

The Charity First Series

# GIFT AID FOR FUNDRAISERS AND SPECIALIST ADVISERS

*Navigating the finer points of Gift Aid  
rules and application*

Graham Elliott

*City & Cambridge Consultancy*

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**GIFT AID FOR FUNDRAISERS  
AND SPECIALIST ADVISERS**

*Navigating the finer points of Gift Aid rules and  
application*

**Graham Elliott**

*City & Cambridge Consultancy*

First edition published electronically in 2013 by Social Partnership Marketing LLP, 38 Leconfield Road, London N5 2SN as The Gift Aid Guide – Rules Relating to Charity Donations by Individuals by Graham Elliott. © Withers LLP, London 2013

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ISBN: 978-1-908595-40-9

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## INTRODUCTION

This booklet covers Gift Aid on donations made by private individuals. It does not cover the specific rules relating to Gift Aid on donations by businesses, although there is some cross-over. Donations made by partnerships are deemed to be donations by individual partners and therefore donations by individuals.

The purpose of this booklet is to describe what Gift Aid is, how it provides benefit to the charities, what, if anything, the donor can get out of the arrangement, and what basic processes need to be followed.

Gift Aid is a valuable benefit for charities. It has only been available in the current format since 2000. In essence, it provides government matched funding (via a tax relief) for the generosity of individual donors, by reference to a tax refund hypothecated to the charity to which the donor made the original gift. It also allows a degree of mitigation of tax for higher rate tax payers. Deployed successfully it can give an immense boost to charity resources.

It is unfortunate that there have been some examples of people seeking to exploit the Gift Aid Rules for convoluted tax avoidance, and even for evasion. This can only be deplored. Whatever one may think of ‘tax planning’ and the obvious fact that taxpayers can, within reason, arrange their affairs in a tax efficient way, any attempt to distort the original generous premise upon which the public exchequer provides this form of additional funding to charities, in order to divert resources back towards the pockets of the ostensible donors, is unjustifiable. For this reason, this publication will not touch on anything that may inspire such ideas. If the reader thinks that he sees something here that is the kernel of an idea of that kind, then the author hereby disassociates himself from that motive.

Gift Aid is paid to charities on any level of donation made by a sufficient payer of UK income tax and capital gains tax who completes a Gift Aid declaration accordingly. In practice, this means that most UK- based donors are able to make tax efficient donations and, in turn this means that significant operations have been established in charities to garner this particular resource.

It will be a ready preoccupation of charity ‘Gift Aid Departments’ to process all of the paperwork and make the relevant submissions to HM

Revenue and Customs (HMRC). For many people, that will be the most important aspect of the process. But as with all taxes, there are significant ‘wrinkles’ of interpretation on the boundaries between certain situations and others, and the main focus of this publication is to look at those more legal aspects. We do not entirely ignore the process or administrative issues, but these are best reviewed in conjunction with the information publicly available on HMRC’s website, which is frequently updated.

HMRC has user-friendly guidance on Gift Aid, although it is not always at the forefront of their search engine. In particular, a document within HMRC’s Detailed Guidance Notes called ‘Chapter 3 Gift Aid’ does not always ‘come up’ when a search is made on their website, yet that is their most comprehensive document of interpretation. A great deal of the material on HMRC’s website involves interpretation of the legislation rather than the legislation itself. Understanding HMRC’s view of the legal situation is very important but it should be borne in mind that not all that they say is necessarily explicitly supported by legislation.

That is not to say that the opposite applies to the contents of this publication. There is much that is open to interpretation, and the reader should bear that in mind just as much for what is said here as for what is said by HMRC. To a great extent, what is written here is its author’s personal view, although steps are taken to indicate where an issue is clear and where it is a matter of interpretation. However, given that that is the nature of the guide, a reader should not assume that in each and every case the approach is unchallengeable. All readers seeking to apply Gift Aid rules, in all but the clearest situations, ought to take professional advice on their own specific area rather than relying on any general guide. This publication is offered as a means of helping charities come to grips with the overarching issues raised by Gift Aid, and as a means of warning charities about various aspects that need to be given further consideration.



## **BASIC REQUIREMENTS**

### **Donations must be money**

Gift Aid does not operate on the basis of payments in kind. The payments must be in money. If a donor has a valuable object the benefit of which he wishes to give to a charity, then Gift Aid tax relief will only apply in that case if the donor sells the goods on his own behalf to start with and then donates the proceeds received. If the donor wishes to donate the value of a service he provides, then he ought to sell the service prior to making the donation (although in this case the proceeds achieved on the sale of the service may well be subject to tax, thus creating an extra tax burden to the donor that would not have applied had he literally donated the service itself). However, donating the service is an option that falls outside Gift Aid and has a range of potential tax and VAT consequences.

