

## Consultation: simplifying the Gift Aid Donor Benefit Rules

### Response from Charity Tax Group (CTG) – 12 May 2016

#### Overview

The Charity Tax Group (CTG) has over 500 members of all sizes representing all types of charitable activity. It was set up in 1982 to make representations to Government on charity taxation and it is now the main representative body for the sector on tax issues affecting charities.

CTG welcomes this consultation and is grateful for the willingness of HMRC and HM Treasury officials to discuss this topic at the CTG Tax Conference. CTG also responded to the earlier Call for Evidence and our response can be read [here](#).

CTG members overwhelmingly support the existence of the Gift Aid donor benefit rules. Benefits to donors are an important way of charities saying “thank you” to their supporters, incentivising giving, and building a relationship with the donor.

The key motivation for reform is to achieve simplification of the Gift Aid donor benefit rules. Simplification must be practical as well as theoretical and reforms are only worth implementing if they are achievable and offer real improvement to charities, donors and HMRC. Feedback from our members has been clear: reforms should be given due consideration, but the cost and resource implications of implementing new systems need to be borne in mind, as do the implications for donor relationships. Simplification need not simply mean stripping back the rules and removing rules and regulations that appear complex. Tax regulation does inevitably involve some complexity and the most effective form of simplification is often achieved by greater clarification of existing rules and more accessible guidance. The diverse nature of the charity sector also means that it may not be possible to achieve a one-size-fits-all solution, and serious consideration may need to be given to different solutions for different types of charities.

It is also crucial that any reforms be carefully thought through before they are implemented, to avoid any unintended consequences which might, for example, affect the integrity of claiming Gift Aid or leave the reformed system open to abuse. As part of that process, CTG would encourage officials to continue their engagement with the sector and work closely with charities (including smaller charities, which may have been unable to respond to the consultation).

#### Consultation Questions

##### Removing the monetary thresholds

1. ***Would calculating the ‘net’ amount of donations on which Gift Aid can be claimed by deducting the cost of providing Donor Benefits from a charity’s gross donation receipts represent genuine simplification for you? Please provide detail to support your response.***

The proposal ignores the fact that charities have to spend a certain amount of money to thank donors and cultivate ongoing relationships. Under this proposal all of this cost would be netted off against the Gift Aid claim, making it less attractive than the current thresholds and in most cases leading to less Gift Aid claimed (as outlined below).

### **Current rules**

- In the course of a year Charity A receives £10,000 in donations, £8,000 of which are accompanied by a Gift Aid declaration by an eligible UK taxpayer. None of these donations exceed £100.
- Charity A spends £500 on benefits that it gives to donors as a 'thank you' for the donations it receives. None of these benefits have a value in excess of £25
- All of the donations fall within the relevant value test (up to 25% of donations £0-100) so Charity A is able to claim Gift Aid on all £8,000 of donations

### **Removing the relevant value test**

- In the course of a year Charity A receives £10,000 in donations, £8,000 of which are accompanied by a Gift Aid declaration by an eligible UK taxpayer. None of these donations exceed £100
- Charity A spends £500 on benefits that it gives to donors as a 'thank you' for the donations it receives. None of these benefits have a value in excess of £25
- Charity A would deduct the cost of providing benefits to donors (£500) from their gross 'Gift Aided' donations. £8,000 - £500 = £7,500.
- Charity A may claim Gift Aid on £7,500 of 'net' Gift Aided donations.

The proposal would therefore be unattractive to charities unless a very generous low value disregard was in place. However, it seems unlikely that this will ever be able to match the 25% value limit on donations up to £100 under the current rules, which enables most lower-value benefits to be disregarded.

### **Removing the relevant value test with a low value disregard introduced**

- In the course of a year Charity A receives £10,000 in donations, £8,000 of which are accompanied by a Gift Aid declaration by an eligible UK taxpayer. None of these donations exceed £100.
- Charity A spends £500 on benefits that it gives to donors as a 'thank you' for the donations it receives. Half of these benefits (£250) exceed the low value disregard limit.
- Charity A would deduct the cost of providing benefits to donors (£250) from their gross 'Gift Aided' donations. £8,000 - £250 = £7,750.
- Charity A may claim Gift Aid on £7,750 of 'net' Gift Aided donations.

