



GOVERNORS FINANCE UPDATE EVENING

3 June 2019

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IDEAS | PEOPLE | TRUST



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1. GENERAL

- For every £1 donated to charity under gift aid, up to **60p** (of that £1) is contributed by HM Treasury (i.e. only 40p by individual)
 - Gift aid tax cost to Treasury 2017/18
 - £1.3 billion paid to charities by HM Treasury
 - £520 million higher/additional rate relief
 - **DICTIONARY DEFINITION OF GIFT: “something given (1) willingly (voluntarily) to someone & (2) without payment or benefit”**
 - Dictionary definitions/common parlance are invariably used by Tax Tribunals
 - **BOTH THE WORDING & ACTIONS** are critical whenever gift aid is to be claimed (may seem pernickety to some)
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1. GENERAL

So to obtain gift aid, the following fundamental general principles must be strictly adhered to for all charitable donations e.g. donations for kodesh tuition:

1. Donation must be Voluntarily & Willingly given by individual (no pressure or compulsion- option to give nothing)
2. No (Minimal) Benefit or Payment received by Individual/Donor
3. Must take utmost care with Wording on ALL Documentation, correspondence, emails, flyers, marketing material etc. (don't forget on Website too!)
4. Action by charity (must match the Wording)

1. GENERAL

5. Requests for Donations should not be for specific amounts e.g. £855.63 - HMRC will think (prima facie) an invoiced amount (multiples of “18” may be ok!)

2. STATE SCHOOLS - WHERE WE ARE TODAY / CURRENT POSITION

- Annual benefit to schools - HMRC calculation £15m (£30m?) per annum
- HMRC Technical strongly believe that they were / are still right (overruled by their Solicitor's Office with '50% rule')
- Therefore HMRC feel that they are not precluded from challenging schools where they consider has been 'gift aid abuse'
- And: *Champions Fun Learning Centre* case (August 2018) - result is 'very positive' for HMRC (albeit strictly not created a precedent)

3. STATE SCHOOLS - HMRC ARGUMENTS TO DENY GIFT AID

HMRC 3 BASIC ARGUMENTS

- **DONATION A FEE (in reality)** - based on “offensive” wording, and lack of “correct” wording, in requests for donations; refunds made; wording on website
- **BENEFIT (to donor parent)** - market value of tuition
- **COMPULSORY (as a matter of fact)** - without the donation, there would be no kodesh tuition

4. STATE SCHOOLS - TO MINIMISE ANY FUTURE CHALLENGE FROM HMRC

- SEE ARTICLE FOR FULL LIST

- NUMBER ONE PRIORITY

All documents/emails/correspondence/website **MUST** state that:

- “there is no obligation to make any contribution”

AND

- “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”

- **CRITICAL MUST USE THESE EXPRESS WORDS** - for Charities Act & Taxes Act purposes

4. STATE SCHOOLS - TO MINIMISE ANY FUTURE CHALLENGE FROM HMRC

- Be careful when speaking to prospective parents - report in JC very unhelpful
- Not send anything that resembles a statement of account or invoice
- No refunds by schools
- Consider separate charitable trust for donations (to assist in rebutting *Champions Fun Learning Centre* case) - BIG SUBJECT

5. STATE SCHOOLS - NO GIFT AID “OFFENSIVE LANGUAGE”

- The case of *Champions Fun Learning Centre*
 - benefit = market value of tuition “absent any other suggestion” of how to value the benefit (we/Tax Counsel hope there are!)
 - Wording in constitution, annual report, financial statements and website strongly implied it was “a fee” (see Article)
- **DO AVOID** (taken from recent draft letters from schools to parents)
 - “*where significant financial struggle*”
 - “*make allowance for those that cannot afford to contribute*”
 - “*parent should approach the school... discuss with Mrs*”

5. STATE SCHOOLS - NO GIFT AID “OFFENSIVE LANGUAGE”

- *“Please log on to settle your balance*
- *“activities may not be possible to fund”*
 - *“contributions represent 100% of the Kodesh budget”*
 - *“financial viability of lessons dependent upon parental contributions”*
- **AND PLEASE DO USE THE EXPRESS WORDS ON SLIDE 8**

6. STATE SCHOOLS - THE FUNDAMENTAL DILEMMA

The single biggest concern/challenge that state schools face in this matter is the tension between protecting gift aid recovery and maintaining donation income.

Schools are petrified that income may fall by an even greater amount than the gift aid if it is made so explicit that the donations are voluntary (and the amounts requested are only suggested).

All the previous comments indicate the likely optimum wording to achieve the gift aid tax relief. Ultimately it is the judgement call of the school to consider and ultimately decide how far they can go with this wording; and if 'not very far', they must recognise that they may well maintain their donation income, but also, critically (at some point in the future), lose their gift aid tax relief - and this loss of gift aid of a particular school could then affect each and every state school's gift aid claim.

That is, making it that much more explicit that donations are voluntary and the amounts requested are only suggested should result in the likely optimisation of gift aid tax relief for ALL state schools.

7. PRIVATE / FEE PAYING SCHOOLS

- Gift aid possible from parents (includes all relatives) for CAPITAL projects ONLY - ‘the building fund’
- Only available when school has covered full running costs.
- Obviously gift aid possible if non-relative donations.

[NOTE: YESHIVAHS/SEMS GREATER TEST AS OVERSEAS CHARITIES]

8. FUND RAISING DINNERS - SEE ARTICLE

- HMRC PREFERRED WORDING:

‘Tickets allocated on “first come first served” basis, free admission, suggested voluntary donation £X per person’

- VITAL WORDING:

“Suggested voluntary donation”

- NO GIFT AID IF WORDING INCLUDES:

‘Price’, ‘Ticket Price’, ‘Minimum Donation’ or if there is no narrative.

8. FUND RAISING DINNERS - SEE ARTICLE

- VITAL for Tax and Charities Act purposes:

“The Trustee Minute”

- MYTH: “Fully sponsored events means compliance with the above is not necessary”

9. RAFFLES & LOTTERIES



9. RAFFLES & LOTTERIES



9. RAFFLES & LOTTERIES

- However described, no gift aid!
- HMRC know about them - concern major enquiry

10. AUCTIONS



10. AUCTIONS

- Auctions - complex - broadly, donation is the element of the payment made which is above the commercial/market value of item e.g. if freely available to buy in a shop
- If no market value e.g. football shirt signed by players - no gift aid on any of the payment, as this item is not commercially available

QUESTIONS?



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