



## **MANAGING MAASER KESAFIM**

### **Maaser Ani or Tzedakah**

**T**he only mitzvah that the Torah records all three of the *avos* (forefathers) performing, aside from prayer, is the mitzvah of *maaser*, tithing. The *pasuk* states in connection with Avraham, “and he gave him *maaser* from all” (Breishis 14, 20). Similarly, we are told, “And Yitzchak sowed in that land and he found in that year one hundred-fold” (Breishis 16, 12). Rashi explains that Yitzchak only measured his harvest for the purpose of separating *maaser*. Finally, the Torah tells us that Yaakov promised Hashem, “and everything that You give me, I will surely set aside *maaser* to You” (Breishis 28, 22).

According to the *Pirkei d'Rebbi Eliezer* (Ch. 33) and the *Medrash Rabba* (Breishis 70, 7) cited by the *Daas Zekeinim M'Baalei Ha'Tosfos*, Yaakov not only separated *maaser* from his agricultural produce and harvest, but

from all his earnings and proceeds as well, a practice that is known as *maaser kesafim*. In fact, Yaakov even tithed his own children by dedicating Levi and his descendants to the constant service of Hashem and the Jewish people in the Beis Hamikdash.<sup>1</sup>

Nonetheless, the normative practice to tithe earnings is not predicated on the precedent of the *avos*, but is rooted in the *Sifrei* cited by *Tosfos* (*Taanis* 9a), which derives from the *pasuk* “you shall tithe **all** the seed crop” (*Devarim* 14, 22). This is interpreted to mean that the concept of tithing applies not only to crops and agricultural produce but to **all** forms of profit and financial earnings. The fact that tithing earnings is mentioned in the context of tithing produce leads the *Tosfos Chadashim* (*Pe'ah* 1:1), the *Mordechai* (BK 192), and later the *Taz* (YD 331, 32) to suggest that tithing earnings is an obligation just like tithing produce.<sup>2</sup> According to their

position, *maaser kesafim* is the annual and broader financial equivalent of *maaser ani*, the pauper’s tithe, which is the requirement to set aside one tenth of the produce grown every third and sixth year of the *shemittah* cycle to be distributed to the poor.

The *Taz* notes that his father-in-law, the *Bach*, disagrees and writes that the notion of tithe earnings is merely a praiseworthy custom but not a formal obligation. This is also the position of the *Maharam MiRutenberg* cited by the *Pischei Teshuvah* (331, 2) and the prevailing opinion of the vast majority of contemporary poskim.<sup>3</sup> The *Chida* (*Birkei Yosef* YD 259:3) explains that according to these authorities, the entire institution of *maaser kesafim* is not part of the regular system of tithing, but rather represents the recommended amount of tzedakah, charity, that each person should give on a yearly basis. This

view is supported by the fact that *maaser kesafim* is presented by the *Shulchan Aruch* (YD 249:1) in the context of the general obligation to give tzedakah, where the *Shulchan Aruch* writes, “under ordinary circumstances, a fifth of one’s property is most laudable, to give one-tenth is the average disposition, but to give less than one-tenth is stingy.”

## **Tithe So That You Will Become Wealthy**

There might be several important issues that hinge on whether *maaser kesafim* is considered to be one of the tithes, akin to *maaser ani*, or whether it is considered regular charity and tzedakah. For example, we are generally told not to perform mitzvos with the explicit intention of gauging Hashem’s response and measure of reward, as the pasuk states, “you shall not test Hashem, your God” (Devarim 6, 16). There is one notable exception: The verse assures us with regards to tithing, “and test Me now therewith, says Hashem, to see if I will not etc. pour down for you blessing” (Malachi 3, 10). Hashem’s unequivocal pledge to reward all those who tithe properly with prosperity is recorded by the Gemara (*Taanis* 8b) with the formulation, “Tithe [aser] shall you tithe [te’aser]” (Devarim 14, 22), take a tithe [asser] so that you will become wealthy [tisasher].” The Rema (YD 247:4) asserts that it is likewise permitted to test Hashem when taking *maaser kesafim*, because *maaser kesafim* is also a form of tithing. However, the *Pischei Teshuvah* (YD 247:2) cites Rav Yaakov Emden and the *Shelah Hakadosh* who disagree and argue that it is prohibited to test Hashem when separating *maaser*

