



Charities Alert

Winter 2020

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Governance



Charity Commission: New ‘five minute guides’

In November 2020, the Charity Commission launched a new set of simple, easy to understand guides to help Trustees to access the information they need.

The Commission stresses that while the guides may be basic, they are designed to serve the needs of experienced Trustees as well as those new to the role. It says that years of experience cannot immunise even the very best Trustees from running into questions or problems.

Helen Stephenson CBE, Chief Executive of the Charity Commission, commented *“Our 5-minute guides are designed with real trustees and real situations in mind. They recognise that good governance is not a bureaucratic detail – it underpins the delivery of a charity’s purposes to the high standards expected by the public – and is all the more important in the midst of this pandemic which is impacting civil society so heavily. I hope trustees, both new and experienced, read and use them to help them fulfil their charity’s purpose for the public benefit.”*

The guides explain the basics of:

- financial oversight
- achieving a charity’s purposes
- good decision making
- addressing conflicts of interest
- what to file with the Commission and what support is available.



The guide can be found on the gov.uk website:
<https://www.gov.uk/guidance/charity-commission-guidance#minute-guides-for-charity-trustees>



Coronavirus (COVID-19) guidance for the charity sector

The Charity Commission has published its responses to the most commonly asked questions about running charities during the COVID-19 outbreak and have provided links to various guidance, both from the Commission and other sources. The initial guidance issued in April has been regularly updated, with the latest update being published in November 2020.

The Commission recognises that charities will be concerned about what to do during the COVID-19 outbreak and have sought to assure charities that their approach to regulation during this uncertain period will be as flexible and pragmatic as possible in the public interest.

They also note that Trustees need to be aware of and think about the wider or longer impact of their decisions on their charity. The guidance is split into 16 key areas which include:

- reporting serious incidents to the Charity Commission
- using reserves and restricted funds
- trading subsidiaries – financial support from parent charities
- further advice on managing financial difficulties.



The guidance can be found on the gov.uk website:
<https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector#contents>



Charity Commission: ‘Regulating in the public interest’

For the Charity Commission, increasing resilience in the charity sector means bringing the public interest to the fore. The Commission has set out to be more responsive and inclusive in the way it listens and responds to different parts of the public, including volunteers and charity supporters, up and down the country.

As part of this, the Commission has over the past two years conducted several research studies among the public and charity Trustees. In May 2020 the Commission, with Populus, published a report which draws together the main findings of that research to offer a better understanding of the public in whose interest the Charity Commission regulates, of the views of Trustees and of the contemporary world in which everyone must operate.

The report recognises that, while there are distinct groups within public opinion based on different perspectives, certain expectations about charities transcend those differences and expectations which, because they are held by such large numbers of people across the population, are most important in defining the relationship between charities and public trust. These shared expectations are:

- that a high proportion of charities’ money is used for charitable activity
- that charities are making the impact they promise to make
- that the way they go about making that impact is consistent with the spirit of ‘charity’
- that all charities show a collective responsibility to each other in adhering to the above.



The report looks at these expectations in more detail and also at how well charities are meeting the expectations. The report is available on the gov.uk website: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891221/Regulating in the public interest research report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891221/Regulating_in_the_public_interest_research_report.pdf)



Going concern: What should Boards be considering?

Trustees of charities, either as directors of incorporated charities or as Trustees of unincorporated charities, have a legal responsibility to ensure that the charity operates as a going concern and is able to meet its liabilities as they fall due. While this is a continuing responsibility, it is formalised each year in the preparation of the charity's annual report and financial statements.

Many charities will have experienced significant changes to their operating environment as a result of the COVID-19 pandemic and this will require Trustees to reassess their financial position and the ability of their charity to continue to operate as a going concern. This may require considering a number of factors, including updating the charity's budgets and forecasts, and should cover any changes up to the date of sign off of the financial statements. Where Trustees identify possible events or scenarios, other than those with a remote probability of occurring, that could lead to failure, then these should be disclosed in the financial statements.

The Charity Commission guidance 'Managing financial difficulties & insolvency in charities' (CC12) stresses the importance for "a Trustee body to have a good knowledge and understanding of the charity and its finances so that, as far as possible, the continued viability of the charity and its charitable activities can be assured.". This is a theme that runs through the Charity Commission's updates and alerts including its guidance on whether charities can use reserves and restricted funds to help the charity through the crisis.



