

Gift Aid Small Donations Scheme

Consultation response by the Office of Tax Simplification

1. Introduction and summary

Gift Aid is an important component of support to the charity sector and is an established part of the tax system. The extension for top up style payments on small donations (GASDS) where it is not practical to obtain a gift aid declaration is a more recent introduction. Reviewing the operation of GASDS at this stage is very much in line with a key OTS principle for avoiding complexity, namely ensuring provisions are reviewed and kept up to date.

We naturally support moves to make GASDS as simple as possible, while recognising the need to safeguard against abuse. We therefore welcomed the HMRC Call for Evidence paper of 9 December 2015 and the subsequent Consultation Document of 20 April 2016, and are pleased to have this opportunity to respond.

The OTS have not attempted to conduct its own parallel review, nor widely canvassed the charity sector, but we have spoken to four treasurers of small registered charities, of which three were parish churches, in order to help inform our response. We have gathered input evidence on some aspects of gift aid in previous reviews.¹

The consultation document makes references to issues raised by a small number of respondents, and these are set out in part 3 of this response. The OTS would encourage HMRC to fully investigate these points, and carry through improvements found to be necessary, in addition to the mainstream changes proposed by the larger charities.

The particular questions raised in the consultation document are also reviewed in section 3 below. In summary, the OTS considers the current eligibility criteria, and the operation of the community buildings rules as an alternative or additional scheme, to be overly complex. The OTS recommends the eligibility criteria be made as straightforward as possible whilst preserving the ability to be able to police the relief.

¹ A particular issue is the position of partnerships and gift aid, where we highlighted in our third Partnerships report https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396668/ots_partnerships_report_final.pdf (page 35 onwards) the way that the legislation seems to require all partners to be apportioned their share of a gift aid donation and make separate claims to tax relief. At the time HMRC operated a practical process of allowing the representative partner to make a claim on behalf of the firm and we recommended that this be formalised. We have been very disappointed that HMRC have instead withdrawn this practice and are insisting on the cumbersome and burdensome strict rule for donations.

We understand the community buildings rules were introduced to ensure that national organisations such as denominations of churches may claim similar amounts whether they be structured as a single national charity, or a group of individual charities. The OTS recommends merging these two schemes into one, removing the element of choice and doubt currently encountered.

2. The Office of Tax Simplification (OTS)

The OTS is an independent office of HM Treasury, established in 2010 to provide independent advice to Ministers on ways of simplifying the UK tax system. In developing our recommendations we carry out extensive evidence gathering from all those involved with the tax system – businesses large and small, individuals, representative bodies, advisers and HMRC. Our recommendations cover both technical and administrative aspects of the tax system.

The OTS is being placed on a statutory basis in FB16 with an expanded remit. As well as projects on areas of the tax system agreed with Ministers, we can now carry out work on our own initiative. In that context we will on occasion be commenting on consultative documents, where they raise issues of complexity/simplification and we think they would benefit from considerations of some of the principles for avoiding complexity that we have developed.

3. Response to the GASDS Consultation Document

The OTS notes from the summary of responses to the call for evidence, under question one: **Are you aware of the scheme and familiar with the current rules** that ‘a small number said they found aspects of the rules confusing’, and that ‘a number of respondents providing combined responses on behalf of a particular sector felt that awareness of the scheme was low among small charities and CASCs.

Similarly, under question five: **Have you encountered any problems and barriers during the claiming process**, ‘six respondents felt the scheme was too complicated to administer, particularly for volunteers, and three respondents suggested that HMRC’s guidance was unclear’.

Whilst the majority of respondents to the call for evidence were aware of the scheme, this is not surprising given they were responding to a document on the scheme itself. When the OTS is gathering evidence to inform our reviews, we are careful to ensure we talk to all parties who might be affected and we would encourage HMRC to take a similar approach – and so seek to talk to charities who do not use GASDS. Why are they not using it? Could this lack of awareness be addressed by organising an increased publicity campaign, which could be undertaken for example by the Charities Commission?

While the majority of respondents did not encounter barriers to claiming relief, the OTS thinks there is a need to thoroughly investigate the position of those reporting difficulties.

Regarding guidance, we find it interesting that several respondents commented that they relied on sector-produced guidance for interpretation of the rules. The OTS found that a simple online search for HMRC guidance on the scheme produced detailed manual guidance on one occasion, but the

more straightforward less detailed summary guidance on another, with no obvious signposting between the two. Alongside technical changes for simplification that may follow this review, we are pleased to see the consultation document states 'the Government undertakes to work with stakeholders to make the guidance as clear and accessible as possible'. We have found on previous reviews (for example on Employment Status) that bringing guidance together and ensuring it is properly linked and cross referenced can be a significant practical simplification.

Reform options

The consultation document set out the following questions on the subject of simplification changes to the scheme rules:

Question 1 – what would the impact on your charity be of the removal of the current legislative requirement that a charity must have been registered for at least two tax years (the two-year rule) before it can access GASDS? Would this change represent a meaningful simplification of the scheme? Please explain your answer.