*kesafim*, since *maaser kesafim* is part of the ordinary mitzvah of tzedakah that does not enjoy the same guarantee as tithing.<sup>4</sup>

## **Using Maaser for Mitzvos?**

In light of the Rema’s view that *maaser kesafim* is a form of tithing similar to *maaser ani*, the pauper’s tithe, we can justify the Rema’s (YD 249:1) insistence that *maaser kesafim* also be distributed specifically to the poor and not allocated toward other mitzvos. However, the *Shach* (249:3) maintains that *maaser kesafim* may be used for other mitzvos, perhaps because he argues and believes that *maaser kesafim* is similar to conventional tzedakah, which is not necessarily reserved exclusively for the poor.<sup>5</sup> Nonetheless, *maaser* funds should not be used whenever we will derive any kind of personal benefit. Therefore, while *maaser* funds can be used to purchase *aliyos* in shul or to make benevolent institutional contributions, they should not be used to purchase items for private use such as *seforim*, *teffilin*, *mezuzos*, *daled minim*, *matzos*, etc. or to pay shul membership dues where we receive tangible items or privileges in return.<sup>6</sup> Similarly, when using *maaser* funds for a dinner to benefit a charitable organization, we should deduct the real value of the meal.

Moreover, the *Be’er Hagolah* (249:5) claims that *maaser* funds can never be used for obligatory mitzvos, only for optional or voluntary mitzvos. For this reason, Rav Moshe Feinstein (*Iggros Moshe*, YD 1:143) asserts that since parents are obligated to support their children until they become self-sufficient or married, they may not use *maaser* funds to do so. Additionally, Rav Moshe Feinstein

(*Iggros Moshe* YD 2:113) argues that *maaser* funds should not be used for tuition, since it is incumbent on every parent to teach their children Torah and halacha, and to generally provide them with a comprehensive Jewish education that will enable them to become independent, proficient, and practicing religious Jews.<sup>7</sup> In contemporary times, where it is customary and expected for young men and women to study in a yeshiva or seminary, even post high-school or *mesivta*, it is debatable whether or not *maaser* funds can be used for this purpose.<sup>8</sup>

Parents who are assisting their independent or married children with basic expenses may undoubtably use *maaser* funds for this purpose.<sup>9</sup> However, if possible, it is generally not ideal to consign all of our tzedakah funds toward one recipient, even if the sole beneficiary is our own child.<sup>10</sup> In fact the pasuk states, “Happy are those etc. who perform charity, *bechol eis*, at all times” (Tehillim 106, 3), and the Gemara (*Kesubos* 50a) asks, “is it possible to perform charity at all times? Are we always in the presence of paupers?” To which the Gemara resolves, “this is referring to one who sustains his own children.” The Gemara emphasizes that supporting our own children is a continuous mitzvah of tzedakah. Nonetheless, the pasuk states, “he should not come, *bechol eis*, at all times, into the holies” (Vayikra 16, 2), from which the Chafetz Chaim homiletically derived that one who only engages in tzedakah that is “*bechol eis*,” “at all times,” because he utilizes all of his charitable funds to assist his own children, is prevented from entering into the holy sanctum of Hashem.<sup>11</sup>