To assist Trustees to meet their responsibilities in relation to going concern, we have prepared a series of questions Trustees should be considering together with a checklist of the disclosure requirements. A copy of this checklist can be obtained here:

<https://www.crowe.com/uk/croweuk/insights/charities-going-concern>



Fundraising Regulator COVID-19: Fundraising key principles guidance

In response to the COVID-19 emergency the Fundraising Regulator has published, and subsequently updated, guidance which aims to support charities and other fundraising organisations to be able to return to fundraising activities in a responsible way.

The guidance sets out a framework to aid good decision making and ensure responsible fundraising. It is intended to supplement existing government guidance and highlights the key issues and areas that fundraising organisations need to consider as they plan their return to fundraising.

The guidance covers:

- getting back to fundraising – planning and risk assessments
- safeguarding the public and fundraisers
- enforcement
- respectful interaction with the public.

The guidance notes that it is the responsibility of individual organisations to apply the guidance in their fundraising activity so that the safety and wellbeing of fundraisers and the public are protected. Part of acting responsibly will also include fundraising organisations properly documenting their decisions, undertaking risk assessments, and being prepared to explain and justify these if necessary.



The full guidance can be seen on the Fundraising Regulator website:
<https://www.fundraisingregulator.org.uk/more-from-us/resources/coronavirus-covid-19-fundraising-key-principles-guidance>



Compliance



Reporting serious incidents to the Charity Commission

The Charity Commission has recently updated its guidance on Serious Incident Reporting, reflecting the extremely demanding and ever-changing challenges arising from the coronavirus pandemic.

The updated guidance includes supplementary examples to aid Trustees in their decision making as to whether an incident that is related to the pandemic is reportable.



The guidance can be obtained from the gov.uk website here: <https://www.gov.uk/guidance/reporting-serious-incident-to-the-charity-commission-during-the-coronavirus-pandemic>



Online Register of Charities: New and improving

In September 2020 the Charity Commission launched a new version of the online register of charities, to make more information about individual charities available at the click of a button.

Each charity's register entry will now display more clearly whether the charity has been subject to regulatory action or is of ongoing concern. And, following changes to the annual return, charities' entries will now show how many staff members receive pay packages of £60,000 and above. It also notes where Trustees are remunerated for their work, and lists the policies a charity has in place, from safeguarding to conflicts of interest and investments.

The new register display is also designed with the needs of charities in mind. Improved functionality makes it easier for Trustees to access and update their own charity's information with the Commission.

The Commission are encouraging the public, charities, and those with an interest in the sector, to use the new register and let the Commission know what is working and what could be improved. A feedback form has been provided so users can pass comment back to the Commission.



The register can be accessed on the gov.uk website: <https://register-of-charities.charitycommission.gov.uk/>



UK charity sector's use of tracking technologies

A group of 38 academics and privacy campaigners have called on charities to remove advertising trackers from their most sensitive web pages.

In an open letter to the UK charity sector they have expressed their extreme concern with the UK charity sector's use of tracking technologies, specifically those belonging to data brokers and programmatic advertising platforms.

The letter refers to the report published by ProPrivacy in September 2020 highlighting the widespread use of programmatic advertising in the charity sector and the potential impact this could be having on the privacy of users of charity websites. The research found that many charity

pages dealing with extremely sensitive issues such as mental health, debt, end-of-life care, and disability contained various trackers belonging to AdTech services, including data brokers.

The letter calls on top charities in the UK to conduct audits of their websites for third-party elements belonging to those in the AdTech space and to exclude them entirely from any support or advice pages dealing with sensitive topics.



The guidance can be obtained from the Gov.uk website here: <https://www.gov.uk/guidance/reporting-serious-incidents-to-the-charity-commission-during-the-coronavirus-pandemic>



Financial reporting



Coronavirus: Financial reporting issues for Charities

It is difficult to predict the financial or operational implications of the outbreak of COVID-19 on the UK economy or the organisations which operate within it.

The measures put in place by the government to limit the spread of the virus have been changing on a regular basis. It is expected, at least in the shorter term, that the limiting of the movement of people by restricting flights and other travel, cancelling events, and closing venues, various business activities and schools will continue and may even increase.

- The government has also implemented a number of business support schemes, including the staff furlough scheme (CJRS), some of which have been available to charities and/or their trading subsidiaries depending on their circumstances. This support continues to change as do the details of entitlement and how any claims will be settled. However, if

a charity has been able to benefit from any of these support schemes Trustees will need to determine when and how any such benefit should be reported in the financial statements.

