



**Extending UK Charity Tax Reliefs to Certain Organisations in
Europe**

Questions and answers

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Introduction:

UK charity tax reliefs are being extended to certain organisations which are equivalent to charities and Community Amateur Sports Clubs (CASCs) in the EU and in the European Economic Area (EEA) countries of Norway and Iceland, following a judgment in the European Court of Justice (ECJ) in January 2009.

A number of changes to the law and processes are being introduced at the same time. These will:

- align the definition of a charity across all charitable tax reliefs and charity exemptions administered by HM Revenue & Customs (HMRC);
- limit the scope for fraudulent claims;
- remove inconsistencies in the current rules; and
- ensure that HMRC can maintain a cost efficient service to charities.

This document aims to help answer the questions you may have about these changes from the perspective of a charity or CASC or a donor. If you have any queries not covered by this briefing, you can contact the HMRC Charities team at: charities@hmrc.gov.uk

Chapter 1 – Charity/CASC questions:

Existing UK Charities

Q1 We are an existing UK charity, how do these changes affect us?

A1 It is unlikely they will impact on you at all. For the vast majority of charities these changes will make no difference. You can continue to claim Gift Aid repayments and file returns as necessary. If you are affected by the changes we will let you know.

However you may find it useful to read our guidance on “fit and proper” persons, and be aware that HMRC will shortly be informally consulting on changes to the in-year Gift Aid repayment claim process. We will issue guidance on the changes soon.

Q2 We are an existing UK charity, but we haven’t been in touch with HMRC for five years, how do these changes affect us?

A2 For the vast majority of charities these changes will make no difference.

However you may find it useful to read our guidance on “fit and proper” persons, which will be available soon.

We will issue further guidance on the changes soon. Until this guidance is available please follow the usual process which can be found at http://www.hmrc.gov.uk/charities/gift_aid/reclaim.htm.

Q3 We are a charity who is registered with the Charity Commission already, do we still need to worry about this?

A3 Probably not. If you are already registered with HMRC you don’t need to do anything further. If you are not registered with HMRC then unless you want to apply to receive Gift Aid repayments, or you receive income that is liable to tax, you don’t need to do anything more at this time.

Q4 We are an existing charity and have just sent in our latest Gift Aid claim, will it still be paid?

A4 We cannot give blanket assurances about individual claims. All claims are considered individually and these changes don’t alter that. The chances are if your claims have been paid in the past they will still be paid but if there is a problem we will let you know why.

Q5 We are an existing UK charity, and are about to change some of our trustees. Do we need to submit information to HMRC so they check they are fit and proper?

A5 You only need to tell us if the trustee or other officer, who is nominated to deal with HMRC, changes. This will be the person who submits tax returns and Gift Aid repayment claims. You will be able to do this through the new variations form, which will be available on our website soon.

Until this form is available please follow the usual process which can be found at http://www.hmrc.gov.uk/charities/gift_aid/reclaim.htm.

With regards to any other trustees who are changing, whilst you do not need to inform HMRC about them, you may find it useful to read our guidance on “fit and proper” persons, which will be available soon.

Q6 We are an existing UK charity, and have been getting regular Gift Aid repayments, do we need to let HMRC have details of all of our officials so that you can check that they are fit and proper?

A6 No. We will let you know if we need any information from you. However you may find it useful to read our guidance on “fit and proper” persons, which will be available soon. You will need to tell us if the trustee or other officer, who is nominated to deal with HMRC, changes.

You will be able to do this through the new variations form, which will be available to download from our website soon. Until this form is available please follow the usual process which can be found at http://www.hmrc.gov.uk/charities/gift_aid/reclaim.htm.

Q7 Will business rates relief be affected by these changes?

A7 No, however HMRC does not administer business rates relief so if you have any specific questions on business rates you will need to contact your local authority for more information.

Q8 Won't the restriction of in-year Gift Aid payments cause small charities cash-flow problems?