## **Exclusions and Earmarks**

The Rema (YD 251:3) states unequivocally that the notion of giving charity beyond the rudimentary mitzvah of tzedakah — one-third of a shekel per year — is only applicable to those who can afford their own basic living expenses. However, the mitzvah to separate *maaser* from produce applies to everyone equally, regardless of their personal financial predicament. Therefore, whether or not someone who is accepting financial assistance from the community in order to pay for their ordinary expenses should be separating *maaser kesafim* might depend on how *maaser kesafim* is viewed, as tzedakah or as a form of tithing.<sup>12</sup> Practically, Rav Moshe Feinstein (*Iggros Moshe* YD 2:113), Rav Moshe Sternbuch (*Teshuvos Ve'hanhagos* 1:560:3-4) in the name of the Brisker Rav, and Rav Elyashiv (cited in *Be'orach Tzedakah* pg. 45) have ruled that since *maaser kesafim* is treated as a *minhag*, it should only be practiced by those who can afford to do so. Therefore, it is permissible to use *maaser* funds for our own necessities, including tuition, when the only other available option is community sponsored financial assistance.<sup>13</sup>

Independent adult children who are being supported by their parents might be exempt from separating *maaser* for an additional reason. While monetary gifts are generally subject to *maaser kesafim*, any gift that is only given conditionally and earmarked for basic support and expenses would be exempt from *maaser*.<sup>14</sup> Therefore, children should generally not be separating *maaser* from funds that their parents have provided for them, when it is for the express purpose of covering their ordinary living

expenses.<sup>15</sup> Moreover, if a child who is currently receiving parental support obtains a temporary or part-time job where they earn their own salary, or gets married and receives wedding gifts, it is still doubtful whether or not they would be obligated to separate *maaser*, since by giving *maaser* now, they would be causing their parents to provide them with more money in the future to defray their basic costs of living.<sup>16</sup>

## **Deductions and Distributions**

All forms of profit are subject to the *minhag* of *maaser*, including monetary gifts or an inheritance.<sup>17</sup> However, a loan is not considered a form of profit and would not be subject to *maaser*.<sup>18</sup> Any losses or business expenses, including income tax, should be deducted from the gross profits before calculating *maaser*.<sup>19</sup> The losses of one business venture may be deducted from the proceeds of a different business venture, as long as they occur within the same accounting period.<sup>20</sup> It is recommended that one day a year, perhaps Rosh Hashanah, or if more convenient, December 31, be designated as the formal conclusion of the annual accounting period for the purposes of calculating *maaser*.<sup>21</sup> Additionally, capital gains from the sale of any asset should be adjusted for inflation according to the Consumer Price Index (CPI).<sup>22</sup>

When calculating *maaser*, only realized gains or distributions need to be included. Any profit that is the result of an asset increasing in value is only subject to *maaser* once the asset is sold and the proceeds are received. We are not required to sell an asset that has risen in value in order to separate *maaser* from the profits.<sup>23</sup> If an investment is sold and immediately rolled over into another investment,

such as in a real estate 1031 exchange, the profits might not be subject to *maaser*, since the proceeds were never distributed. On the other hand, any profits that were extracted and distributed from a business that rose in value, even if they were obtained through the refinancing of a loan, might arguably be considered realized gains that would be subject to the *minhag* of *maaser*.

## **Tzedakah and the Yomim Noraim**

According to the Gemara (*Rosh Hashanah* 16b) tzedakah is one of the few mitzvos that can fundamentally improve our judgement for the coming year, as reflected in the familiar refrain, “repentance, prayer, and tzedakah remove the severity of the decree.” Moreover, only through giving tzedakah between Rosh Hashanah and Yom Kippur can we truly behold and bask in the presence of Hashem throughout the year. The culmination of the Yomim Noraim is punctuated by the mitzvah to dwell in the sukkah, which represents the personal chamber of Hashem.<sup>24</sup> The *Divrei Chaim* notes that the key to entering into the sukkah and ultimately encountering the presence of Hashem is the mitzvah of tzedakah, as suggested by the dimensions of the sukkah itself. Minimally, the sukkah must have two full walls that are seven *tefachim* (handbreadths) wide and ten *tefachim* tall, a third wall that is one *tefach* wide and ten *tefachim* tall, and a roof that is seven *tefachim* wide by seven *tefachim* long, for a total of 199 square *tefachim*, the same numerical value as the word “tzedakah.” In the merit of the mitzvah of tzedakah and the *minhag* of *maaser*, may we all be blessed with a year of prosperity and to continuously reside in the shade of Hashem.

