

Jewish state schools were celebrating last month. After over 3 years of protracted dialogue, HMRC had announced that they would be continuing to grant gift aid tax relief on voluntary donations/contributions made by parents for the religious tuition given to their children.

Background

Gift aid had been available on parental donations to all state schools nationwide since 1997 i.e. whether it was a faith school or not was irrelevant (this is in contrast to private schools where very different and much stricter rules apply). In 2014 certain matters were drawn to the attention of HMRC, resulting in their questioning whether gift aid should cease on these voluntary donations (and it did indeed stop for some schools).

Financial benefit to state schools/parental donors of gift aid

In broad terms, for every £1 donated to a school by a parent, with gift aid tax relief, HMRC would effectively have contributed up to 45p of that £1 donation. Gift aid refund claims on the parental donations are therefore a vital source of income for the schools.

HMRC arguments

The HMRC's position was based on three key alternative arguments, of which only one needed to be successful.

Argument 1 – The donation is in reality 'a fee' i.e. it is not 'a gift' for 'gift aid purposes'

Under the Education Act 1996, section 451, it is not permitted for state schools to charge a fee to a parent for their child's education.

Notwithstanding this, as a result of HMRC having seen how some schools had couched their requests for donations, HMRC formed the view that they had too much of the characteristics of a fee. This is because in HMRC's opinion, the wording used in correspondence implied a degree of obligation on the part of parents to make the donation.

Additionally, HMRC believed their argument to be enhanced by the fact that schools had not stated in all communications to parents that there was no requirement to make the donation, nor that the child of a parent who makes a reduced or no donation would not be treated differently from those whose parents had made donations.

Although, unlike private schools where a child may be asked to leave as a result of non-payment of fees, in practice, no child at a state school was ever disadvantaged by the non-payment of a donation by a parent to the school.

HMRC found refunds (albeit only a handful) of donations being made by the school to parents, implying further that the payments were fees.

Argument 2 – There is a 'Benefit in Kind' resulting from the donation

In order for gift aid to be obtained, there must be no (or virtually no) benefit received from the donation. A useful dictionary definition of 'gift' (Tribunals often use such sources) is: "something that is bestowed voluntarily and without benefit".

HMRC were arguing that 'the benefit' to a parent from their donation equated to the market value of the tuition given to their child.

Argument 3 – The religious tuition could not take place without the donations

HMRC were taking the view that it was impossible to argue that these donations were voluntary, as without them, the school's religious tuition could not take place.

Lessons to be learnt for the future

HMRC deciding not to pursue these arguments has not created a legal precedent. Indeed, they have confirmed that they have not conceded the issue. HMRC could therefore at any time in the future start the whole process again, especially (as they have also said) if they were to see any major breach or abuse of the gift aid rules. In order to minimise the possibility of another challenge from HMRC, the following must therefore be taken into account regarding state schools' requests for voluntary contributions for religious tuition (this is not a comprehensive list).

1. Critically, all documentation must clearly and openly state:

- a) that there is no obligation for any parent to make any contribution, and
- b) that pupils at the school will not be treated differently according to whether or not their parents have made any contribution in response to the request or invitation.

The express words in a) & b) should ideally appear on every piece of correspondence in connection with requests for voluntary contributions.

2. The letter from the school to parents should not give the impression that the religious tuition will only be provided through voluntary contributions.

3. Nothing must be sent which resembles a statement of account or invoice.

4. It is strongly recommended that consideration be given to collect the voluntary contributions through a separate charity which may be the school foundation body or a separate charitable trust. This would have its own body of trustees and be independent of the school's governing body.

5. Assuming such an entity is in place, the school would pay out all operating expenses including all salaries out of its general budget.

The charitable trust would transfer across the necessary amount of collected voluntary contributions to the school when its cash flow requires it.

6. It is vital that what is stated on the school's website and in other literature about voluntary contributions is consistent with the above.

Also, care must be taken when speaking about this matter in public – open days, for example.

7. Schools must be particularly cautious when talking to individual parents who are not making donations or who are paying less than the school considers is reasonable. The parent must never be pressurised or coerced into making a donation (or a larger donation than they are making at present).

8. It is of major importance that no refunds are ever made to parents.

A donation by definition cannot be returned.

The above is not intended to be comprehensive or formal advice and is strictly without liability. It contains 'generic' information – and it is critical that each school is advised on an individual basis, based on the precise facts of their case. You should consult an accountant on any matter concerning the above.

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This advert has kindly been sponsored by BDO LLP in order to ensure that schools and parents understand the critical importance of complying with the gift aid regulations.