All of these developments and measures may have a broad range of implications for charities. How the impact on individual charities will depend on a number of factors including the charity's key sources of income, areas of charitable activity, staffing models, contractual relationships, the nature of the charity's assets and liabilities and the charity's underlying funds structure.



Charity Trustees will already be facing unexpected challenges to their charities and it will be important that these are reflected into the necessary decisions that have to be made when reporting on the charity's activities and financial position.

We have produced guidance which considers the potential impact of COVID-19 on the yet to be published annual reports and financial statements of charities.

The key areas of focus of the guidance are as follows, being mindful that charities are diverse in their activities and their income generation and therefore, there may be some areas of focus not specifically addressed:

- income recognition, including the recognition of government support grants

- commitments and liabilities
- asset values
- going concern
- other financial statement disclosures
- Trustees' annual report
- government support.

Management and Trustees will need to carefully consider the impact of coronavirus on the charity's report and financial statements to ensure that these continue to reflect the financial activities and position of the charity in accordance with the Charities SORP.



The full report can be found on our website:
<https://www.crowe.com/uk/croweuk/insights/covid-19-financial-reporting-charities>



Fundraising reporting requirements guidance

In September 2020, the Fundraising Regulator issued additional guidance on the Fundraising reporting requirements guidance under the Charities (Protection and Social Investment) Act 2016.

This Act requires charities to provide statements in their annual report on key aspects of charities' fundraising activity including the approach taken, regulation, complaint numbers and how the charity ensures vulnerable people are protected. This reporting is a legal requirement for all charities where their gross income is over £1 million in a year.

In June 2020 the Regulator conducted a second review of a sample of charity's annual reports and found that only 21% of reports included a statement on all of the Act's requirements and 15% reported on none of them. Of particular concern, many charities did not report on what they are doing to protect vulnerable people and the public when fundraising.

It is ultimately the responsibility of Trustees to ensure compliance with the Act. The report pulls together advice on how can a charity report against the requirements and how Trustees might approach the writing of their charity's statement.



The full guidance can be seen on the Fundraising Regulator website:
<https://www.fundraisingregulator.org.uk/more-from-us/resources/charities-act-2016-fundraising-reporting-requirements-guidance>



Streamlined Energy and Carbon Reporting (SECR) / SORP Update Bulletin 5

SECR is a mandatory reporting requirement for all large companies, including charities, other Non Profits and LLPs, which is designed to:

- increase internal awareness of energy usage and cost
- drive adoption of energy efficiency measures
- standardise external reporting
- provide greater transparency for stakeholders on energy efficiency and emissions.

Exemption is available for entities with under 40,000 kWh of emissions per year. There is also a 'seriously prejudicial' exemption, although this is expected to be used in exceptional circumstances only, for example in the lead up to a major restructuring or acquisition.

If financial reporting is on a group basis, reporting of emissions will also be on a group basis, unless any of the subsidiaries fall under the 40,000 kWh per year threshold, in which case their figures can be excluded.

Reporting starts with periods commencing on or after 1 April 2019. So for companies reporting on a standard financial year the first reports affected will be for the year ended 31 March 2020.



We have summarised information in the regulations and accompanying guidance and added our own insights to aid those preparing and reviewing the new disclosures, which can be found on our website: <https://www.crowe.com/uk/croweuk/insights/streamlined-energy-and-carbon-reporting>



Pension liabilities: RPI or CPI

For a number of years, the question as to whether pension increases should be based on the Retail Price Index (RPI) or the Consumer Price Index (CPI) has caused a high amount of uncertainty for pension schemes. RPI is the oldest measure of inflation in the UK, introduced in 1956, and is widely used across the economy and in financial contracts. However, there are a number of shortcomings which has meant that at times the index has over or under estimated the rate of inflation.

The CPI was introduced in 1997 and does not suffer from the same shortcomings as RPI, and in 2003 the government set the CPI as the basis for the Bank of England's inflation target. However, the CPI does not include a measure of owner-occupiers' housing costs. In 2013 CPIH was introduced to address this issue.

In March 2019, the UK Statistics Authority made a recommendation to the Chancellor to address the shortcomings in the RPI, and a [consultation](#) was published in March 2020 setting out HM Treasury and the UK Statistics Authority's intention to bring the two indices together by aligning RPI with CPIH.

