the Register of

Charities by the Commission, and HMRC can still demand repayment of previous reliefs.

Outside of the remit of the Commission and HMRC, things get a little more complicated. If a charity fails to provide a public benefit, it is up to the governing local authority to determine whether rates concessions are still available.

Ever since public benefit became an issue several years ago, we have been proactively advising our clients on any actions that could be required to meet the proposed or actual public benefit test. Most trustee bodies have now at least considered how their charity would meet the public benefit test, but if this is something that you still have to do or would like some assistance with, then please do not hesitate to contact me via jscaife@bishopfleming.co.uk.

Joe Scaife, Head of Charities



If you'd like us to send future newsletters straight to your inbox, please e-mail ojeffery@bishopfleming.co.uk.



social media for charities

The advent of social media provides an unprecedented range of opportunities for charities. Never before have charitable organisations had such unfettered and free access to mass communication tools. Indeed, the biggest challenge facing most charities is where to start.

Why social media?

Social media is a very simple concept. It is nothing more than a set of communication tools, including some very familiar names such as Facebook and Twitter, that allows a person to communicate with other people, either on an individual basis or to a mass audience, in a manner that was traditionally the exclusive domain of a handful of mass media organisations that control

television, radio and the press. As such, social media offers charities the opportunity to bypass the press and communicate their message straight to people.

Social media therefore provides a rallying point for charitable organisations that they can use at any time, if not all the time.

No longer are charities dependant on time donated on mass media channels or an unreliable and expensive postal system to reach the people they rely on for donations and volunteers. Thanks to social media, charities can talk to people directly regardless of distance and geography.

Continued overleaf...

Social media for charities *(continued from the front page)*

A richer mix of tools for difficult times.

Of course, mass media and mail shots still have their place. Nobody is saying that charities should look to abandon their traditional activities and solely focus on social media as a communication channel, but it is a valuable addition to the mix – especially in times when cash is in short supply.

There are many ways in which charities can reduce costs, increase awareness and generally benefit from using social media. Here are just five practical applications that you may want to consider using in your organisation.

1. Spreading your message

Social media allows anyone to create a video, an article, or a short statement on a subject and publish it to the world in no time at all. By listening to existing communities online, you can target the people you need to reach with your message even more effectively.

The important thing to remember when spreading your message via social media is not to sit on the fence. You need to galvanize opinion around you. People need something to identify with, or to react against. This can be a cause, or perhaps a person – it doesn't matter - the important thing is that you give people a reason to talk about you and to you.

The best examples of charities spreading their message via social media are those that go viral. A viral message is one that is so engaging, people want to spread it on your behalf. The advantage that charities have is that their message is often inherently spreadable.

2. Sourcing Volunteers

Social media provides a great opportunity to source and communicate with individuals and identify volunteers. It helps break down some of the traditional barriers to volunteering through its inherent flexibility. You can break work up into chunks and give small bits to different people. It allows users to do volunteer work in their own time, in their own environment. It also helps you show your appreciation for volunteers publicly and make them feel valued. Similarly, you can hold volunteers to account, as any commitments undertaken through social media are public and there for all to see.

3. Fundraising

Social media offers many powerful and exciting ways of raising funds for charitable causes. Not only does it allow you to react to events in real time, but combined with online payment and ecommerce, you have a great opportunity to collect funds directly through this channel.

The best examples of social media fundraising tend to be sponsorship based or those that generate donations based on maximising awareness of a particular cause. For example, there have been numerous examples on Twitter of people or

organisations offering to pay a penny in return for each new follower of a particular account, or for using a particular phrase or statement. These campaigns have the joint benefit of both maximising awareness and generating funds.

Online events are also an excellent way of raising funds. 'Twestival' is a global event on Twitter where volunteers organise parties in different towns and cities all over the world on the same day, and link the parties using social media. The events are organised, publicised and tickets all sold via social media, thereby generating revenue and awareness for the charity.

4. Organising projects and collaborating over distance

A lot of social media tools are designed to help people collaborate on projects and work together more effectively. Platforms such as Huddle.net, Yammer.com and Google Wave offer charitable organisations a great opportunity to collaborate, share resources and communicate on projects with great ease and minimal cost.

