

## a gift for gift aid

Chancellor Alistair Darling announced in his first Budget that charities will still be able to claim 28p in every pound donated through the Gift Aid scheme until 2011. The news came as charities feared the falling rate in income tax would impact on the amount they were able to claim for every pound donated through Gift Aid, a tax relief on donations which charities can reclaim to boost the value of a donation. Some charities feared it would lead to a funding shortfall to the sum of £90 million.

Mr Darling also announced reform changes to the Gift Aid scheme which will see the lessening of auditing penalties imposed on charities for record-keeping mistakes. The measures were announced following a consultation by HM Revenue & Customs (HMRC) with charitable organisations about changes to the

Gift Aid system that would see charities claiming Gift Aid at a fixed annual rate. Although this proposal was not followed through by Mr Darling, many charitable organisations have welcomed the Chancellor's reform proposals.

The National Council of Voluntary Organisations (NCVO) said in its reaction to the Budget: "We welcome reforms to Gift Aid which will make it easier for many charities to maximise the income they receive from donations. In particular, we welcome measures to ease the existing onerous auditing process which can prevent charities from using Gift Aid altogether."

John Low, CEO of the Charities Aid Foundation (CAF), said: "Gift Aid is a generous tax relief. This announcement means that every pound given by a UK taxpayer will continue to be worth £1.28 for their charity."

Lindsay Boswell, Chief Executive of the Institute of Fundraising, said: "Supporting charities and voluntary and community sector organisations to maximise their fundraised income is at the heart of the Institute's work and we are very pleased that these important support resources will be able to continue through Government funding.

"We are delighted that many of the issues raised by the sector in the course of the HM Treasury-led review of Gift Aid have been recognised and action is now being taken. Ensuring that Gift Aid and other forms of tax-effective giving reach their full potential requires a partnership between the sector and Government."

According to Ed Miliband, Minister for the Cabinet Office, the measure introduced by the Chancellor place the third sector 'at the top of the Government's agenda'. After the Budget was announced, Mr Miliband said: "The Government has listened to the sector and in a difficult fiscal climate, has found an extra £300 million over three years to support charities. I know that this will be money that will make our society fairer and more just."

Some third sector experts fear that, although the Chancellor has acted in good faith, his actions will have been in vain if Gift Aid take-up does not increase - the extra cash will only be available to charities if more taxpayers are aware of the scheme and opt in to a charity's enquiry as to whether it can claim Gift Aid on a donation. In support of the Gift Aid announcements, the Government has launched a dedicated Gift Aid web information service and toolkit at [www.direct.gov.uk/giftaid](http://www.direct.gov.uk/giftaid).



## size matters

Smaller charities involved in caring for children suffer ongoing uncertainty over funding, with many under threat of closure or cutbacks, a survey and report has found. These small organisations also sometimes feel excluded from "influencing structures", and have mixed feelings about the Government's Every Child Matters (ECM) agenda.

Funding issues dominate the report findings, published by the National Council of Voluntary Child Care Organisations (NCVCCO) and entitled 'Under the Radar'. 10% of the 108 organisations surveyed said they were either closing or under threat of closure. Two thirds relied on between two and four sources of income, although those organisations that had a wider spread of income tended to be larger and more confident about their financial futures. 13% depended on a single source. ECM has affected all organisations

working with young people and children. However the survey found that in practice, most organisations have simply adapted the way they report and describe their work rather than changing what they do. One quoted survey response typifies the idea that organisations feel they have long been doing the right thing: *"Most of what we do already fits into the outcomes, though the reports I provide to the Children's Fund now focus more tightly on the ECM targets."*

Small charities are often involved in influencing structures - the groups which identify needs, set policies, commission services and distribute funding - but report mixed results. Influencing structures are regarded as a good way to network and stay aware of what is happening locally, but respondent's comments suggest the voluntary sector feels it has little say compared to official groups.