## Endnotes

1. This implies that one-tenth of all assets and possessions should be tithed, which leads Rav Moshe Feinstein (*Iggros Moshe EH* 4:26) to claim that we are also obliged to designate one-tenth of our time as well to charitable projects and helping others.
2. Within this position that *maaser kesafim* is a formal obligation and part of the system of tithes, there is a significant dispute among the authorities as to whether it is a biblical or perhaps only a rabbinic obligation. For example, see *Teshuvos Chasam Sofer* (YD 2:232), *Teshuvos Noda B'yehudah* (YD 73), and *Aruch Hashulchan* (YD 249:5).
3. Therefore, the Chafetz Chaim (*Ahavas Chesed* 18:2) recommends that when giving *maaser kesafim* for the first time, we should stipulate and have in mind that we are only doing so voluntarily, and without any intention to accept a vow to do so in the future. Similarly, if we mistakenly thought that *maaser kesafim* was a formal obligation and later discovered that it is only a *minhag*, we would not have to abrogate or renounce our vow, since the oath was taken under false pretenses, see *Shulchan Aruch* (YD 214:1). Additionally, since *maaser kesafim* is generally treated as a *minhag* and not a formal obligation, the parameters and limits of the *minhag* might not have rigidly defined or universal rules. Rather, at least to a certain degree, each person's *minhag* might be shaped by their own mindset and specific assumptions when they initially undertook to separate *maaser*.
4. The *Aruch Hashulchan* (6) and the Chafetz Chaim (*Ahavas Chesed* 18, 1) rule in accordance with the *Rema*.
5. The *Chasam Sofer* (YD 331) cited by *Pischei Teshuvah* (249:2) adds that if we only began the practice of separating *maaser kesafim* with the assumption that it could be used for mitzvah purposes, then it would be permitted even according to the *Rema*.
6. *Taz* (YD 249:1), *Chochmas Adam* (144:11), *Nachlas Shiva* (8:2), *Aruch Hashulchan* (249:10), and Rav Yaakov Kamentsky, *Emes Le'Yaakov* (YD Note 134).
7. However, see Rav Yitzchak Blazer, *Pri Yitzchak* (2:27) and *Orchos Rabbeinu* (1:198) who disagree.
8. See Rav Moshe Sternbuch, *Teshuvos Ve'hanhagos* (Vol. 1 560:4), Rav Yaakov Yeshaya Bloi, *Tzedakah U'mishpat* (6:14), and Rav Yaakov Kamentsky, *Emes Le'Yaakov* (YD Note 134).
9. *Shulchan Aruch* (YD 251:3).
10. *Shulchan Aruch* (YD 257:9).
11. Cited in *Kol HaTorah* Vol. 39 pg. 89.
12. See *Dovev Meisharim* (3:84), as well as, Rav Moshe Feinstein (*Iggros Moshe* YD 2:112), Rav Yitzchok Weiss (*Minchas Yitzchak* 6:110), Rav Moshe Sternbuch, (*Teshuvos Ve'hanhagos* 1:560:2), and *Orchos Rabbeinu* (3:138).
13. Rav Shlomo Zalman Aurbach (cited in *Kol HaTorah* Vol. 39 pg. 89) adds that *maaser* funds can certainly be used for any portion of the regular tuition bill which is directed towards helping subsidize those who can't afford to pay tuition.
14. Rav Yechezkel Feinhandler, *Be'orach Tzedakah* (pg. 135).
15. Rav Moshe Feinstein, (*Iggros Moshe* YD 2:112), Rav Shlomo Zalman Aurbach (cited in *Kol Hatorah* vol. 39 pg. 94), and Rav Elyashiv (cited in *Be'orach Tzedakah* pg. 136).
