



TAXREP 19/12

(ICAEW REP 75/12)

ICAEW TAX REPRESENTATION

The Gift Aid Small Donations Scheme

Comments submitted on 24 May 2012 by ICAEW Tax Faculty in response to HM Revenue & Customs consultation document *The Gift Aid Small Donations Scheme* published on 27 March 2012

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document [The Gift Aid Small Donations Scheme](#) published by HM Revenue & Customs (HMRC) on 27 March 2012.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 17 May we attended an open meeting with HMRC in which we were able to put forward some key comments and concerns and discuss aspects of the consultation document.
4. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

5. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
6. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.
8. ICAEW has a charities technical committee and a charities and voluntary sector special interest group with over 3,000 members. Many ICAEW members are active in charities and the voluntary sector; approximately 40,000 are charity trustees, treasurers, school governors and in other voluntary roles.

KEY POINT SUMMARY

9. We support the Government in its commitment to encourage charitable giving. We do, however, have a number of concerns over the design of the scheme set out in the consultation document. Our comments should not be seen as criticism of those in HMRC tasked with designing the Gift Aid Small Donations Scheme (GASDS). We appreciate the difficulties that they have had to contend with to get to this stage.
10. We consider the proposals too complex and are concerned that the provisions may not achieve the policy objective of reducing the administrative burdens on charities. We are also concerned that a large number of smaller charities are excluded from the scheme because they do not have Gift Aid (GA) donations and a number may not get the additional limit because of the way they carry out their charitable activities.

11. We are also concerned that calling this the Gift Aid Small Donations Scheme is confusing. It implies a connection with Gift Aid that does not exist and blurs the two sets of regulations. We suggest that the scheme should be called the Small Donations Scheme.
12. As a general point we suggest that greater reliance could be placed on the regulatory role of organisations such as the Charity Commission as a measure to deter fraud and counter abuse of the scheme. This could be by reference to the number of years a charity has been registered and compliance with their regulatory requirements on submission of accounts etc.
13. Our key points are:
 - the time limit for making a claim under GASDS is too short and may result in inaccurate or incomplete claims;
 - although a separate claim is not required to be made under GASDS, the differing time limits for GASDS and GA claims means that this may occur, thus increasing the administrative burden on a charity;
 - the requirement to have a three year track record of successful GA claims before claiming GASDS excludes all those charities who do not have GA donations;
 - the requirement that a GASDS claim must be made by the parent charity, and not by the local groups that carry out charitable activities in a community building, adds to the administrative burden for no apparent reason;
 - it seems unfair to exclude from claiming the additional limit all local groups, or branches of charities, where the charitable activity is that of providing online/telephone or face to face support;
 - the definition of community building is too restrictive and does not take account of the way that smaller charities may operate;
 - the definition of connected charity is too narrow; and
 - the rules for splitting the 'core' limit can operate in an unfair manner.

MAJOR POINTS

14. We note in para 2.13. that the time limit for claims under GASDS is one year after the end of the tax year in which the small donations are collected. We consider that this time limit is too short and should be aligned with the time limit for claiming Gift Aid.
15. Many charities and CASCs will make an annual claim for GA when the accounts have been finalised and the relevant figures can be easily extracted. HMRC will be aware that the deadline for filing accounts with the Charity Commission is ten months after the year end. For a charity or CASC with a 31 March year end this leaves only two months in which to make a GASDS claim. Furthermore, the Charity Commission report that 25% of charities, over 40,000, fail to meet this filing deadline, and, for those that do, the majority file in the last two months. As a body we would not condone late filing of accounts but we are aware that many of the smaller charities are reliant on pro bono work of accountants and others to prepare, and where necessary audit, accounts and thus are not in a position to demand early completion thereof. If the deadline remains at one year many claims under GASDS may be based on incomplete or incorrect information.
16. We understand that a claim to GASDS is to be made using the GA form R68i. The differing time limits for claims under GASDS and GA, and the fact that GA claims for charitable companies and trusts are made in relation to an accounting period, not a tax year, will often mean in practice that two claims will be made This has the effect of increasing, rather than

reducing, the administrative burden on charities and CASCs, the fundamental policy objective. We suggest that both the time limits and the claim periods should be aligned with the GA rules.