The difficulty of valuing benefits is one of the most common points charities make about the donor benefit rules. HMRC's own guidance recognises the difficulty in valuing benefits; but the main complexity is caused by the requirement that the benefit be valued at market price (or the best estimate) to the recipient. The proposal to move to benefits being established by cost is therefore welcome and should be given serious further consideration, even if, as we suggest, proposal 1a is not taken forward.

The biggest obstacle to this proposal would be the additional administrative burden for charities, as outlined in our response to question 3.

## **2. *Would removing the relevant value test and aggregate value test and operating Gift Aid Donor Benefits through an extension of the split payment rule represent genuine simplification for you? Please provide detail to support your response.***

A good number of CTG members make use of the split payments method and find it a very useful mechanism, particularly where they have high value donors and higher value benefits. For these charities, this proposal could be very attractive.

To make the use of split payments more practical we would urge HMRC to remove the requirement that benefits be available for purchase separately. This is a particular problem for organisations that work with a small pool of high value donors, through a membership or Patrons Scheme, as one of the main benefits of being a member is that they get access to exclusive events. Charities would not object to

being required to continue valuing these benefits, but would like to be able to offer exclusive benefits to their donors where appropriate. Valuing benefits at cost would also be particularly helpful in this context too.

However, a large number of CTG members do not use split payments. This is partly because it is not relevant to the types of benefits being offered, or the types of relationships with donors. We are also aware that charities have been put off using split payments by the associated administrative burden (see our response to question 3 for further detail on this point), particularly if the amount of Gift Aid being claimed is relatively low. Lack of take-up may also reflect a lack of understanding about how the split payments rule works.

Split payments are a very useful mechanism for certain charities, but do not work for the whole sector. Extending these rules should therefore be an option for charities, but not the only rule.

**3. *Do you agree that this proposal would mitigate the administrative burden on charities? Please provide details to explain your response.***

Feedback from mass fundraising charities indicates that charities could face large additional administrative costs (time, resources and cost) dependent on the reporting required to calculate the level of benefit received by individual donors. There is limited information in the consultation document about how this information would need to be recorded, but, any new system is likely to be more onerous than the current reporting requirements. Charities currently track the level of benefits provided to their donors, but do not need to keep formal records where the value of benefits to donors clearly fall below the permitted thresholds (which are relatively practical, generous and comfortably cover the cost of small “thank yous” – as outlined in our response to question 1).

For the reasons set out above there would also be additional work to value benefits too.

The consultation paper also fails to consider fully the implications for taxpayers eligible for higher rate relief on their donations. A move to a split payments model would require greater interaction with donors to inform them of the value of their “donational element”, which, while important in helping donors understand their tax position, would lead to greater administration for some charities (both in terms of preparing and sending the letters and modifying existing databases to record this information) for limited additional benefit to the charity (if any). Giving charities the choice would therefore be helpful.

**4. *What negative implications, if any, do you foresee this proposal having on your ability to claim Gift Aid? Please provide details to explain your response.***

The consultation document is unclear about how the netting off of the costs of donor benefits from Gift Aid claims would work in practice. This would need to be done at an individual donor level to avoid the opportunity to manipulate higher rate relief, but the example in Box 3.A of the consultation document suggests otherwise. The example would seem to apportion the total cost of the benefits solely to the gift aid donors, rather than to all donors, despite all donors receiving the benefit. This would mean that donor benefits provided to non Gift Aiding supporters would reduce the amount of Gift Aid which can be claimed, which seems unreasonable.

In addition, Gift Aid managers have to weigh up the cost of the charity’s time and resources in processing a claim against the value of Gift Aid that is available. If there is an increase in the administrative burden (which is already high) charities may decide not to claim. A move to valuations of benefits being established by cost rather than market value is likely to reduce the administrative burden and result in more resources being available to make Gift Aid claims on eligible donations.

## Reducing the number of thresholds

**5. *Would you consider reducing the number of thresholds, from three to one, to be a useful simplification of the current Donor Benefit rules? Please provide details to explain your response.***

CTG members report that the current limits are not logical because they comprise a mixture of percentages (25% or 5%) and a fixed limit (£25), depending on the donation band. The thresholds require charities to have good systems in place to record the value of benefits against each donor and to monitor these benefits against the thresholds. For charities with a very large donor database and with potentially many different ways for the charity to interact with each donor, this can be a very difficult exercise. A single threshold could therefore be a lot simpler and easier to follow than the current thresholds.

