

SMALL CHARITABLE DONATIONS ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2: Meaning of “eligible charity”

21. [Section 2](#) defines the eligibility conditions for a charity or CASC to be entitled to a top-up payment under [section 1](#). *Subsections (1) and (2)* state the two main conditions to be met:
 - the charity or CASC must have made a successful Gift Aid exemption claim in at least two of the previous four tax years, and there must not have been a period between claims of two or more consecutive tax years, and
 - the charity or CASC must have been in existence for at least two complete tax years.
22. The first condition at [subsection \(1\)](#) of [section 2](#) considers a charity’s or CASC’s Gift Aid exemption claim activity over a four year period, and requires successful claims in at least two tax years during this period. [Subsection \(2\)](#) requires that, when considering the number of Gift Aid exemption claims made over a four year period, there must not have been a period between claims of two or more consecutive tax years if the earlier claim is to be taken into consideration. So a successful Gift Aid exemption claim made in the 2009/10 tax year can not be considered as one of the two successful claims, if the next claim was not made until the tax year 2012/13.
23. The effect of these provisions is to ensure that the charity or CASC has a good, recent, track record of making Gift Aid exemption claims in order to be eligible to make claims under GASDS. The conditions allow a charity or CASC to demonstrate their compliance even if they do not make Gift Aid exemption claims every year.
24. For example, Charity A is a long established charity and has made successful Gift Aid exemption claims in each of the tax years 2011-12 and 2012-13. Charity A will be eligible to make a claim under the GASDS on small donations collected from 6 April 2013 (the tax year 2013/14).
25. Charity B has made successful Gift Aid exemption claims in each of the tax years 2012-13 and 2015-16. There have been two consecutive years, 2013-14 and 2014-15 in which Charity B has not made a Gift Aid exemption claim. Therefore Charity B is not eligible to make a GASDS claim until it has made at least one more successful Gift Aid exemption claim in the years 2016-17 onwards, so long as the gap between making a claim is not two tax years or more. Claims made before the two year gap do not qualify.
26. For the purposes of the eligibility conditions in [section 2](#), Gift Aid exemption claims made in a tax year do not need to be made in respect of donations received in that tax year. However, for the purposes of matching Gift Aid donations to GASDS donations in [section 1](#), the matched Gift Aid donations must be received in the same tax year as the GASDS donations.
27. A “successful” Gift Aid exemption claim is defined in [section 18](#) and is a claim made by the charity or CASC which has resulted in an amount falling to be exempt from income

*These notes refer to the Small Charitable Donations Act 2012
(c.23) which received Royal Assent on 19 December 2012*

tax or corporation tax as a result of the claim. Under *subsection (3)* of section 2, any penalty incurred in respect of a Gift Aid exemption claim or top-up claim will disqualify the organisation from entitlement to a top-up payment for the tax year in which the claim was made, and the following tax year. This does not apply if the penalty is suspended or cancelled, but it does apply to a suspended penalty that subsequently becomes payable. A penalty is defined in *subsection (4)* as a penalty under Schedule 24 to Finance Act (FA) 2007 for Gift Aid exemption claims or a penalty under the regulations that will be made under *section 11* in respect of claims to top-up payments. It is intended that the penalty provisions under section 11 will mirror those in Schedule 24 FA 2007 that apply to Gift Aid exemption claims.