Many pension schemes, depending on the specific scheme rules, already provide pension increases on a CPI basis. However, there are other areas which may be

impacted by any changes, such as investments linked to RPI. The Association of British Insurers estimates the potential impact of the proposed alignment to be a £96bn to £122bn reduction in the value of index-linked gilts.

The consultation closed on 21 August 2020 and a [response](#) was issued by the UK Statistics Authority and HM Treasury on 25 November 2020. The summary conclusion is that, while the Chancellor has announced that he sees the statistical arguments of the Authority's intended approach to reform, in order to minimise the impact of reform on the holders of index-linked gilts he will be unable to offer his consent to the implementation of such a proposal before the maturity of the final specific index-linked gilt in 2030.



High Court rules on GMP equalisation of transfers

A new ruling issued by the High Court on 20 November 2020 means that Trustees of defined benefit (DB) pension schemes must revisit and equalise guaranteed minimum pensions (GMP) for historic transfers.

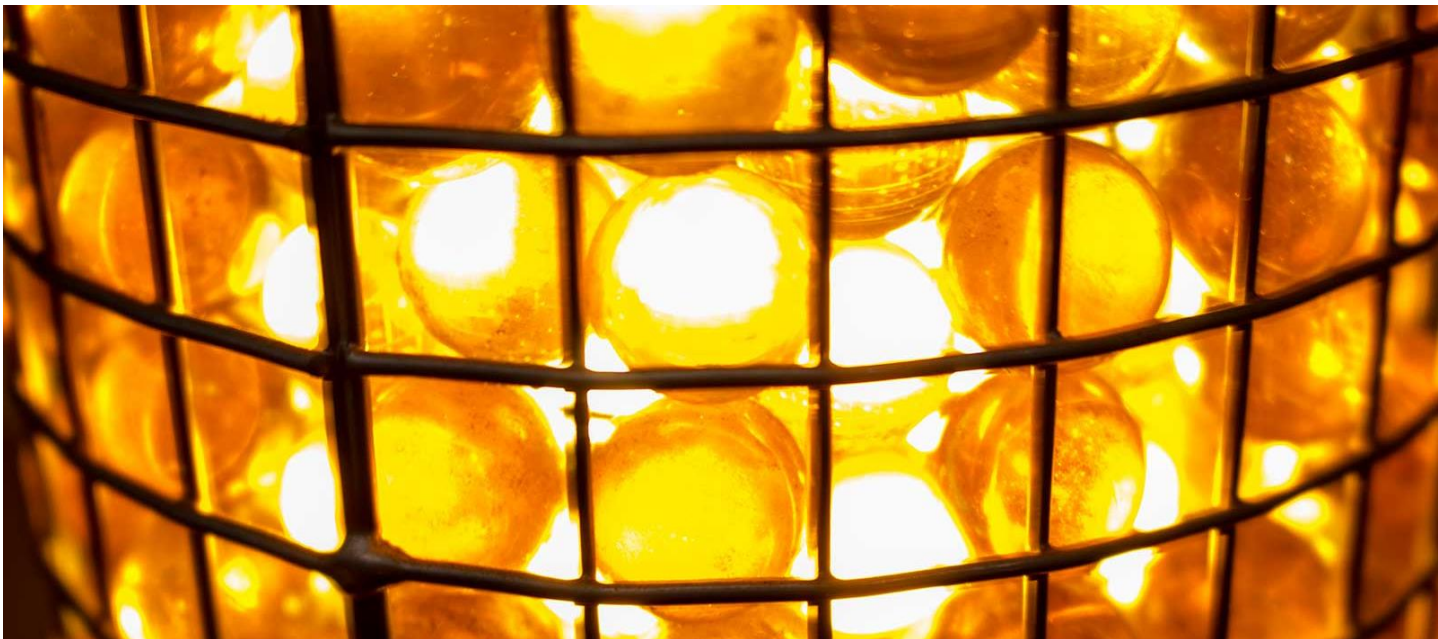
The new judgement ruled that Lloyds Banking Group pension scheme Trustees are legally responsible for equalising the GMPs for the employees who transferred out of one of its DB pension schemes.

The ruling means that organisations should revisit historic cash equivalent transfer values (CETV) that were previously not equalised, and top up where necessary. Unlike the previous

ruling, no time bar applies which means that schemes are unable to rely on provisions within the rules that would normally limit claims to a six year period.