17. We note in para 2.13 that charities and CASCs must continue to make GA claims if they wish to make a claim under GASDS. This would, on the face of it, appear to exclude a significant number of charities and CASCs who do not currently make GA claims. There are over 160,000 registered charities in England and Wales and 6,000 registered CASCs, yet HMRC statistics show that only approximately 65,000 such bodies made a GA claim in 2010/11. If the number of registered (or deemed registered) charities in Northern Ireland and Scotland are included, which number approximately 6,000, it would seem that less than 40% of charities will be able to benefit from GASDS. Many of these charities will not have small cash donations, but many will.
18. The exclusion of over 100,000 charities and CASCs from the scheme on the basis that they do not make GA claims seems to us unfair. It appears to discriminate against the smaller charities at whom the scheme is aimed and particularly at those charities who operate in the poorest areas where local supporters may not be taxpayers and thus not eligible to make GA donations. We appreciate that this is an attempt to counter abuse of the scheme but we do not understand why a charity, or a CASC, that is registered and has complied with the relevant body's reporting requirements could not serve as the determining factor for eligibility to a claim under GASDS.
19. We do not understand the reasoning behind the requirement that, while local groups of a charity may make GA claims on the donations they receive, all GASDS claims must be made through the parent charity. The parent charity will have to calculate the number of local groups it has, where they met and whether the donations received will qualify. This seems to add complexity for no apparent reason. The parent charity will have to maintain separate accounting records for each local group, whereas in the past they will just have maintained one account. This requirement does not reduce the administrative burden but adds to it.
20. We welcome the announcement that the limit on a small donation is to be increased to £20, but wonder how this is to be policed by HMRC and the collecting charity or CASC. It is unlikely to be readily apparent from the monies collected, in a bucket collection for example, few people carry £50 notes as a matter of routine. Is it expected that the bucket collector will note down where an individual gives two £20 notes? Many collecting boxes in shops, for example, are unstaffed and there will be no way that the charity, or CASC, can be sure that an individual did not donate more than £20. It is wrong in principle to propose legislation that cannot be complied with.

Charities running charitable activities in community buildings – the additional limit

21. Paragraph 5.13 states that a charity that has local groups or branches can receive, in addition to the 'core' limit of £5,000, an additional limit of up to £5,000 in respect of small donations made in community premises in which the charity carries out its charitable activities. This would appear to exclude all those charities whose charitable purpose is to provide online or telephone support/advice through local branches from claiming the additional limit. The building in which such support is provided would be likely to fail the definition of community building in para 5.18 as it would not generally be accessible to the public. The branch or group would also fail the definition of running charitable activities in para 5.16 as these activities are not carried out in a group setting.
22. We find the definition of charitable activities in para 5.16 too restrictive. As mentioned above all those charities that provide online or telephone support would fail as would those provide confidential face to face support or advice. We do not understand why the charitable work undertaken by these charities, many of which are staffed by unpaid volunteers, should be

regarded as less worthy of support than a church providing a day centre for the elderly or a medical charity running a local self-help group.

23. We appreciate that a charity that provides support in the ways outlined above does not have the same opportunity to collect donations during the course of its charitable activities. We suggest therefore that consideration be given to increasing the amount of the 'core' limit available to the parent charity by £5,000 for each local group or branch that carries out its charitable activities online, by telephone or by face to face meetings.
24. We note the definition of a community building in para 5.18 and the exclusion from the definition of any premises used wholly or mainly for commercial or residential purposes. It is not uncommon, however, for a charity that runs a local self-help group or a group for the elderly, to hold such meetings in someone's house or in a local pub to reduce costs, as many church and village halls charge for use. We fail to see why, in these circumstances, donations made at these events would not be eligible for the additional limit.

Connected charities or CASCs – reduction of the 'core' limit

25. The definition of a connected charity, para 5.22, is widely drawn and would seem to connect charities that might have differing charitable aims but be run by the same or some of the people. In a small community it is not unusual to find the same people involved in a range of charitable activities. There might thus appear to be a connection in terms of administration when in reality the charities have been established to carry out different charitable activities.
26. The rule outlined in para 5.24, whereby the 'core' limit is to be split equally between connected charities or CASCs seems to us to be inequitable. The example given in the paragraph makes this inequity clear. If four connected charities raise a total of non-community building income of £2,000 between them each charity is entitled to £500 of the 'core' limit. This is regardless of how much each connected charity raises individually. Thus, if Charity 1 raised all the income, because it is in a wealthy area perhaps, and the three connected charities raised no income, the maximum that could be claimed by the connected charities under GASDS for non-community building income is £500. If the connected charities were structured as one lead charity and three local groups the donations would be pooled and the GASDS claim for non-community building income would be £2,000, it would be irrelevant how much each local group has, or has not, raised. As the connected charities are required to ascertain the total amount of donations raised to determine the limit, we fail to understand why, if the amounts raised are under the 'core' maximum of £5,000, this should not be allocated in such a way between the connected charities to obtain the maximum benefit.
27. This rule seems even more inequitable as it would appear to apply only where one or more of the connected charities carry out charitable activities in a community building. Paragraph 5.27 indicates that connected charities, none of whom carry out charitable activities in a community building, will have their donations pooled for the purposes of a claim under GASDS.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Where should the balance lie between fairness and complexity of the scheme and do you have any other suggestions on how the GASDS should work?