The survey questioned organisations with annual incomes of less than £250,000, but the findings reveal

considerable differences within that bracket. On the whole larger organisations were more financially secure, were better aware of ECM and felt they played a positive role in influencing structures. The report is notable for including many comments from respondents, giving personal views to accompany the many figures it quotes, at: [www.ncvcco.org/UserFiles/File/Under%20the%20radar.pdf](http://www.ncvcco.org/UserFiles/File/Under%20the%20radar.pdf)



## VAT window for claiming back

The success of a long-running challenge to the Government's VAT regime means that charities which were overcharged VAT between 1973 and 1996 have a brief opportunity to claim it back. The House of Lords ruled in January that HM Revenue & Customs' (HMRC) three-year time limit on claims was unlawful. HMRC have announced that this opportunity to reclaim remains until 31 March 2009.

The ruling means that many charities can backdate claims for output VAT (tax on expenditure) overpaid before 4 December 1996 and input VAT overpaid before 1 May 2007. Furthermore, they will not have to prove they were aware of their right to claim before those dates - i.e. that they considered trying to claim tax back but rejected the idea on the grounds that they were likely to be unsuccessful. The decision may



not necessarily mean an automatic windfall for charities seeking to claim back VAT paid between those dates. Firstly, it has not yet been established whether they will be entitled to compound interest which would raise the amounts to realistic levels. Secondly, it is also not clear how much paperwork HMRC will demand before they agree to meet claims. Although HMRC have discretionary powers to accept alternative evidence, where the original records do not exist they have not made any specific announcement as to whether they will exercise such discretion. Finally, a

forthcoming case before the Edinburgh VAT tribunal will bring into question the validity of the entire VAT regime, considering that no legislation has been passed giving a clear framework for time limits in tax cases. Nevertheless the sums repayable could total as much as £1 billion for all sectors, and charities stand to benefit particularly with regards to VAT charged on the cost of fundraising.

Charities have also been encouraged by the court's additional decision that they will not have to meet HMRC's costs should their claim be unsuccessful. HMRC's briefing document explaining the background and how to submit a claim is available at: [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageVAT\\_ShowContent&id=HMCE\\_PROD1\\_025958&propertyType=document#P90\\_9768](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_PROD1_025958&propertyType=document#P90_9768)

## public benefit guidance

Since implementation of the Charities Act 2006, organisations wanting to describe themselves as charities under the law of England and Wales have had to demonstrate that their charitable purposes are likely to benefit the public. The Charity Commission has now published guidance explaining what this means and how it will affect those in charge of a charity.

Until the 2006 Act, charity law assumed that the traditional 'three heads' of advancing religion, education, or relieving poverty, benefited the public by their very nature. The 2006 Act makes the requirement more explicit, and includes public benefit in the definition of a charitable purpose. The law has been introduced in stages, with the public benefit requirement enforced since 1 April.

The Act also requires trustees to carry out their aims for the public benefit, stay aware of Charity Commission guidance, and explain how their organisation benefits the public in their Trustees' Annual Report.

The new guidance sets out the two principles of public benefit, and gives a series of examples of how the Charity Commission interprets and applies the term. Firstly, it must be clear what the benefit is, it must be related to the aims of the charity, and it must be balanced against potential harm. Secondly, the benefit must be to the public or a section of the public. This means that sufficiently large numbers of people must benefit from a charity's work, and access should not be unduly restricted by poverty, costs such as high membership fees, or geographical scope.

The new requirements mean that charity law in England and Wales remains very similar to the regime in Scotland, and the Office of the Scottish Charity Regulator (OSCR) has welcomed the guidance.

The guidance is available from the Charity Commission at: [www.charity-commission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf](http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf)  
The 2006 Act has been introduced in stages, and the Government has published details of the various requirements at: [www.cabinetoffice.gov.uk/third\\_sector/news/news\\_stories/080116\\_charities\\_guidance.aspx](http://www.cabinetoffice.gov.uk/third_sector/news/news_stories/080116_charities_guidance.aspx)

Solicitors Wright Hassall offer a briefing note describing the main provisions of the Charities Act at [www.wright Hassall.co.uk/resources/articles/art\\_charitiesact2006.aspx](http://www.wright Hassall.co.uk/resources/articles/art_charitiesact2006.aspx)

## charity cake only so big

More than half of the UK population gave to charity in 2006-2007, but a detailed report published by the Charities Aid Foundation (CAF) shows that this proportion has fallen slightly from the previous year. And total giving reached £9.5 billion - a fall of 3% compared to 2005-2006. It is not clear whether this indicates a long-term trend or is a temporary situation reflecting broader economic trends.

