

Charity shops - interaction with rates relief

Introduction

While most hospices operate shops, there is no universal model as to how their retail operations are structured, with some operating the shops through the charity and others through a trading subsidiary.

Eligibility for rates relief is one of the many factors which hospices may want to take into account when deciding how to structure their shop operations. For guidance on tax related issues around charity shops, including retail gift aid, please refer to our publication 'Hospice shops – accounting and tax issues', produced in conjunction with Sayer Vincent.

The key to deciding eligibility for rates relief is:

- who owns (or leases) the property
- what the property is used for.

Rates relief for charities

Charities are entitled to mandatory rates relief of 80% of the rates payable. This has to be claimed from the local authority. It is only available where the ratepayer is a charity and the property is mainly used for charitable purposes. The sale of donated goods and charitable bought in goods is considered a charitable purpose, but the sale of non-charitable bought-in goods is not.

If a charity is running a shop, then it is entitled to claim the mandatory rate relief as long as the charitable sales exceed the non-charitable sales. It is best to agree with the local authority how the two are compared. Options include turnover and floor area.

If all retail operations are run through the charity and the shops only (or mostly) sell donated (not bought in goods) the shops should be eligible for the 80% mandatory relief.



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Interaction with retail gift aid

Acting as an agent (on behalf of the individual who donates the goods) is a non-charitable trading activity. Therefore, if a hospice begins operating the retail gift aid scheme, the switch to agency sales may affect business rates relief. This is only available if the shop is mainly used for charitable purposes.

Sales of donated goods are charitable purposes but agency sales are not. So switching sales to agency sales will decrease charitable activity and at the same time increase non-charitable activity. If the level of charitable activity drops below 50%, mandatory business relief for the shop operations will be lost, though some local authorities may still be prepared to grant discretionary relief.

Discretionary Relief

While the mandatory relief for charities is 80% of the rates bill, local authorities can provide discretionary rates relief of up to 100%.

If the charity's trading subsidiary is the ratepayer, then mandatory rates relief is not available. Discretionary rate relief may still be available – the amount given, if any, is at the discretion of the local authority and therefore is subject to significant local variation.

Interaction with tax planning and risk management

While operating shops through the charity is the most beneficial solution if the decision were based solely on rates relief, in reality there are many other factors which will influence a hospice's decision on how to structure their shops activity.

For example, there may be tax reasons (especially if operating a retail gift aid scheme or buying some goods for resale) and risk management reasons (e.g. a desire to segregate trading activities so that the charity is not put at risk by losses or legal claims arising from trading activities) why hospices may prefer to operate their shops through a trading subsidiary.

Operating shops through a trading subsidiary

Selling goods through a trading subsidiary (as opposed to a charity) means that the shops are not eligible for the mandatory relief, as does using the property for other fundraising activities.

It may be possible for a hospice to structure its operations in such a way that the shop activity remains in the trading subsidiary but is still eligible for rates relief if:

- the hospice owns the property (or is the leaseholder if it rents the property from a third party)
- the hospice then grants the trading subsidiary a licence (not a lease) to use the premises, but only at a commercial rate
- the licence does not grant the subsidiary exclusive possession or security of tenure
- the hospice uses the property as well (e.g. for sorting donated goods or promoting its charitable objectives)
- the charity keeps all responsibilities for the lease. This would include responsibility for issues such as insurance and health and safety. Therefore this option may not be attractive to a hospice whose main motivation for using a trading subsidiary for their shop operations is to ring-fence any risk.

Given the complexity of these arrangements, it is important that hospices obtain specific legal advice before implementing such an arrangement.

Conclusion

To benefit from rates relief, it is most efficient to operate hospice shops through a charity. It may still be possible to structure operations in such a way that relief is still available if a trading subsidiary is used, although this is a much more complicated issue.

It should also be remembered that availability of rates relief is just one of many factors for hospices to consider when structuring retail operations.

The decision as to whether to operate shops through the charity or a subsidiary will be influenced by operational, administrative and financial concerns, as well as the trustees attitude to risk.

What may be the most beneficial solution from one perspective may create complications from another perspective, and it is not possible to define a one size fits all model that would be suitable for all hospices.

Therefore, hospices should take professional advice which will take into account their own unique circumstances if they are considering making any changes to the way their shop operations are structured.