Draft Regulations laid before the House of Commons under section 17(2) of the Small Charitable Donations Act 2012, for approval by resolution of the House of Commons.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

CHARITIES

The Small Charitable Donations Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 11, 12(6), 13(7) and 17(3) of the Small Charitable Donations Act 2012(**1**).

In accordance with section 17(2) of that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of the House of Commons.

Citation and commencement

1. These Regulations may be cited as the Small Charitable Donations Regulations 2013 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"the 2012 Act" means the Small Charitable Donations Act 2012;

"overpayment" means an amount paid to a charity under section 1 of the 2012 Act to which the charity was not, or has ceased to be, entitled;

"TMA 1970" means the Taxes Management Act 1970(**2**).

(**1**) 2012 c. 23.

(**2**) 1970 c. 9. Several of the provisions of TMA 1970 that apply to small charitable donations by virtue of these Regulations make reference to "the Board" which section 118(1) of that Act defines as the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1)(a) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

Making and giving effect to top-up claims

3.—(1) Subject to the modifications in paragraph (2), and to paragraph (3), Schedule 1A to TMA 1970(**3**) (claims etc not included in returns) applies in relation to—

(a) making and amending top-up claims and giving effect to top-up claims and amendments;

(b) enquiring into top-up claims and completing an enquiry by issue of a closure notice;

(c) amending a top-up claim in a closure notice and appealing against any such amendment,

as it applies to a claim or election under the Tax Acts(**4**) made otherwise than in a return.

(2) The modifications are—

(a) a reference to an amount of tax to be discharged or repaid is to be treated as a reference to an amount of top-up payment to be made;

(b) a reference to the discharge or repayment of tax is to be treated as a reference to the making of a top-up payment;

(c) a reference to a year of assessment or accounting period is to be treated as a reference to a tax year;

(d) in paragraph 4(1), for "Subject to sub-paragraphs (1A), (3) to (5)" substitute "Subject to sub-paragraph (3)".

(3) In applying Schedule 1A to TMA 1970 for the purposes of this regulation, omit—

(a) paragraph 2(2);

(b) in paragraph 2A—

(i) sub-paragraph (2A);

(ii) in sub-paragraph (3), "sub-paragraph (3A) and";

(iii) sub-paragraph (3A);

(iv) in sub-paragraph (4), "Subject to sub-paragraph (5) below,";

(v) sub-paragraphs (5) and (7);

(c) in paragraph 4—

(i) sub-paragraphs (1A) and (2);

(ii) in sub-paragraph (3), "or (2)";

(iii) sub-paragraphs (4) and (5);

(d) in paragraph 5—

(i) in sub-paragraph (1), "or, in the case of a partnership claim, any successor of that person";

(ii) in sub-paragraph (3), paragraph (b) and the "or" immediately preceding it;

(e) paragraph 7(3) and (8);

(f) in paragraph 8—

(i) in sub-paragraph (1), the words from "whether—" to the end;

(**3**) Schedule 1A was inserted by paragraph 35 of Schedule 19 to the Finance Act 1994 (c. 9). Relevant amendments to Schedule 1A have been made by Schedule 20 to the Finance Act 1995 (c. 4), sections 124(6) to (8) and 130(5) of, and paragraphs 8 to 10 of Schedule 19 to, the Finance Act 1996 (c. 8), paragraph 42 of Schedule 19 to the Finance Act 1998 (c. 36), paragraphs 10, 12 and 34 of Schedule 29 to the Finance Act 2001 (c. 9), paragraph 141 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 264 of Schedule 1 to the Income Tax Act 2007 (c. 3), paragraph 77 of Schedule 36 and paragraph 3 of Schedule 37 to the Finance Act 2008 (c. 9), paragraphs 6 and 7 of Schedule 52 to the Finance Act 2009 (c. 10), S.I. 2009/56, S.I. 2009/404 and S.I. 2009/2035.

(**4**) "The Tax Acts" is defined in Schedule 1 to the Interpretation Act 1978 (c. 30) and means the Income Tax Acts and the Corporation Tax Acts, which terms are also defined in that Schedule. The tax provisions that apply to small charitable donations by virtue of these Regulations, besides those contained in TMA 1970, are all contained in the Tax Acts.