Question 2 – What would the impact on charities be if the requirement that a charity must have made a successful Gift Aid claim in at least two out of the previous four tax years (the two-in-four rule) was changed to a requirement that a charity must have made a successful Gift Aid claim in the previous tax year only?

Subject to any issues reported by respondents to the consultation on these changes, the OTS would support streamlining the eligibility rules, which do appear overly complex. It was reported to us that it was somewhat unfair that a charity could not claim in its opening year, but we acknowledge the need to see a compliance history, and this change should enable a charity to claim in year two.

On Gift Aid, the matching rule limiting a GASDS claim to ten times a charity's main Gift Aid claim was raised in the call for evidence, and again we appreciate the need to show compliance under the main scheme. Indeed, this may support expansion of the main scheme. On simplification grounds we would suggest that if the charity makes a successful Gift Aid claim that should suffice to establish eligibility for a GASDS claim, i.e. the 10 x matching could be replaced with a simple de minimis of say £100.

Question 3 – Does your charity currently collect donations using contactless payment technology, or are you currently considering doing so in future? Please explain your answer.

Question 4 – Would expanding GASDS to include donations received via contactless credit and debit cards present any challenges to charities, particularly in terms of record keeping or other administrative requirements? Please explain your answer.

The paragraphs preceding these questions relate to the very nature of this scheme, i.e. small donations where it is not practical to complete a Gift Aid declaration. Whilst the current legislation stipulates cash, other forms of spontaneous giving are now widely used, i.e. text messaging and contactless debit and credit cards, and the OTS feel the scheme needs to be modernised to reflect these trends. Both text and debit/credit cards are simple ways of giving that are likely to increase donations whilst reducing administration for the charity. We are pleased that the consultation contemplates extending GASDS to debit/credit cards but can see no good reason to exclude text giving.

We also hear that cheques are sometimes left on collection plates (where contactless may not be practical), but accept their use is actually declining and do not think that GASDS needs to be extended to include them, nor direct debits where by their nature some 'audit trail' exists.

One church treasurer we spoke to found the wording in the legislation², *that where a gift of cash is made to the charity and its managers do not know whether the gift is £20 or less, the condition in sub-paragraph (1) (- the gift must be £20 or less in cash) is to be treated as met if the managers have taken reasonable steps to find out*, to be impossible to comply with, since there are no such reasonable steps possible in the case of a church collection plate. Of course the HMRC guidance offers some comfort: ‘any bank note of £20 or below, and all coins, can be treated as a small cash donation unless the charity or CASC is aware they were made as part of one single donation of over £20, for example, if a donor personally hands over £30 to the person making the collection, or £30 is given in an envelope’, but it has already been acknowledged that the guidance doesn’t always get through. However some legislative amendment may be helpful so that a common sense approach to this limit may operate without issues of conscience. The limit itself would also need to be kept under review.

Question 5 – Would the government’s proposal to allow charities to claim under the main GASDS allowance or under the community buildings allowance, but not under both, present any equality issues or generate any obviously unfair outcomes? Please explain your answer.

Question 6 – What impact would this proposal have on your charity?

The consultation document acknowledges the current rules do not appear to fulfil the original policy intention, and charities may be able to claim significantly less than others because of the way they are structured. The OTS were also told that the term ‘community building’ was misleading, and we heard of confusion regarding which of the two schemes should apply.

However, merely restricting a claim to one or other schemes would not fully simplify matters, and we make further proposals under question 9 below.

Question 7 – Would relaxing the community buildings rules to allow donations collected to be received outside the building itself allow more charities to claim under GASDS? Please explain your answer.

Question 8 – What reasonable requirements could be included to ensure that the relaxed community buildings rules still only benefit donations received in a specific local community?

The paragraphs preceding these questions set out the issue that those charities claiming under the community buildings rules, presumably because they are deemed connected under the main GASDS rules, may have claims restricted because the donations are received outside the building. The OTS can see that some charities may not be aware whether funds are received inside or outside, and if the community buildings scheme is to remain in place as an alternative relief, then inside or outside should not be a factor. We also heard that the requirement of 10 beneficiaries being present may give rise to difficulties for smaller country churches.

Question 9 – Are here any other reforms you would like the Government to consider?

We understand the HMRC view on connected charities is contested by some. This appears to be the heart of the community buildings issue – charities that are deemed to be connected would have to share the relief and the community buildings relief offers an alternative route.

² Paragraph 1(2) Schedule 1 Small Donations Act 2012

To fully simplify the position, the connected charities rule would need to be recast, in order that only those charities with a sufficiently substantive economic connection were caught. A review could then be undertaken to see if this would remove the need for community buildings relief altogether.

Alternatively, it could be worth considering recasting the rule on the basis that any charity (whether connected to others or not) which operated one or more community buildings had an aggregate allowance equivalent to £8,000 per building, but removing the restriction on funds received outside the building as set out under question 7/8 above.

As set out under paragraph 1 above, the OTS has not undertaken an extensive review on its own, but one improvement suggested to us was on making a second or subsequent in-year claim, whether it would be possible for the online form to show the amount of claims made by the charity to date.