The consultation document suggests a 10% threshold, which would permit higher value benefits than under current rules for all donations above £250, but lower value benefits for all donations below £250.

This is welcome for larger donors as it will allow charities to give greater recognition to those that give the most. The consultation document suggests a limit of £2500 for aggregate donations and while there may be merit in introducing a cap to safeguard the system this should be reviewed closely to ensure that this is an appropriate level.

However, it would mean that charities would be able to provide a much smaller benefit for donations of less than £250. The vast number of donations fall into this bracket and it would not make sense to arbitrarily reduce the level of benefit that charities are able to provide. The consultation document recognises this issue and indicates that this could potentially be implemented alongside a disregard for low value benefits. This would be welcome as it would provide an effective exemption for the lowest value benefits, supporting smaller charities, in particular. CTG believes that in order for this to be effective, the low value benefit disregard would need to be slightly higher than the £3 proposed in the consultation document and would suggest that this be set at £5 and be subject to ongoing review and appropriate safeguards.

**6. *Would you consider expressing this remaining threshold in terms of the value of the benefit as a percentage of the associated donation a useful simplification of the Donor Benefit rules? Please provide details.***

Expressing the threshold in percentage terms is preferable to a fixed limit because it ensures that it is future-proof and would not be subject to changes in inflation and subject to uprating.

**7. *Do you think that this proposal is preferable to Proposal 1a (above), namely removing the thresholds altogether? If so, please provide details.***

Yes, subject to a reasonable threshold percentage and low value disregard being agreed. This proposal has the advantage of introducing a clearer simplified threshold without requiring fundamental change to charities' operations and record keeping.

CTG endorses the comments made by the ICAEW with regard to the discontinuity in the current benefit rules that applies at the level of a £1,000 gift. This causes unintended distortions and highlights the importance to further consultation with charities over the practicalities of different bandings.

**8. *Would any of the options set out in Section 1 represent a welcome simplification of the existing rules? If so, please identify which and provide details to explain your response.***

Each of the proposals made have merit, but proposal 1a does not provide a solution for the whole of the sector. If there is sufficient appetite to take these forward, this should be on an opt-in basis. While this

may appear to be adding an extra layer of administration, the overall effect may be to provide different forms of simplification to different target audiences. Separate rules relating to admissions work effectively and could be a good precedent to follow.

As outlined above, CTG would welcome the introduction of a single threshold, alongside a low value benefit disregard, so long as it was high enough to ensure that charities are no worse off than under the existing rules. To ensure this there would need to be further consultation with charities as well as testing of the effects of the new rules. We appreciate the need protect the integrity of the Gift Aid system, but think that any safeguards introduced need to be proportionate.

### **Low-value disregard**

**9. *To what extent would a disregard for low value benefits simplify the Donor Benefit rules for charities? Please explain your answer.***

The existing disregards are very useful to charities and make it very easy to understand where the donor benefit rules do not apply. Using a disregard for low value benefits would be necessary under proposal 2 to ensure that charities currently within the permitted value thresholds are not inadvertently brought into the new rules, or have less of an allowance overall.

A fixed value would be preferable to a list of specific disregards as this could become unwieldy and would need to be revised regularly to keep up with new innovations in fundraising and new types of benefits.

**10. *To what extent would a specific disregard for benefits below the value of £3 represent a valuable simplification for charities? Please explain your answer.***

While a specific disregard for low value benefits would be welcome, CTG believes that £3 is too low and that the starting figure should be somewhere nearer to £5. This would ensure that the vast majority of benefits currently protected by the lower threshold would be covered. Charities do often wish to give a reasonable thank you to donors, to cultivate further giving and £3 is likely to be too low.

If the fixed value was to be lower, it would make sense for benefits to be calculated at cost, rather than market value and we think this should be introduced regardless of the implementation of other proposals. Clearer rules on the correct application of the aggregate value test would also help charities to determine what an appropriate fixed value should be. As with all the proposed reforms, further consultation would be required with charities to determine what the implications would be for the range of benefits currently provided.

CTG would also urge the Government to consider an even higher threshold for benefits that directly advance the charitable purpose of an organisation e.g. birdboxes for a charity like the RSPB.