A copy of the judgement can be seen here:
<https://www.bailii.org/ew/cases/EWHC/Ch/2020/3135.html>



Taxation



INGOs: VAT implications for funding and grants

For some years now, we have been ensuring that our clients are aware that, under a concession, there is a long-standing arrangement between HMRC and the Foreign, Commonwealth & Development Office (FCDO).

This means that contracts with overseas governments, paid for by FCDO, are viewed under this concession as FCDO procuring and paying for services provided to an overseas customer by UK suppliers. The supplies are treated as outside the scope of UK VAT and also allow VAT on associated costs to be recovered in full. These contracts have also enhanced charities' overhead recovery on general expenditure as well.

Recent guidance issued by HMRC might impact your organisations, in particular charities who are involved with:

- overseas aid grants
- FCDO projects
- collaborative partnerships
- reverse charge issues with overseas partners.

There has been much correspondence with HMRC in respect of the VAT treatment of humanitarian and associated funding, including FCDO funding and UK Global Challenges Research Funding (GCRF).



The main findings are summarised on our website:
<https://www.crowe.com/uk/croweuk/insights/vat-ingos>



VAT: Extra payments from local authorities to care providers

We are aware that local authorities are making extra payments to care providers as a result of the COVID-19 outbreak. This is clearly good news for the sector but how should the extra be treated from a VAT perspective and what, if any effect, does this have on VAT recovery?

Treatment of Income

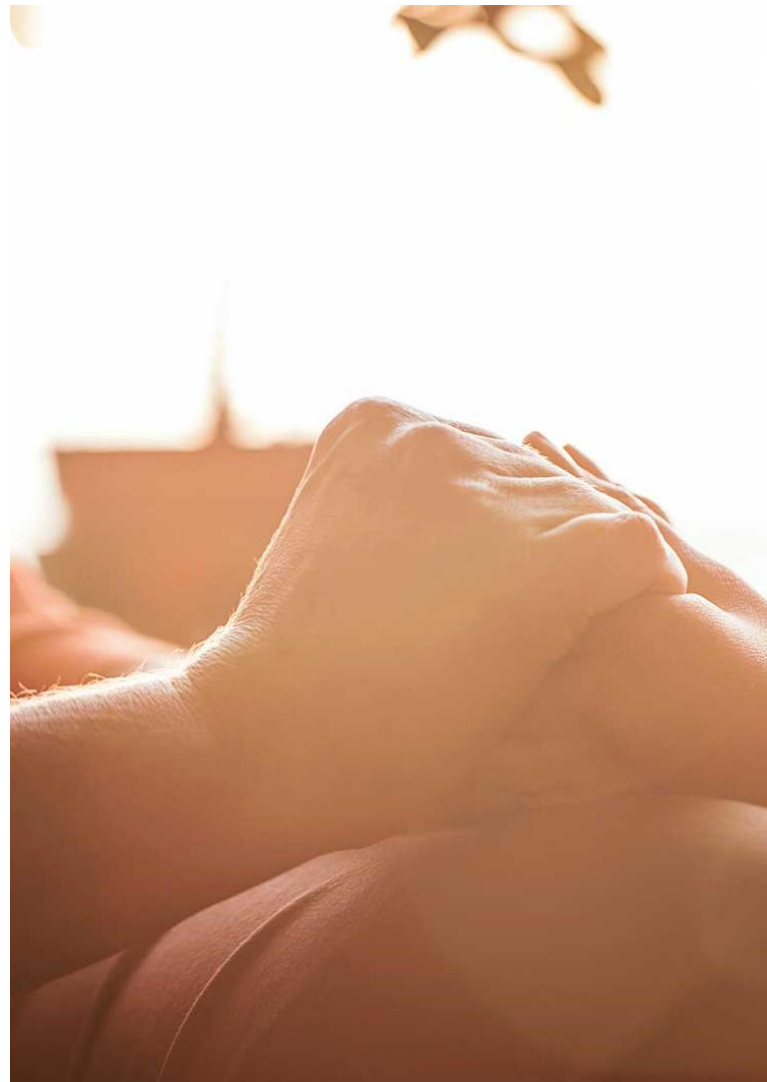
The VAT treatment applicable to income received will depend on whether the payment is structured as extra consideration for the supply of services or as a grant.

The former will result in VAT falling due on the supply if the underlying contract is subject to VAT (e.g. where the service is provided by a trading subsidiary) but exempt where VAT exemption is applicable (where the service is provided by a state regulated entity or a charity).

Grant funding is not subject to VAT as does not relate to a supply/activity and so no VAT would fall on any grant funding in either case.