A8 HMRC will informally consult with the charity sector in shaping the way in-year Gift Aid payments are restricted under this measure – the position of small charities and any cash-flow difficulties will be considered carefully in order to minimise any potential impact on them.

New UK charities and non-UK charities

Q9 I want to register my charity to be eligible for UK charitable tax reliefs - what do I need to do?

A9 In due course you will be able to look at our website for guidance on setting up a charity (see www.hmrc.gov.uk/charities/index.htm). It will explain all you need to know. If necessary, you will also have to complete our new application form, which will be available on our website soon.

Until this form is available please follow the usual process which can be found at http://www.hmrc.gov.uk/charities/gift_aid/reclaim.htm.

Q10 Are there certain criteria my new charity must meet to be eligible for UK charitable tax reliefs?

A10 Yes. To be eligible for UK charitable tax reliefs a charity needs to meet the English and Welsh definition of a charity, be based in the EU, Norway or Iceland, be registered with any regulators in their home country which the law

requires the organisation to register with, such as the Charity Commission in England and Wales, and have managers that are fit and proper persons. You will find it useful to read our guidance on “fit and proper” persons, which will be available soon, along with further guidance on these changes.

Q11 I am a charity established in the EU, can I now benefit from the VAT reliefs and exemptions available to charitable organisations in the UK?

A11 Potentially yes. Just like any other tax relief, to be eligible for the UK VAT reliefs and exemptions, your organisation needs to meet the English and Welsh definition of a charity, be based in the EU, Norway or Iceland, be registered with any regulators in your home country which the law requires your organisation to register with, and have managers that are fit and proper persons. You will find it useful to read our guidance on “fit and proper” persons, which will be available soon, along with further guidance on these changes.

Q12 How will HMRC determine whether an organisation is set up for charitable purposes only?

A12 As now, HMRC will look at whether the organisation meets the definition of charitable purposes within the meaning of the Charities Acts of 1993 and 2006.

Q13 Doesn't this just replicate what the Charity Commission does already?

A13 HMRC takes into account the fact that charities registered with the Charity Commission have already had their charitable purposes reviewed, when considering an application for eligibility to tax relief. The checks performed by HMRC are, in these situations, tailored to reflect the fact the charities are already registered with the Commission.

The Charity Commission however only considers applications from certain charities established in England and Wales. HMRC already applies the charitable purposes test to applications from smaller charities within England and Wales, and charities established in Scotland and Northern Ireland, and now also to organisations within the EU, Norway and Iceland. The checks performed by HMRC also go further than those of the Charity Commission to the extent that they consider the eligibility of an organisation to access valuable tax reliefs.

Q14 I am about to set up a charity in the UK, do these changes apply to me?

A14 Yes, if your charity wants to benefit from charity tax reliefs like Gift Aid. Look at our website for guidance on setting up a charity which will be available soon.

Until that guidance is available please follow the usual process which can be found at http://www.hmrc.gov.uk/charities/gift_aid/reclaim.htm.

Q15 I am about to set up a charitable organisation in France, do these changes apply to me?

A15 Only if you want to claim any UK charity tax reliefs or exemptions, or if you are going to receive any donations from UK taxpayers that you want to include in Gift Aid.

Q16 I am about to set up a charity outside the EU, Iceland and Norway will I now be able to claim UK charity tax reliefs?

A16 No.

Q17 What does the new 'registration condition' mean for new charities in Scotland and Northern Ireland?

A17 Very little. Charities wishing to benefit from charitable tax reliefs still need to register with their charity regulator, where it is a requirement to do so by the law in their jurisdiction. So if, for example, the law in Northern Ireland requires a charity to register with the Charity Commission of Northern Ireland, once it is set up, then it must do so. The new legislation outlines that registration with such authorities is a requirement in advance of an application to HMRC for any tax reliefs or exemptions.

General

Q18 Which tax reliefs are affected by these changes?

A18 The changes affect all tax reliefs available to charities, CASCs and their donors which are administered by HMRC. These are generally referred to as charitable tax reliefs and include: income tax, Gift Aid; capital gains tax; corporation tax; VAT reliefs and exemptions; inheritance tax; and the various stamps taxes.

