

Constable VAT Consultancy LLP (CVC) has a number of clients who may benefit from cost savings and economies of scale, in particular those operating in the charity, education, insurance and finance sectors. At a time when many charities and other organisations are considering working together due to the condition of the economy as a whole and many are facing funding cuts the concept of a cost-sharing group (CSG) may be attractive. VAT should not be a barrier to collaborative working. Therefore, we are grateful for the opportunity to comment on the consultation document. In response to the specific points raised we would comment as follows:

Question 1. Are there any other bodies or entities that could be used to form a cost sharing group?

In addition to registered Charities we would welcome the inclusion of companies limited by guarantee as bodies capable of acting as a CSG. This may be intended by the broad reference to 'corporate entity' and if so we support this. We see no need to restrict CSG status to any particular type of body providing it can meet the other CSG criteria.

Question 2. Does the proposed definition of 'independent group of persons' provide any practical problems or barriers to using the exemption?

We see no particular practical difficulty although allowing VAT group members in CSG may present a problem with arbitrary threshold tests, see question 7.

Question 3. What practical problems or difficulties could occur if a VAT group was a member of a CSG and how could these be resolved?

If a member of a VAT group registration is also able to become a member of a CSG we can envisage no practical problems.

Question 4. Are there any difficulties or problems that may arise from multiple memberships?

No doubt there would be administrative requirements which may prove burdensome as noted by the Commissioners at paragraph 3.19 ; however, multiple memberships of CSG's would give charities and their trading subsidiaries the opportunity to work in collaboration with other organisations with the possibility that an additional VAT charge does not represent an absolute cost and act as a deterrent to collaborative working.

Question 5. Are these characteristics appropriate?

The characteristics set out at paragraph 3.26 appear reasonable and we would expect some of these (not necessarily all) to be present. We would anticipate that each CSG has a membership contract clearly setting out who the members are, their responsibilities, the aims and objectives of the group etc.

Question 6. Do you agree that independence is a necessary safeguard against abuse and distortion?

We agree that a CSG should not be used for abusive purposes. The comment at paragraph 3.28, regarding tendering for supplies received, seems reasonable and we would expect scenario's such as this to be set out in the governing document of the CSG.

Question 7. Do you think HMRC should introduce a specific test? If your answer is yes please indicate the threshold and timescale you think should apply.

We appreciate the Commissioners desire to protect the revenue in terms of the potential for abuse of the CSG to gain a tax advantage, as outlined at paragraphs 4.6 and 4.7. The bullet points set out at paragraph 4.2 should suffice in terms of determining the eligibility to join a CSG. If a specific test were introduced it seems to us that this would create the potential for disagreement and an increased administrative burden for the Commissioners and taxpayers alike. In particular trading patterns for defined periods could create an unfairness, for example if an exempt activity is not fully developed and the level of exempt turnover does not fairly represent the status of the business.

Question 8. Do you have a preference for any of the approaches described above? Please explain why.

The Commissioners preferred approach appears to us too restrictive. If an 85% to 95% test were applied then we would expect most charities which are independently VAT registered, or perhaps the representative member of a VAT group registration including some of its trading subsidiaries, to fail such a test. We would expect most charities which are VAT registered to have input tax recovery rates (that is composite recovery rates calculated using a business/non-business apportionment and partial exemption calculation or combined method with effect from 1 January 2011) in excess of this although, if such a test were applied, the CSG is likely to be beneficial to charities which are not VAT registered or those who are but engage in very low levels of taxable activity.

In our view it may be appropriate to have a de minimis threshold as a simplification but this should not be the only way of applying a 'directly necessary' test. A key concern is that on applying a threshold as standard this will create scope for a different complexity than a conceptual 'directly necessary' test. For example, would this interact in a complex way with a member within a group VAT registration, would it be the group turnover or the individual member(s)? Would an inputs test require a calculation beyond the VAT groups partial exemption method? Could the thresholds be open to manipulation?

Question 9. Do you prefer another approach? If you do please outline your ideas.

Please refer to Question 8 above.

Question 10. Do you agree with this approach to "direct reimbursement of costs"? If not please explain why and indicate the approach you would like to see adopted.

The approach outlined at paragraph 6 appears reasonable to us.

Question 11. In what circumstances do you think the 'Distortion of Competition' condition should apply?

Again, the approach set out regarding the 'distortion of competition' condition at paragraph 7 seems reasonable. However, the members of the CSG may not look beyond the CSG itself to acquire services from other suppliers who may charge VAT if the same services can be received from the CSG. This is covered at paragraph 7.3.

Question 12. Are there any process and compliance aspects of the cost sharing exemption that you think might need to be addressed specifically in the guidance?

This is likely to be a complex area, particularly as the CSG rules bed in. We welcome the confirmation at paragraph 9.3 of the consultation that the Commissioners will assist charities and other organisations seeking clarification that their cost sharing arrangements satisfy the conditions of the exemption. In our experience all taxpayers desire certainty as to liabilities of supplies made and VAT recoveries and we would expect CSGs to be no different.

Question 13. Do you think that the implementation of the cost sharing exemption will have any equality impacts? If yes please indicate what the impacts are and offer suggestions about how they can be eliminated.

We have no immediate thoughts on this point.

Question 14. On the basis of the information in this document do you have any comments on the assessment of impacts?

We would welcome the opportunity for charities and other voluntary organisations to reduce some of the irrecoverable VAT costs collaboration agreements may present. This will hopefully enable more resources to be focused on charitable aims and objectives.

Question 15. On the basis of this document would your organisation join a CSG?

We believe a number of our clients may join a CSG.

Question 16. What are the most valuable services (in cost terms) your organisation would want to receive from a CSG using the exemption? Please state the value of at least 3.

We would anticipate clients would benefit from the following:

- Human resource functions.
- IT services.
- General overhead costs.

Question 17. Of the services listed in question 16, what services are currently supplied by a third party? Please state the annual irrecoverable VAT you currently incur when receiving those services.

It is difficult for us to comment on this point with authority as the position will be different on a client by client basis.

Question 18. Of the services you have listed in question 16 what are the annual economies of scale you would expect to make on services currently provided-in house if they were supplied by a CSG?

We cannot provide any conclusive information on this point for the reasons set out in the answer to question 17 above.