Commenting on the report, the Chief Executive of the National Council for Voluntary Organisations (NVCO), said: *"We hope that worries such as increasing debt and rising house prices won't put people off giving to the causes that need them."*

Within this overall fall in donations the report reveals that some types of charities have gained considerably while others had a difficult year. Medical research and causes supporting children and young people continued

to get the lion's share of donations, but only education has seen income rising as a share of overall giving.

Importantly for charities keen to analyse their 'market', the report offers a detailed analysis of how gender affects giving. Women are considerably more generous than men in this respect, the biggest difference appearing between single men and married women. Women in general are much more likely to donate to animal charities and religious organisations, while sporting causes are the only area where men give more than women.

The report also offers an interesting analysis of the number of different organisations donors support. Exactly half of the people surveyed gave to one charity only in 2006-2007. A quarter gave to two, while only 2% gave to six or more charities.

The report, 'UK Giving 2006-2007' is available at: [www.ncvo-vol.org.uk/research/index.asp?id=3291#\\_UK\\_Giving\\_2006/07](http://www.ncvo-vol.org.uk/research/index.asp?id=3291#_UK_Giving_2006/07).

The recently published Civil Society Almanac offers further details about charity across the UK, with particular emphasis on geographic location compared to socio-economic status at: [www.ncvo-vol.org.uk/press/releases/?id=8228](http://www.ncvo-vol.org.uk/press/releases/?id=8228).



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# OSCR: what is a charity?

What do the words 'charitable' and 'charitable purposes' mean in Scottish law? The Office of the Scottish Charity Regulator (OSCR) and HM Revenue & Customs (HMRC) have jointly published a set of definitions designed to clarify an issue which has caused uncertainty until now. As a result, it is hoped that new charities will have a better idea of how to frame their constitutions under the Charities and Trustee Investment (Scotland) Act 2005 and that it will be easier to apply for charity tax relief. However, a briefing note makes it clear that if Scottish organisations whose constitutions state they are charities and mention charitable purposes want tax relief, they must define their charitable purposes in terms that satisfy both the 2005 Act and UK tax legislation – in particular the Income and Corporation Taxes Act 1988.

To be defined as a charity under the 2005 Act, an organisation must have only charitable purpose. In addition its constitution must ensure that all its property is to be used for charitable purposes, and that it cannot be used to promote political parties. It must provide a public benefit (whether in Scotland or elsewhere), and must not be subject to unduly restrictive conditions.

OSCR has suggested this may cause existing charities problems, as their constitutions may include the terms



'charitable' or 'charitable purposes', but they may also be using their property for non-charitable purposes. However, it has stated that if it comes across such cases during its rolling review, the charities concerned will be given a year to resolve the issue and change their constitutions. The requirement that charities may not impose "unduly restrictive conditions" has been controversial in the educational sector. In a pilot study, Dundee University was found to be charitable under the Act, despite being a fee-paying institution. It is less clear whether public (fee-paying) schools will always qualify as charities under the law.

OSCR briefing note: [www.oscr.org.uk/NewsItem.aspx?ID=cfe0172f-1d66-43b0-baaf-b1fb71149079](http://www.oscr.org.uk/NewsItem.aspx?ID=cfe0172f-1d66-43b0-baaf-b1fb71149079).

'Meeting the Charity Test': [www.oscr.org.uk/DocumentViewer.aspx?id=dbca1be4-9894-43f3-8070-4d6806c3c669](http://www.oscr.org.uk/DocumentViewer.aspx?id=dbca1be4-9894-43f3-8070-4d6806c3c669).

OSCR has been running a consultation on its guidance for Meeting the Charity Test, and plans to publish the results during the summer: <http://www.oscr.org.uk/ClosedConsultations.stm>

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