16. Rav Herschel Schachter in the name of Rav Yaakov Moshe Lessin. See also Rav Yechezkel Feinhandler, *Be'orach Tzedakah* (pg. 45) in the name of Rav Shmuel Vosner. However, Rav Yaakov Emden, *Sheilas Yaavetz* (1:6) notes that a couple that is financially independent should be separating *maaser* from wedding gifts they receive. *Be'orach Tzedakah* (pg. 352) quotes Rav Vosner that since *maaser* is only a *minhag*, children are not required to separate *maaser* on bar or bas mitzvah gifts. However, *Be'orach Tzedakah* (pg. 46, 138, 370) cites Rav Avigdor Nevenzhayl, Rav Chaim Pinchas Scheinberg, and Rav Nissim Karelitz who argue that children should be trained to separate *maaser* on bar or bas mitzvah gifts. Alternatively, Rav Yaakov Kamenetsky, *Emes Le'Yaakov* (YD Note 132) suggests that all wedding or bar or bas mitzvah gifts should be exempt from *maaser* since there is a general expectation that those gifts will be reciprocated, therefore it should be considered as a loan (see *Bava Basra* 145b) which is not subject to *maaser*.
17. *Pischei Teshuvah* (YD 249:1) and Rav Chaim Kanievsky, *Derech Emunah* (*Matnos Aniyim* 7:7).
18. Rav Yaakov Yeshaya Bloi, *Tzedakah U'mishpat* (5:5).
19. *Pischei Teshuvah* and *Taz* (YD 249:1). *Tzedakah U'mishpat* (5:35) considers childcare for a working woman as a business expense that may be deducted from her salary before calculating *maaser*. The *Shiurei Kenesses Hagedolah* (YD 249) and Rav Yosef Karo (*Avkas Rochel* 3) maintain that even personal or household expenses may be deducted before calculating *maaser*. Therefore, *maaser* would only apply to the expendable income that we earn above and beyond any business or household expenses. This position is challenged by the Chida (*Birkei Yosef* 249:5) and the *Aruch Hashulchan* (249:7). See the *Kitzur Shulchan Aruch* (34:4), *Tzitz Eliezer* (10:6), and *Tzedakah U'mishpat* (5:8) who note that the majority of *poskim* have ruled in accordance with the latter opinion.
20. *Pischei Teshuvah* (YD 249:1). In the same business venture, losses may be deducted even if they occurred in a different accounting period than the profits. Therefore, Rav Shimon Taub, *The Laws of Tzedakah and Maaser* (pg. 143-144) quotes from Rav Shlomo Miller, that one who went to school to earn a degree with the intention of using it to earn a livelihood would be permitted to deduct the tuition and other costs incurred in the pursuit of obtaining that degree, and would only become obligated to separate *maaser* when his earnings have surpassed the sum of those costs, see also *Kol Hatorah* (vol. 39 pg. 89) in the name of Rav Shlomo Zalman Aurbach.
21. *Chavos Yair* (224), *Aruch Hashulchan* (249:1) and *Iggros Moshe* (YD 1:143).
22. Rav Moshe Feinstein, *Iggros Moshe* (YD 2:114), Rav Shlomo Zalman Aurbach, cited in *Kol Hatorah* (vol. 39 pg. 87), and Rav Moshe Sternbuch, *Teshuvos Ve'hanhagos* (Vol. 1 560:5). With regards to the sale of a private home, presumably any expenses related directly to maintaining the house, such as the cost of capital improvements, real estate taxes, home insurance, mortgage interest, electric and gas bills etc. should be deducted from the proceeds of the sale prior to calculating any *maaser* obligation. It seems that under most circumstances, after deducting overhead expenses and adjusting for inflation, we would rarely profit from the sale of a private home in a way that would trigger the *minhag* of *maaser*. Moreover, Rav Elyashiv (cited by *Be'orach Tzedakah* pg. 129) is of the opinion that we would not be required to separate *maaser* from the sale of any personal residence which is not considered to be an investment.
23. Rav Moshe Sternbuch, *Teshuvos Ve'hanhagos* (Vol. 1 560:7).
24. *Zohar* (*Emor* 103b).