(ii) sub-paragraphs (2) and (3);

(g) in paragraph 9—

(i) in sub-paragraph (1), paragraph (b) and the "or" immediately preceding it;

(ii) sub-paragraphs (2) and (5).

(4) No top-up claim may be made more than 2 years after the end of the tax year to which the claim relates.

Information powers: orders for delivery of documents

4. The following provisions of TMA 1970 apply to an offence involving serious fraud in connection with, or in relation to, the making of a top-up claim as they apply to such an offence in connection with, or in relation to, tax—

(a) section 20BA(**5**) (orders for the delivery of documents);

(b) section 20BB(**6**) (falsification etc of documents);

(c) section 20D(**7**) (interpretation of sections 20 to 20CC);

(d) Schedule 1AA(**8**) (orders for production of documents).

Information and inspection powers

5.—(1) Subject to the modifications in paragraph (2), and to paragraph (3), Schedule 36 to the Finance Act 2008(**9**) (information and inspection powers) applies to checking a charity's position in relation to a top-up claim or an overpayment as it applies to checking a person's tax position.

(2) The modifications are—

(a) a reference to checking a person's tax position is to be treated as a reference to checking a charity's position in relation to a top-up claim or an overpayment;

(b) a reference to a taxpayer is to be treated as a reference to a charity;

(c) a reference to prejudice to the assessment or collection of tax is to be treated as a reference to prejudice to the assessment or collection of an overpayment;

(d) in paragraph 5(4)(b), for "tax" substitute "top-up claims";

(e) in paragraph 19(1)(a), for "tax" substitute "a top-up claim or an overpayment";

(f) in paragraph 25, a reference to a tax adviser is to be treated as a reference to a person appointed to give advice to a charity in relation to a top-up claim or an overpayment;

(g) in paragraph 50—

(i) in sub-paragraph (1)(c), for "the amount of tax that the person has paid, or is likely to pay, is significantly less" substitute "the amount of overpayment made, or likely to be made, to a charity, is significantly more";

(**5**) Section 20BA was inserted by section 149(1) of the Finance Act 2000 (c. 17).
(**6**) Section 20BB was inserted by section 145 of the Finance Act 1989 (c. 26) and relevantly amended by section 149(3) of the Finance Act 2000, paragraph 69 of Schedule 36 to the Finance Act 2008 and S.I. 2009/56.
(**7**) Section 20D was substituted by Schedule 6 to the Finance Act 1976 (c. 40) and relevantly amended by section 148(2) of the Finance Act 1989, paragraph 1 of Schedule 22 to the Finance Act 2007 (c. 11) and paragraph 70 of Schedule 36 to the Finance Act 2008.
(**8**) Schedule 1AA was inserted by section 149(2) of the Finance Act 2000.
(**9**) Schedule 36 was relevantly amended by section 96(1) of, and Schedules 47 and 48 to, the Finance Act 2009, S.I. 2009/56, paragraph 582 of Schedule 1 to the Corporation Tax Act 2010 (c. 4), paragraph 24 of Schedule 6 to the Finance Act 2010 (c. 13), paragraph 62 of Schedule 23 and Schedule 24 to the Finance Act 2011 (c. 11) and section 224(1) to (5) of the Finance Act 2012 (c. 14).

(ii) in sub-paragraph (3), for "the amount of tax which has not been, or is not likely to be, paid by the person" substitute "the amount of overpayment which has been, or is likely to be, made to a charity";

(h) in paragraph 62(1), after "the Taxes Acts," omit the "or" and insert—

"(aa) the Small Charitable Donations Act 2012, or".