5. Delivering services

One area that is often overlooked by charities is the opportunity that social media provides for delivering services. One example of a beneficial service delivered by social media is Qwitter, a Twitter based social media tool to help you give up smoking. Another example was the presence of Childline on the teenage social network Bebo. Children on Bebo could communicate directly with Childline and get access to services that otherwise they may not have felt comfortable with or been able to access.

Summary

Social media offers many opportunities to charitable organisations and this article lays out just five ways in which you might consider using social media. The challenge is taking a pragmatic and informed approach to this huge area of opportunity. Without a plan or a strategy it is all too likely that you may expend huge resources in implementing social media activity with very little return. By defining clear goals and a planned approach, social media offers a great many opportunities for charitable organisations to undertake their traditional activities in new and more effective ways.

For more information, please contact Julian Cramp on (01392) 448800 or e-mail jcramp@bishopfleming.co.uk.

Thanks to Organic Development for their assistance with this article.

Julian Cramp, Marketing Manager



Getting your VAT back

Rhona Graham, VAT Director



One of the major issues VAT-registered charities face is calculating how much of the VAT they incur on costs can be reclaimed from HM Revenue and Customs. This article aims to summarise the key concepts that need to be considered, and to highlight the risk areas that have emerged following some recent case law developments.

Reclaiming VAT - basic principles

Many charities find themselves in the position of having income streams that, for VAT purposes, may be taxable (at the standard, zero, or reduced rates), exempt from VAT (e.g. supplies of education, welfare etc.) or outside the scope of VAT altogether (e.g. grant income). In some cases, this “outside the scope” income may be deemed to be payment for what is termed a ‘non-business’ supply.

The basic principle for reclaiming VAT on costs is that VAT can only be reclaimed to the extent that it relates to the making of taxable supplies. So, broadly, VAT on direct costs associated with taxable supplies may be recovered, but VAT on costs used in generating other income sources cannot be recovered.

This leads to the obvious question: how much VAT can be reclaimed on overheads? Unfortunately, the answer is far from simple.

Non-business activities and exempt supplies

An important distinction

The VAT legislation sets out the principles for apportioning and reclaiming the recoverable proportion of overhead VAT where a taxpayer makes a mixture of taxable and exempt supplies - or “partial exemption” in common parlance.

However, there is no statutory basis for apportioning between “business” and “non-business” expenditure. This can cause difficulties where an organisation has income which is taxable, exempt and non-business.

HMRC usually expect that a separate non-business apportionment will be carried out before the partial exemption calculation, unless an alternative methodology has been agreed with them. So, the normal order of events is as follows:

1. Identify VAT on costs used exclusively in non-business activities – not reclaimable
2. Identify VAT on costs used exclusively in business activities – carry forward to partial exemption calculation (if one is required)

3. Identify VAT on costs used in both business and non-business activities
4. Apportion this ‘mixed use’ VAT in ratio of business to non-business income – non-business element not reclaimable, business element carried forward to partial exemption calculation
5. Carry out partial exemption calculation to apportion recoverable proportion of VAT incurred on business activities.

Recent case law developments

Church of England Children’s Society and Oxfam

There have been a number of cases on business/non-business issues over the years. The most recent notable examples are those of the Church of England Children’s Society (CECS) and Oxfam.

The CECS case was a significant success for the charity sector. Prior to the decision, HMRC’s policy had been that the receipt of donations was non-business income and that VAT incurred on unrestricted fundraising expenditure was wholly related to non-business activity - and therefore could not be reclaimed.

The CECS decision overturned this, because the donations given could be used to fund all of CECS’ activities – both business and non-business. So, the VAT incurred on related costs was eligible for partial recovery.

Oxfam subsequently tried to use the principles established in the CECS case to amend its agreed business/non-business recovery methodology on a retrospective basis, which would have resulted in increased VAT recoveries for earlier years.

Unfortunately, Oxfam did not succeed. The key point to come out of the case was that, because business/non-business apportionments are not subject to a statutory framework, HMRC can withdraw their agreement to them at any time; and, furthermore, that correspondence with HMRC about Oxfam’s method of apportionment did not constitute a binding contract.

