

## **In-year Repayments of Tax to Charities**

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### **Who is likely to be affected?**

This measure applies to charitable companies and some charitable trusts that make claims for repayment of tax (excluding Gift Aid) outside a tax return.

### **General description of the measure**

This measure puts on a statutory footing the practice by certain charities of making claims for repayment of tax outside a tax return (excluding Gift Aid). HM Revenue & Customs (HMRC) makes certain repayments of tax to charitable companies and certain charitable trusts that make a claim to repayment of tax outside a tax return (in-year claims) which should, in strict law, be claimed in a tax return.

In-year claims to repayments of income tax under Gift Aid were put on a statutory basis by Schedule 8 to Finance Act 2010 and this measure puts on a statutory basis other repayments of tax to charities. As the measure is legislating an existing extra-statutory concession, charities will not need to be aware of the change.

### **Policy objective**

This measure puts on a statutory footing an extra statutory concession operated by HMRC, to support the Government's agenda of making the tax system fairer.

### **Background to the measure**

The measure was announced at Budget 2011. It will retain the effect of the existing concession.

## **Detailed proposal**

### **Operative date**

This measure will apply for claims made on or after 6 April 2012.

### **Current law**

Section 42(2) of the Taxes Management Act 1970 provides that repayments of tax other than Gift Aid relief should be claimed only in an annual return made by a charitable trust if a notice has been issued to make a tax return. Paragraph 9 of Schedule 18 to the Finance Act 1998 provides that repayments of tax, other than Gift Aid relief, should be claimed by a charitable company only in its annual return, whether or not a notice has been issued requiring a return to be made.

### **Proposed revisions**

Legislation will be introduced in Finance Bill 2012 to make provision for charitable trusts that have received a notice to make a tax return and charitable companies to make in-year claims to repayments of tax.

## Summary of impacts

<b>Exchequer impact (£m)</b>	2011-12	2012-13	2013-14	2014-15	2015-16
	-	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.				
<b>Economic impact</b>	This measure will have no economic impact.				
<b>Impact on individuals and households</b>	This measure concerns charities rather than individual donors to charities and it has no direct impact on individuals or households.				
<b>Equalities impacts</b>	The potential equality impacts of this policy have been considered. No different impact on any equality group has been identified.				
<b>Impact on business including civil society organisations</b>	This measure is simply to put an extra statutory concession on a statutory basis and charities for the most part will not need to be aware of the change.				
<b>Operational impact (£m) (HMRC or other)</b>	This measure will not have any impact on HMRC's operating costs.				
<b>Other impacts</b>	No other impacts have been identified.				

## Monitoring and evaluation

This measure will be kept under review through communication with relevant taxpayer groups.

## Further advice

If you have any questions about this change, please contact the Charities Helpline on 0845 302 0203 (email: [charities@hmrc.gov.uk](mailto:charities@hmrc.gov.uk)).

## 1 Charities: claims for relief

- (1) In section 42 of TMA 1970 (procedure for making claims etc), in subsection (3ZA), for the words after “tax” substitute “by virtue of—
  - (a) section 521(4) of ITA 2007 (gifts entitling donor to gift aid relief: charitable trusts),
  - (b) section 532 of that Act (exemption for savings and investment income),
  - (c) section 533 of that Act (exemption for public revenue dividends),
  - (d) section 536 of that Act (exemption for certain miscellaneous income), or
  - (e) section 537 of that Act (exemption for income from estates in administration).”
- (2) In section 538A of ITA 2007 (claims in relation to gift aid relief)—
  - (a) in subsection (1) for the words after “tax” substitute “by virtue of—
    - (a) section 521(4) (gifts entitling donor to gift aid relief: charitable trusts),
    - (b) section 532 (exemption for savings and investment income),
    - (c) section 533 (exemption for public revenue dividends),
    - (d) section 536 (exemption for certain miscellaneous income), or
    - (e) section 537 (exemption for income from estates in administration).”, and
  - (b) in the heading, after “**relief**” insert “**etc**”.
- (3) In Schedule 18 to FA 1998 (company tax returns, assessments and related matters)—
  - (a) in paragraph 9 (claims that cannot be made without a return), in sub-paragraph (2A), omit the “or” at the end of paragraph (a) and after paragraph (b) insert—
    - “(c) section 486 of that Act (exemption for investment income and non-trading profits from loan relationships),
    - (d) section 487 of that Act (exemption for public revenue dividends),
    - (e) section 488 of that Act (exemption for certain miscellaneous income), or
    - (f) section 489 of that Act (exemption for income from estates in administration).”, and
  - (b) in paragraph 57 (claims or elections affecting a single accounting period), in sub-paragraph (1A), omit the “or” at the end of paragraph (a) and after paragraph (b) insert—
    - “(c) section 486 of that Act (exemption for investment income and non-trading profits from loan relationships),
    - (d) section 487 of that Act (exemption for public revenue dividends),
    - (e) section 488 of that Act (exemption for certain miscellaneous income), or

(f) section 489 of that Act (exemption for income from estates in administration).”