Treatment of Expenditure

- Further funding by way of grant does not change the nature or value of the services provided under the contract and so VAT recovery would not be affected. However, under the standard method of partial exemption, where the payment is extra consideration under a contract the VAT recovery of overhead costs would be increased if the contract was taxable but reduced if it is exempt.



The main findings are summarised on our website: <https://www.crowe.com/uk/croweuk/insights/payment-care-providers>



VAT: Changes to COVID-19 measures

The Chancellor recently announced two VAT measures as part of the ongoing COVID-19 support package. The first is the extension of the reduced rate of VAT applicable to the hospitality and tourism sectors, until 31 March 2021. The second measure is an extension to the time by when organisations have to settle the VAT payments they deferred earlier this year.

Extension to the reduced VAT rate for hospitality and tourism sector

In July 2020, the government introduced a temporary 5% VAT rate that is still in effect today. This reduced rate applies to food and non-alcoholic drinks served in restaurants, cafes, pubs and similar venues. It also applies to takeaway orders of hot food and hot, non-alcoholic drinks.

Supplies of hotel and holiday accommodation and entry to attractions also qualify for the reduced 5% rate of VAT. Hotels, bed and breakfasts and campsites are able to benefit from this when people stay with them while theme parks, zoos and cinemas will enjoy a lower rate of VAT on their entry fees. Our original client alert is available [here](#).

The recent announcement extends the period of time over when the temporary 5% reduced VAT rate applies to 31 March 2021, a near three month extension.

While the temporary reduced rate was a welcome development for many organisations, it did give rise to system and practical challenges for organisations in ensuring that they could maximise the benefits of the VAT savings.

Further deferral to the due date for paying deferred VAT

In March 2020 the government announced an immediate deferral of VAT payments falling due between 20 March 2020 and 30 June 2020. All organisations were able to automatically defer the VAT payments due to be made between these dates until 31 March 2021. Our original alert is available [here](#).

Today's announcement introduced a New Payment Scheme, whereby deferred VAT payment amounts can be made in instalments, rather than as a single lump sum falling due on 31 March 2021. The details released so far by HMRC say that the amount owing can be split across 11 months, and no interest will be charged on the deferral. All organisations are eligible for this deferral and will need to opt-in using HMRC's opt-in system, which HMRC hope to launch in early 2021.

It should be noted that the measures do not apply to VAT payments falling due from 1 July 2020 onwards. If organisations have difficulties in making these VAT payments, they should be able to agree a 'time to pay' arrangement with HMRC and Crowe can support you in applying for this.



VAT: HMRC issue update on zero rated online advertising

HMRC has released its guidance covering the VAT treatment of digital advertising services to charities in Business Brief 13 (2020).

In this guidance HMRC has also stated that 'location services' can be treated as zero rated, where previously it has considered these to be standard rated on the basis that the adverts were directly targeted to individuals. This is good news for the charities that acquire services from suppliers such as Facebook and GoogleAds.

HMRC has recently reviewed its policy in relation to the application of the zero rate relief to digital advertising provided to charities. In HMRC's last correspondence with the Charity Tax Group, HMRC conceded that VAT relief could apply to a number of digital advertising services on the basis that the advertising processes involve the targeting of aggregated audiences and not individuals. In Brief 12 (2020) 'location advertising' is clearly on the list of services capable of being zero-rated when supplied to a charity.

Some charities have accounted for reverse charge VAT on invoices received covering ALL digital advertising services acquired from companies outside of the UK (e.g. Facebook) and UK based providers have applied UK VAT to these services. Now that

HMRC has released the finalised guidance it is possible to recover the overpaid VAT, as the only supplies that should have been subject to a standard rated reverse charge are:

- email advertisements, and those that are targeted directly at individuals who login to personal pages as these are targeted directly 'at the individual'
- natural hits.

Charities who have accounted for VAT under the reverse charge on digital advertising should review the services received to quantify a claim to be made directly to HMRC. Where suppliers are based in the UK, charities should approach the suppliers to seek credit for any VAT that has been incorrectly charged.

In both of the above cases, overpaid or overcharged VAT should be claimed going back the statutory four years. Crowe can assist with identifying potential claims of overpaid VAT for the last four years and in submitting those claims to HMRC and/ or suppliers.



You can find more information and contact details for our VAT team here:
<https://www.crowe.com/uk/croweuk/services/tax/vat>



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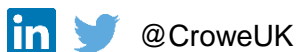
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