28. The scheme should be designed to enable the maximum number of charities to benefit, both from the 'core' limit and the additional limit, without increasing the administrative burden on them. We do not think the proposed scheme does this, as can be seen from our comments above.

Q2: Under what circumstances do you think HMRC should exercise its powers to make regulations in connection with community buildings?

29. We consider that all legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

Q3: Are there circumstances where the proposed meaning of 'connected' would result in charities or CASCs that are, in fact, wholly independent of one another being connected for the purposes of the GASDS? What are these circumstances?

30. We find the proposed meaning of 'connected' to be too broad and too vague. As noted in para 25 above there might be an apparent connection where the same people are involved in two completely different charities. We suggest that the definition be extended to include a reference to the charitable aims of the charity.

Q4: What are the criteria that indicate a charity or CASC is being run as a wholly independent entity and what alternative definition of 'connected' might be used to avoid hard cases while at the same time deterring abuse of the GASDS?

31. We understand that there are charities that may be connected under the proposed definition but which require each of the branches of the charity, which operate as charities in their own right, to be self-funding. We suggest that financial independence should be one of the criteria.

Q5: Do you think it will be administratively easier to allocate the £5,000 maximum limit to one lead organisation or should the rule split the allocation between all the connected organisations, as for connected organisations where one or more charity is running charitable activities in a communal building?

32. We do not agree that the 'core' allocation should be split equally between connected charities, see our comments in para 26 above. The small donations should be pooled and we are content that a lead charity or CASC should make the claim on behalf of all the connected organisations.

Q6: Do you have any other ideas on how a rule to ensure charities or CASCs that fragment, in order to gain more GASDS top-up payments, might be framed? What would be the administrative consequences for the organisations?

33. We wonder how big a problem fragmentation is likely to be in practice. The benefit in so doing is relatively small and may not be cost-effective in terms of the additional administration costs. Furthermore any charity that did fragment would still face the problem of demonstrating that they were not connected charities. We have no suggestions to make in this regard.

Q7: Should a requirement to match GASDS claims with Gift Aid claims be introduced and if not, what alternative method for countering abuse of the scheme is suggested?

34. Any requirement to match GASDS claims with Gift Aid claims may be a problem for the smaller charity that relies on bucket-rattling etc to fund their charitable activities. Such charities may have only a small number of regular GA donors.
35. We suggest again that greater reliance should be placed by HMRC on the regulatory role of the bodies that register and regulate charities and CASCs. This could be linked to the number of years that a charity has been in existence and compliance with their rules.

Q8: If a matching requirement is introduced, do you think the £1 to £1 matching proposed would cause difficulties for any charities/CASCs? Would the additional complexity and extra cost of a different match, such as £1 GASDS donation to 50p Gift

Aid donation be warranted? Are there any other ways of deterring fraud or other suggestions for how the matching should work?

36. If a matching requirement is to be introduced we consider that unless it is at a nominal level, say £100 in total, many smaller charities will be precluded from claiming GASDS.

Q9: Do you have any other comments or suggestions on how the GASDS should work?

37. We refer you to our detailed comments in paras 14-27 above and the suggestions therein.

Q10: Does the approach taken in the design of the GASDS create any specific equality issues – are certain groups that have protected characteristics specifically disadvantaged?

38. We are not aware of any specific equality issues, but we are concerned that the apparent complexity of the scheme will deter the smaller charity without professional advisers from making a claim.

Q11: How many charities that do not currently claim Gift Aid do you think will claim under the new scheme?

39. We assume that the reason a charity does not make claims under Gift Aid is because they receive no donations under Gift Aid or that such donations are minimal. As one of the stated requirements of the scheme is to have a three year record of making GA claims we would also assume that the answer to this question must be none or very few.

Q12: How many charities with local groups that do not currently claim Gift Aid do you think will claim under the new scheme?

40. See our response to Q11 above.

Q13: How long do you think it will take these parent charities and local groups to start claiming?

41. At the minimum it must be three years, in order to satisfy the requirement that there must be a three year record of making successful Gift Aid claims.

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ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)