**11. *What would be the impact on your organisation of applying a disregard for low value benefits according to an annual 'per donor' limit rather than a 'per donation' limit? The government would welcome all views on this proposal, and specifically on the potential administrative impacts and any effect it may have on charities' ability to incentivise their donors.***

CTG believes strongly that a low value disregard would only work if the rules applied on a per donation basis. Otherwise there would be a huge increase in administrative work to keep a track of accumulated benefits during the year. Charities generally assess the donor benefits rules on a campaign by campaign basis and a move to an annual donor limit would be a very unattractive and costly option.

### **Legislation of Extra Statutory Concessions**

**12. *Would you consider the inclusion of a split payments rule in legislation to be a useful clarification of the Donor Benefit rules? Please provide details.***

As outlined in our response to question 2 the split payments rule is very useful to certain charities. We think that it should be included in legislation, and that the Government should use this opportunity to provide additional guidance on this mechanism, as many charities have limited knowledge of it.

**13. *Would the requirement to proactively inform donors of the amount of Gift Aid claimed on split payment donations impose significant extra burdens on charities? If so, please provide details.***

As we understand it, the donor needs to be aware of the value of their donation, rather than the amount of Gift Aid claimed. Many charities using split payments inform their donors of this amount already and it is regarded as best practice. Charities should have the option of using the split payments rules if it suits them and their donors and will necessarily need to absorb some additional administrative burden. The important thing is that the charity has the choice.

As stated in our response to question 2, the Government should remove the requirement that charities using the split payments mechanism have to provide the benefits for purchase separately.

**14. *Would you consider the inclusion of the averaging method in legislation to be a useful simplification of the Donor Benefit rules? Please provide details.***

Many of CTG's members use the averaging method, which can be a very useful way to minimise the administrative burden for the charity because individual benefits do not have to be allocated to individual donors.

Benefits which can be averaged over the whole membership base can also be helpful for charities that have a large member base because the average value of the benefit per member is likely to be very low when divided by the total number of members. For CTG members, a major difficulty has been to know which benefits could be dealt with under the averaging rule, and which ones have to be recorded against individual members. Another difficulty is knowing when the benefit could be averaged over the whole donor base, and when it would need to be restricted to a section of the donor base, for example where publicity of a benefit is targeted at a specific geographical area or group of donors, even though in practice the benefit would usually be available to all donors.

CTG sees no reason for the averaging method to be removed or restricted and believes that this concession should be formalised in appropriate legislation if required. As part of this process, it would be really helpful if the averaging calculation could be formally incorporated into the legislation and its scope extended to cover a wider range of benefits.

We think it is unhelpful that the example provided for averaging in Box 1.C of the consultation document refers to a benefit arising from attendance at a fundraising dinner. We do not believe that there is a benefit in this context (as the emphasis is on building donor relationships [with no expectation of upfront donations] rather than provision of a benefit) and this highlights our wider concerns about the implementation of the "in consequence" rule, which we believe needs further clarification.

**15. *Would you consider the inclusion in legislation of literature being considered of inconsequential value to be a useful simplification of the Donor Benefit rules? Please provide details.***

The overwhelming feedback from CTG members is that the disregard for literature is valuable and should be maintained and that literature should continue to carry no value for the purposes of the donor benefit rules provided the eligibility rules are met. CTG welcomes the Government's proposal to formalise this rule in the legislation, although we would see it more as maintaining consistency with the current rules, rather than a simplification.

It is clear that many charities are embracing digital technology and that they are increasingly sending literature via e-sources including e-books and online apps to share information about the charity and to encourage donations. In many cases this e-material meets the eligibility rules for the disregard in that it is produced solely for the purpose of describing the work of the charity – whether produced by the charity or a third party – and is relevant to and distributed exclusively in furtherance of the objects of the charity. Moreover, it often replicates directly material produced in hard copy and its main purpose is often for marketing purposes and not a benefit *per se*. CTG thinks that the Government should give serious consideration to extending the disregard for literature to equivalent e-sources.

### **Removing the lifetime benefits rule**

**16. *How, if at all, would the removal of the lifetime benefits rule create problems or complexity for charities? Please provide specific examples to support your answer.***

CTG understands that some of its members provide lifetime benefits using the 10-year rule, or would consider doing so. We are also conscious that there may be charities using the rules that have not been able to contribute to this discussion.