What should you do?

The Oxfam case highlights how important it is to ensure that charities put in place VAT recovery methodologies which are robust, agreed with HMRC and, perhaps most importantly, reviewed regularly to ensure that any changes in circumstances are appropriately reflected in the agreed method - and if necessary renegotiated with HMRC.

If you have any concerns in this area, please call Rhona Graham on (01392) 448800 or email rgraham@bishopfleming.co.uk. Rhona will be happy to arrange an initial, no obligation review to assess if you need to revise your existing methodology.

Cut costs *without cutbacks*



Charities that implement cost saving energy efficiency measures could save around 20% a year on energy costs. That's money that protects your margin and flows straight to the bottom line. Interested?

Getting access to any type of loan to stay ahead is really difficult in the current climate. The chance of getting a 0% loan is therefore a no brainer. The Carbon Trust is offering organisations and businesses interest-free energy efficiency loans of between £3,000 and £500,000. The loans are unsecured, carry no arrangement fee, and can be spread over a four-year period.

The loans can cover a range of energy saving investments such as replacing inefficient equipment, installing intelligent lighting systems, solar heating, building insulation, boilers, heating control systems, and variable speed drives.

The online application process is easy to use, and you'll get a

response within 24 hours. Each application is assessed on its energy saving potential and the technology involved. Quite simply, the higher the CO2 saving, the bigger the potential loan.

Some charities have already cut their energy bills. For example, a South Devon residential care home used a £12,500 loan to install energy efficient lighting, update the hot water system and install solar tubes, saving them £4,800 a year on their energy bills.

Not only are 0% loans available, but your charity may also be eligible for the government's new Feed-In Tariffs, which can actually pay you for the energy you produce.

For more information on these or any other grant or loan scheme, please contact Ewan McClymont on (01872) 275651, or email emcclymont@bishopfleming.co.uk.

Liability insurance

Many charitable organisations already hold "charity trustee liability" insurance to protect their members, but the types of cover available from the insurance market have recently evolved. Your charity can now get cover to protect you against a wide range of risks, including the following:

Employment practice liability to insure your organisation and its trustees, directors, governing body members, officers, employees, volunteers and, to some extent, independent contractors for defence costs and legal liability incurred on account of claims and prosecutions against them for wrongful employment practices.

Crime cover to insure your charity against theft by employees, trustees, directors or officers acting alone or in collusion with others.

Benefit plan liability to insure pension schemes and other benefit plans, trustees thereof, corporate trustees, companies, charity and or organisation trustees, directors, governing body members, officers, employees and volunteers for defence costs and legal liability incurred on account of claims and prosecutions against them for wrongful acts, errors or omissions in respect of the operation of benefit plans. This type of insurance can also provide cover for representation costs in benefit plan-related investigations.

Kidnap & extortion to protect organisations, trustees and employees, and their relatives, against expenses incurred in connection with a kidnapping, hijacking, wrongful detention, extortion, cyber extortion or political threat.

For advice or further information on the above, please contact Christopher Dean at the Pavey Group on (01803) 408053, or your usual Bishop Fleming adviser.

for *more* information...

Bishop Fleming has a team of specialists, dedicated to the charity and not-for-profit sector including:

Joe Scaife - Bristol

T: 0117 9100250
F: 0117 9100251
E: jscaife@bishopfleming.co.uk

Tim Borton - Exeter

T: 01392 448800
F: 01392 448899
E: tborton@bishopfleming.co.uk

Will Hanbury- Torquay

T: 01803 291100
F: 01803 293092
E: whanbury@bishopfleming.co.uk

Pam Tuckett - Torquay & Plymouth

T: 01803 291100 / 01752 262611
F: 01803 293092 / 01752 667882
E: ptuckett@bishopfleming.co.uk

Alison Oliver - Truro

T: 01872 275651
F: 01872 222996
E: aoliver@bishopfleming.co.uk

Rhona Graham - Exeter (VAT)

T: 01392 448800
F: 01392 448899
E: rgraham@bishopfleming.co.uk