



Simplifying the Gift Aid donor benefits rules

ICAEW welcomes the opportunity to comment on the HM Treasury consultation Simplifying the Gift Aid donor benefits rules published in February 2016 and available from this [link](#).

This response of 11 May 2016 reflects consultation with the ICAEW's Charity Technical Sub-Committee of the ICAEW Business Law Committee. This Sub-Committee includes representatives from public practice and the charity sector.

Our response of 9 October 2015 to the earlier HMRC call for evidence on this issue is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working 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 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

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.

Copyright © ICAEW 2016
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: representations@icaew.com

icaew.com

MAJOR POINTS

1. We comment on the two main options suggested below. As might be expected, there are potential advantages and disadvantages with each approach. While the current regime is complex we believe that any radical change should be approached with caution and developed more fully (including as regards HMRC systems and processes) and tested within the sector before being introduced, with particular consideration given to the potential effect on small charities and how change will be communicated to the sector to ensure awareness.
2. Of the less radical changes considered, we believe that replacing market value tests with cost of benefits is likely to have the greatest scope to simplify the existing regime. There is also scope to simplify the relevant value test, but the resulting thresholds would need to be sufficiently generous for change to be widely welcomed, given that some short term disruption would inevitably result.

Question 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.

3. While this appears to be a simplification, it could have unintended consequences for many charities and result in its own complications.
4. In particular, we believe that most charities legitimately do not record donor benefits in a systematic way under the current regime. A ‘net amount’ regime, however, would tend to require the costs to be assessed systematically. This might result in charities having to consider related issues that are potentially difficult in themselves (whether under the existing or, possibly, any new, regime), such as whether a particular arrangement does constitute a ‘benefit’ and how to assess its cost. Also for many charities the cost of recording the benefits systematically would be unwelcome.
5. In many cases the donations in respect of which gift aid could be claimed might be reduced under a ‘net’ regime, particularly on low value donations with a benefit offered.
6. It is also unclear how the regime would operate in respect of the claims process for Gift Aid and how the cost of benefits would be accounted for (eg against each donation or in aggregate) or how the regime would affect tax reclaims for higher rate tax payers.
7. That said, this approach would mean that relevant charities would no longer need to analyse the value of benefits provided in individual cases. In addition, it is usually likely to be simpler to ascertain ‘cost’ than it would be to ascertain ‘market value’.
8. It might be that concerns could be alleviated by ensuring that there are suitable low value disregards or de-minimus levels, but as this would represent a radical change, we would suggest that case studies be undertaken to ascertain the practical impact on a sample of charities and an initial feasibility study regarding impact on HMRC systems and processes before it is pursued further.
9. The illustration given of this option involves deducting the entire cost of providing benefits to donors even where some donors do not make a Gift Aid declaration. It would be more logical for the deduction to be based on the cost involved in benefits provided to Gift Aid donors (ie a proportional amount of the total costs).

Question 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.

10. As noted in our response to the Call for Evidence, we believe that the existing relevant value test could usefully be simplified.

11. The split payment rule involves calculation of market value which can itself be complicated and would require donor benefits to be recorded in a systematic way that is not currently always required under the relevant value regime. Even if actual cost were to be applied in place of market value, it would still be necessary to have de-minimus thresholds and disregards or the amount of donations in respect of which gift aid could be claimed would be reduced.

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

12. See answers to Q1/2.

Question 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.

13. See answers to Q1/2.

Question 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.

14. As noted above, we believe that there is scope to simplify the relevant value test. However, any change is likely to lead to short term complication as the sector adjusts and the most important issue for charities is likely to be whether the levels result in a more or less generous tax regime for charities to encourage charitable giving.

Question 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.

15. It would be simpler to have a threshold that is expressed simply as a percentage, rather than to have a number of thresholds based on percentages and absolute amounts. As noted above, however, a new set of rules would have the potential to create greater complexity in the short term. It is also important that the threshold applying to small donations is generous to minimise the amount of administrative work involved in large volumes of small donations (if Gift Aid is to be claimed).

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

16. See earlier comments. Whether or not the number of thresholds is changed we believe it is important to remove the discontinuity in the benefit rules that applies at the level of a £1000 gift. The maximum benefit value is £25 on a gift of just less than £1000 but doubles to £50 if the gift is £1,000. A free ticket for an event or dinner will often have a value between £25 and £50. But if a charity wishes to offer its donors a gift worth £30 under the current scale it has to receive a minimum donation of £1000 which seems harsh.
17. Even if the Government decides to keep to the essence of the current system, this particular issue could be addressed by changing the £1000 threshold to £500 so the rules on maximum benefit would then be:
- 25% on gifts up to £100
 - £25 on gifts £100 to £500
 - 5% on gifts £500 and above.

Question 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.

18. See earlier comments.

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

19. It is important that low value benefits are excluded by some mechanism to reduce disproportionate administrative work (or risk deterring Gift Aid claims), but there are inevitably challenges in defining the value of the benefit and the threshold as is evident from the existing regime and points of discussion noted above..

Question 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.

20. Again, the question of how 'value' is determined arises and if this is suggested as an alternative to the current relevant value test, it appears to be a very low figure (compared to 25% up to £100 in respect of small donations).

Question 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.

21. A 'per donor' disregard would require charities to maintain new types of records and databases which could be costly and burdensome, particularly for smaller charities and we believe that per donation is preferable.

Question 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.

22. This would create greater clarity and certainty.

Question 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.

23. We understand that split payment donations are relatively rare, largely due to the market value requirement. Those using the process are required to have relevant records so that it might be supposed that informing donors would not be over-burdensome. However, it would be an additional burden as charities would need to set up new processes and in some cases alter their arrangements with third parties. It is not therefore easy to see how this would be a simplification for charities or what the justification for it would be.

Question 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.

24. This would not be expected to give rise to simplification but it would create greater clarity and certainty.

Question 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.

25. As above, this would not be expected to give rise to simplification but it would create greater clarity and certainty.

Question 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.

26. Although this rule is little used, in cases where it is used it means that calculations are much more straightforward than they would otherwise be.

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

27. As mentioned in our response to the Call for Evidence, we believe that what is meant by 'as a consequence' and 'entirely unsolicited' in HMRC guidance might be more clearly explained and we welcome the assurance given in the consultation that Government is open to this guidance being updated in general.