(3) In applying Schedule 36 to the Finance Act 2008 for the purposes of this regulation, omit—

(a) paragraphs 10A and 11;

(b) in the heading to paragraph 12 and in sub-paragraph (1) of that paragraph, "10A or 11";

(c) paragraphs 12A and 12B;

(d) in paragraph 13—

(i) in sub-paragraph (1A), "(except as required under sub-paragraph (2A))";

(ii) in sub-paragraph (2), "10A or 11";

(iii) sub-paragraphs (2A) and (2B);

(e) paragraph 17;

(f) paragraphs 21 to 22;

(g) paragraphs 33 to 38;

(h) paragraph 41;

(i) in paragraph 50(6)—

(i) paragraph (a);

(ii) paragraph (c) and the "and" immediately preceding it;

(j) paragraphs 56 and 57;

(k) paragraph 60(3);

(l) paragraphs 61 and 61A;

(m) paragraphs 63 to 92.

Agents of the charity: information powers and penalties

6.—(1) Subject to the modifications in paragraph (2), and to paragraph (3), Parts 1 to 6 of Schedule 38 to the Finance Act 2012 (tax agents: dishonest conduct) apply to an individual who, in the course of business, assists a charity in connection with a top-up claim, a top-up payment or an overpayment as they apply to tax agents.

(2) The modifications are—

(a) a reference to a tax agent is to be treated as a reference to an individual who, in the course of business, assists a charity in connection with a top-up claim, a top-up payment or an overpayment;

(b) a reference to a client's tax affairs or tax position is to be treated as a reference to the affairs or position of a charity in relation to a top-up claim, a top-up payment or an overpayment;

(c) a reference to a loss of tax revenue or to the tax revenue lost is to be treated as a reference to an overpayment, and a loss of tax revenue is brought about for the purposes of paragraph 3(1) and (4) if an eligible charity obtains a top-up payment to which it is not, or has ceased to be, entitled;

(d) in paragraph 7(3)(a), the reference to an offence relating to tax is to be treated as including a reference to an offence committed in connection with a top-up claim, a top-up payment or an overpayment;

(e) in paragraph 15(1)(a), for "tax" substitute "a top-up claim or an overpayment";

(f) in paragraph 27(3)(b), for "a loss of tax revenue from a client is balanced by an overpayment" substitute "an overpayment to a client charity is balanced by an amount paid to HMRC".

(3) In applying Schedule 38 to the Finance Act 2012 for the purposes of this regulation, omit paragraphs 36 and 37.

Overpayments: making and notifying assessment

7.—(1) Where an officer of Revenue and Customs discovers that an overpayment has been made, the officer may make an assessment in the amount to be repaid to HMRC by the charity.

(2) Notice of an assessment under this regulation—

(a) shall be served on the charity assessed;

(b) shall state the amount of overpayment and the reason why, in the officer's view, the charity is not, or has ceased to be, entitled to it;

(c) shall state the date of issue of the assessment and the time within which an appeal against it may be made;

(d) may contain an assessment of overpayments relating to more than one tax year.

(3) In the case of a charity which is a trust, an assessment under this regulation may be made on, and in the name of, any one or more of the trustees in the tax year in which the assessment is made.

Overpayments: time limit for assessment

8.—(1) Subject to paragraphs (2) and (3), an assessment of an overpayment may be made at any time not more than 4 years after the end of the tax year to which it relates.

(2) An assessment involving an overpayment brought about carelessly by a charity, or by a person acting on its behalf, may be made at any time not more than 6 years after the end of the tax year to which it relates.

(3) An assessment involving an overpayment brought about deliberately by a charity, or by a person acting on its behalf, may be made at any time not more than 20 years after the end of the tax year to which it relates.

(4) An assessment of an overpayment shall not be out of time if it is made before the relevant date.

(5) The relevant date for the purposes of paragraph (4) is the later of—

(a) the last day of the tax year following that in which an officer of Revenue and Customs discovered the overpayment; or

(b) where a top-up claim made by a charity is enquired into by an officer of Revenue and Customs, the day on which, by virtue of paragraph 7(1) of Schedule 1A to TMA 1970 as applied by regulation 3, the enquiry is completed.

(6) An objection to the making of an assessment of an overpayment on the ground that it is out of time shall only be made on an appeal against the assessment.

Overpayments: altering an assessment and payment of amount assessed

9.—(1) After the notice of an assessment of an overpayment has been served on a charity, the assessment shall not be altered except in accordance with the provisions of TMA 1970 applied to it by regulation 11(1).