Q19 How will tax reliefs be affected by these changes?

A19 The nature of the reliefs themselves is not affected. What is changing is that these reliefs are now available to certain organisations in Europe that are the equivalent of a charity or CASC in the UK.

Q20 What is the English and Welsh definition of a charity?

A20 The English and Welsh definition of a charity is based on case law and the Charities Act definition of charitable purpose, which includes a purpose to do with the prevention or relief of poverty, advancement of education, religion, health or saving lives, citizenship or community development, arts and culture. The organisation must be established for charitable purposes only and these purposes must be for the public benefit. To find out more about which sorts of activity that qualify and how to register as a charity, see the Charity Commission website <http://www.charity-commission.gov.uk>.

Q21 Does this mean HMRC could deny tax relief to a charity registered as such with the Charity Commission?

A21 As now, if a charity is registered with the Charity Commission but cannot satisfy HMRC that it is eligible for charitable tax reliefs, any claim to tax relief will be denied. If this happens HMRC will provide the organisation

with an explanation of why they have failed to qualify for tax relief, giving the organisation an opportunity to rectify the position.

Q22 Doesn't this just make getting tax relief even more complicated for genuine charities?

A22 No, the position will be as straight forward for genuine charities as it is now. Charities are not being asked to undertake anything more than what they already have to do.

Q23 Will this have an adverse effect on UK charities? What is being done to counter this?

A23 A number of these changes will impact upon the way UK charities interact with HMRC, but on the whole this measure places on a statutory footing what UK charities are required to do under existing rules and procedures and any potential adverse impact has been minimised.

Q24 Will eligibility to UK charitable tax reliefs be available retrospectively to non-UK charities?

A24 Claims to charitable tax reliefs in respect of organisations equivalent to UK charities in the EU, Norway or Iceland on or after the date of the ECJ judgment on 27 January 2009 will be considered on a case by case basis.

Q25 If non-UK organisations are found to be fraudulent will HMRC be able to get the money back from them?

A25 Yes, within the EU HMRC have the discretion to exercise its power under the Mutual Assistance Recovery Directive to claw back excessive reliefs. Similar agreements with Norway and Iceland enable recovery from these countries also.

Fit and Proper Persons Test

Q26 Who will the fit and proper person test be applied to?

A26 The fit and proper person test will not only be applied to charity directors or trustees, and CASC officials – but will also apply to anyone who, in practice, controls the financial aspects of running the charity.

Q27 How will HMRC decide if a charity director, trustee, manager, or CASC official, is a 'fit and proper person'?

A27 If HMRC needs to decide if a person is "fit and proper" it will look at the records it holds, and has access to, to determine whether that individual, is likely to exploit the charity tax reliefs for non-charitable purposes. The position the person holds within the organisation will be very important as those with greater control over how charity tax reliefs are used will clearly present a greater risk than those with no such control. As a result the tests applied will vary from case to case, depending on individual circumstances (and the position held), and will range from simple verification of the person's name and address to detailed examination of the facts where, for example, there has been a previous conviction for tax fraud.

Q28 Will organisations lose their tax reliefs if a director, trustee, manager or CASC official is not fit and proper?

A28 HMRC will not automatically deny a charity access to charitable tax reliefs if it determines that one, or more, relevant persons are not fit and proper. Where there has not been, or is unlikely to be, any misappropriation of the charity's funds, HMRC will work with the organisation to ensure entitlement to tax relief continues in full.

Q29 Isn't it unfair to prevent a charity or CASC from accessing charity tax reliefs simply because they unwittingly engage a director, trustee, manager or CASC official who HMRC deem not to be 'fit and proper'?

A29 HMRC will not automatically deny a charity access to charitable tax reliefs if it determines that one, or more, relevant persons are not fit and proper. Where there has not been, or is unlikely to be, a misappropriation of the charity's funds, HMRC will work with the organisation to ensure entitlement to relief continues in full.