(4) After section 491 of CTA 2010 insert –

*“Claims*

**491A Claims in relation to certain reliefs**

- (1) Subsections (2) to (5) of section 477A (claims in relation to gift aid) apply to claims for amounts to be exempt from tax by virtue of a provision listed in subsection (2) as they apply to claims to which that section applies.
- (2) The provisions are –
  - (a) section 486 (exemption for investment income and non-trading profits from loan relationships),
  - (b) section 487 (exemption for public revenue dividends),
  - (c) section 488 (exemption for certain miscellaneous income), or
  - (d) section 489 (exemption for income from estates in administration).”
- (5) The amendments made by subsections (1) and (3) have effect in relation to claims whenever made.

**EXPLANATORY NOTE**

**CHARITIES: CLAIMS FOR RELIEF**

**SUMMARY**

1. This clause enables claims to be made to HM Revenue & Customs (HMRC) outside a tax return for repayments of tax to charitable companies and certain charitable trusts in respect of certain sources of income.

**DETAILS OF THE CLAUSE**

2. This clause amends the rules for charitable trusts and charitable companies to make claims for the repayment of tax and aligns the rules with those that already apply to Gift Aid. Currently:
  - charitable trusts that have been issued with a notice to file a tax return can claim a repayment of income tax (other than in respect of Gift Aid relief) only on the tax return (section 42(2) of the Taxes Management Act 1970 (TMA)); and
  - charitable companies that are subject to corporation tax, can claim a repayment of income tax (other than in respect of Gift Aid relief) only after the delivery of a company tax return for the period to which the claim relates (paragraphs 9(1) and (2) of Schedule 18 to the Finance Act (FA) 1998).
3. Subsection (1) disapplies (in respect of certain sources of income) the requirement in section 42(2) of the TMA that, where HMRC has already issued a notice to charitable trustees to make a tax return for the year, and the trustees are to make a claim, that claim must be included in a tax return. The sources of income in respect of which this requirement does not apply are added to the list in section 42(3ZA) TMA which includes gifts entitling a donor to Gift Aid relief.
4. Subsection (2) amends section 538A of the Income Tax Act 2007 (ITA). Section 538A of the ITA enables charitable trusts to make a claim for repayment of income tax withheld on income from the sources listed in section 538A, in what is known as a “free-standing claim”. A free-standing claim may be made during the tax year in which the income is received. The provision also enables the Commissioners of HMRC to make regulations to limit the number of free-standing claims that may be made within a tax year and the minimum amount that may be claimed in a free-standing claim.

5. Subsection (3) disapples the requirement in Schedule 18 to Finance Act 1998 for a charitable company to make a claim for repayment of income tax in a company tax return. The sources of income in respect of which this requirement does not apply are added to the lists in paragraph 9(2A) and paragraph 57(1A) of Schedule 18, which already include gifts qualifying for Gift Aid relief.
6. Subsection (4) introduces new section 491A of the Corporation Tax Act (CTA) 2010.
7. New section 491A applies certain provisions within section 477A CTA 2010 (claims in relation to Gift Aid) to the sources of income listed in new section 491A(2). The effect of this provision is to enable charitable companies to make a claim for repayment of income tax withheld on income from the sources listed, in what is known as a “free standing claim”. A free standing claim may be made during the tax year in which the income is received. The provision also enables the Commissioners of HMRC to make regulations limiting the number of free-standing claims that may be made within a tax year and the minimum amount that may be claimed in a free-standing claim.

#### **BACKGROUND NOTE**

8. HMRC has allowed charitable trusts and charitable companies to submit tax repayment claims in advance of filing a tax return (“in-year claims”) under their powers of collection and management, although in law some trusts and all companies are allowed to make a claim only in a tax return. The same rules applied in relation to repayments of tax under Gift Aid but these were put on a statutory footing by paragraphs 4 to 7 of Schedule 8 to FA 2010.
9. This clause aligns the treatment of claims to repayments of tax in respect of a number of sources of income with the treatment of repayment claims in respect of Gift Aid relief.
10. If you have any questions about this change, or comments on the legislation, please contact Ellie Mayor on 020 7147 2822 or 020 7147 2778 (email [charitypolicy.taxteam@hmrc.gsi.gov.uk](mailto:charitypolicy.taxteam@hmrc.gsi.gov.uk)).