We would suggest that, so long as HMRC has not identified any problems with lifetime benefits, the *status quo* should be maintained and legislation introduced to formalise this concession. We do not regard removing this provision as a simplification.

We also have concerns that removing the lifetime benefit rule could have unintended consequences that could leave the donor benefit rules vulnerable to fraud. Under the normal rules for annual members you look at what benefits are provided in the year and measure the benefits against that donation. If someone buys a lifetime membership, and if the 10 year rule is abolished, for what period do you have to monitor the benefits? If it were just the tax year in which the donation was made, this would open up the possibility of high value (non-disregarded) benefits being provided in Year 2 onwards, which could lead to abuse, eg lavish dinners for a Friends group of an Arts charity. Or would you have to continually monitor the benefits for the entire life of the donor? In theory this could be the case if the 10 year rule was abolished.

### **Any other considerations**

**17. *Are there any other major aspects of reform that you would like the Government to consider? Please provide details.***

A number of respondents to the Call for Evidence expressed concerns that there was uncertainty in the application of the ‘in consequence’ rule. This is not well defined or explained in the guidance and there is widespread misunderstanding of the correct interpretation. The averaging rule example in Box 1.C of the consultation document, for example, does not make the “in consequence” rule any clearer. If David gives a donation at the fundraising dinner, then how can the benefit of that dinner be “in consequence” of his donation? The uncertainty surrounding this crucial rule has been a longstanding issue for CTG and one that we have raised in the donor benefits working group. We believe that this warrants a dedicated review and close consultation with members because the current guidance is unsatisfactory and leads to uncertainty for charities and their advisers.

CTG supports the existence of different levels of guidance for different audiences. Easily accessible, straightforward guidance is essential to enable donors and those new to the rules to understand the requirements. However, CTG members are also very clear that there is a requirement for detailed guidance which can be relied on by tax professionals and which provides satisfactory assurances about the eligibility of different benefits and arrangements. Members report a lack of breadth and depth in the examples included in the detailed guidance in Chapter 3. We are conscious that it is not practical (or

even possible) to include an exhaustive list of scenarios on the website; but we would encourage the inclusion of as many examples as possible – not least because the situations in which the rules may come into play are so varied.

While most charities cope reasonably well with the donor benefit rules, we do receive complaints from charities about their unnecessary complexity and about the fact that HMRC guidance is not always that easy to follow. In a large charity with many staff involved in activities which could have implications for Gift Aid, it can be very difficult to ensure that everyone has the correct level of understanding of how the rules work in practice. It would help if at least part of the guidance could be written with fundraisers in mind and discussed with them before being issued. There can be situations where a fundraising strategy is agreed but it is only when it comes to claiming the Gift Aid that it becomes apparent that donations are ineligible for Gift Aid. If fundraisers were provided with more accessible guidance it is likely that the gift and the donors' benefit could be structured to ensure Gift Aid could be claimed. It would also relieve pressure on finance staff, who have to monitor each new fundraising product very closely to ensure compliance with the rules.

More generally, members have reported difficulties in using the Gov.uk website to access guidance on the Gift Aid donor benefit rules as well as wider guidance relating to Gift Aid and charity tax. We are grateful to the Minister and officials for recognising this concern and hope to see continued improvements going forward. Easy access to guidance is critical if the donor benefit rules are to work in practice.

We understand the reason for not including VAT considerations in the consultation document – and as previously stated, charities would not want the Gift Aid and VAT treatment of benefits to be aligned – but it is a material factor and the corresponding VAT implications of any of the proposals should be taken into account before implementation.

We also continue to support proposals for the admissions disregard to be extended to live performances where they are provided in line with their charitable purposes. We believe that this specific exclusion to a list that is otherwise regarded as not exhaustive is anomalous and would be a simple revision to the existing rules that would place charities that provide access to live performances on a level playing field.

Lastly CTG supports the proposal that there should be a return to the previous HMRC position whereby all 'unsolicited' third party benefits were disregarded, and that 'solicited' third party benefits should be disregarded where evidence is held by the charity that a similar offer is available to other members of the general public.

**CTG**  
**12 May 2016**