HMRC's approach will depend upon the individual circumstances in each case. For example, if a charity trustee had previously been convicted of a finance related offence, but was not involved in, or capable of influencing, the financial affairs of the charity then HMRC would probably consider that the charity continued to be eligible for charitable tax reliefs.

Q30 What about charities that seek to rehabilitate offenders? They may have directors, managers or trustees who would fail a 'fit and proper person' test for this reason.

A30 The fit and proper test will be applied flexibly by HMRC and a charity's eligibility for UK tax reliefs will not be automatically denied where the test has not been satisfied. In appropriate cases HMRC will work with the charity in an attempt to ensure eligibility for reliefs continue.

CASCs

Q31 Can't you leave CASCs out of this? Aren't they a uniquely UK phenomenon? Wasn't the CASC system designed to make things easier for them and to encourage amateur sports participation?

A31 CASCs are entitled to benefit from a number of the UK's charitable tax reliefs and so the new regime will be applied to them as well.

Chapter 2 – Donor questions:

Q32 I am a UK donor to charity. What tax reliefs are affected by these changes?

A32 The changes affect all charitable tax reliefs administered by HMRC: income tax, including Gift Aid donations; capital gains tax; corporation tax; VAT reliefs and exemptions; inheritance tax; and the various stamps taxes. The reliefs themselves are not affected. What is changing is that those reliefs are now available on donations to certain organisations in the European Union, Iceland and Norway that are the equivalent of a charity or CASC in the UK.

Q33 How do I know if an organisation is eligible for UK charitable tax reliefs?

A33 All charities and CASCs in the UK that are currently eligible for UK charitable tax reliefs will remain eligible under the new rules provided they continue to operate within the rules. If you are uncertain whether a new UK or non-UK organisation is eligible for charitable tax reliefs you should ask them whether HMRC has agreed that they are eligible. We will be publishing a list of organisations where we have confirmed they do qualify for relief on our website soon.

Q34 I'm a UK taxpayer. Am I affected by this?

A34 If you donate money to charity, then this change may be of interest to you, although most people who donate to charities will not notice a difference. But you will now be able to claim tax relief on gifts to organisations in the EU, Iceland and Norway, if those organisations are eligible for UK charitable tax reliefs. We will be publishing a list of organisations where we have confirmed they do qualify for relief on our website soon, to assist you in determining whether relief can be claimed.

Q35 I gave some money to a charity in the EU last year. Can I claim relief on the gift?

A35 If you have made a gift to a charitable organisation in an EU country, or Iceland or Norway, since 27 January 2009 you may be able to claim tax relief on the gift, depending on whether the recipient would be a charity under English and Welsh law at that time. You should ask the organisation if they can confirm whether HMRC have said they qualify for relief. We will be publishing a list of organisations where we have confirmed they do qualify for relief on our website soon.

Q36 Will this treatment be available retrospectively to donors to non-UK charities?

A36 Claims to tax relief in respect of donations to organisations equivalent to UK charities in the EU, Norway or Iceland on or after the date of the ECJ judgement on 27 January 2009 will be considered on a case by case basis.

Q37 Why don't you publish a list of eligible charities?

A37 We shall soon be publishing a list of charities that we have agreed are eligible to UK charitable tax reliefs. However even where a charity appears on the list you may want to check that they continue to be eligible at the point when you make your donation: it is possible that some charities, particularly smaller charities, may have become dormant in the meantime or changed their circumstances such that they are no longer eligible for UK charitable tax reliefs.

Q38 I am not a UK resident, but I pay UK tax on some of my earnings. Can I apply Gift Aid to my charitable donations to both UK and EU charities?

A38 Yes, as long as your donation qualifies under the usual Gift Aid rules - see <http://www.hmrc.gov.uk/individuals/giving/gift-aid.htm> - your donations to UK charities, and equivalent organisations eligible to claim UK charitable tax reliefs in the EU (Norway and Iceland) will qualify under Gift Aid.