In the recent past, a waiver of loan was not accepted by HMRC as being the same as making a payment in money. However, during the Covid 19 pandemic HMRC changed its mind in the case of tickets sold by charities where the event had to be cancelled. Where the charity asked the customer to waive a refund in order to turn the initial payment into a donation, HMRC accepted that this could in principle benefit also from gift aid. They later indicated that such cases could apply more generally. The key element seems to be that the loan waiver must arise from a payment that had been made in money, and which was to be turned into a donation. There is no indication that a liability a charity owes to a putative donor is included if there was no payment by that donor in the first place.

Oddly, a Gift Aid donation can be in any currency. This may have been introduced at the inception of the relief on the footing that the Euro would become much more important in our lives than it has subsequently become. It is not understood that very many donations are paid to charities in foreign currency, but it is worth bearing in mind that just because foreign currency is received this does not preclude Gift Aid being claimed.

### **Need to pay sufficient tax**

In public accounting technical terms Gift Aid payments to a charity are a tax rebate, rebating some or all the tax already paid by the donor directly to the charity. It does not constitute public spending. Although this concept

is wishful thinking in real terms, it explains why the process governing Gift Aid works as it does.

It includes the specific requirement that every donor against whose donation a Gift Aid claim is made by the charity should have paid enough tax either through income tax or capital gains tax in order to cover the 'rebate' made to charities. Any donor that happens not to pay any of these taxes cannot make a Gift Aid declaration, and the charity cannot claim Gift Aid on their donations. However, there can be a misconception that as long as the donor is 'a UK taxpayer' that qualifies the donation automatically as one for which the charity may claim Gift Aid. Whilst that will usually be the case it is not strictly the position. In fact, the donor must be paying enough qualifying tax in the fiscal year in which the donations are made in order to cover the tax reclaimed on the specific donations. That is, the amount of tax paid in that particular year cannot be less than the aggregate Gift Aid rebate claimed by all the charities to which he has made donations in that year. The only relaxation of this 'matching' rule is that a donation may be set against the tax paid in the prior year as long as it is made before that year's tax return is submitted, but no later than 31 January after the end of the tax year. But this is a limited degree of 'carry back'.

To illustrate the pitfall: say a donor has accumulated a substantial amount of savings, but his income tax and capital gains tax is low in a particular year though his savings remain fairly high. He decides therefore to make the usual generous donations to selected charities but in doing so pays more to those charities than the value of the income on which he has paid qualifying tax. Each charity to which he gives (and which holds a previously issued Gift Aid Declaration) naturally assumes that it is able to make a Gift Aid claim on the full amount of his donations. However, he has not paid enough tax to 'frank' all of the Gift Aid reimbursements from HMRC.

It will be tempting to think that the fact that he has probably paid a significantly greater amount of tax in the past than has ever been covered by previous Gift Aid payments gives him cover for this, on a 'carry forward' basis. Such a sensible rule does not exist. The mere fact that the donations in the given tax year exceed the taxed income creates a problem, which is only mitigable by the limited backwards look mentioned above.

It can be seen immediately that no one charity has any way of knowing this. In fact, even if they did, none of the charities in question would know which ones should give up an amount of tax on the Gift Aid claim. For this reason the law is configured to pass the liability for uncovered taxation back to the donor. He therefore runs a risk of suffering the ignominy

of having not only been generous to the charities, at least by reference to his taxable income for the year, but to have to pay an amount back to HMRC for the tax which the charities have claimed but for which there was insufficient cover.

Plainly the lack of any carry forward is a major weakness in the Gift Aid system.

The required Gift Aid declaration to be provided by the donor is not strictly prescribed, but must include the elements contained in HMRC's guidance. This requires the donor to state that he pays enough tax to cover all of the charitable donations for the year. This makes it clearer to the donor that he cannot have paid insufficient tax of his own to cover the Gift Aid rebates to all charities to which he chooses to give.

At the time of writing, HMRC provided comprehensive guidance on Gift Aid declarations in Chapters 3.6 – 3.10 of its Charities Guide, and this should be used as the main guidance in drafting a gift aid declaration, and should be frequently consulted to check for any changes.

### **Effective restricting of use of donations**

There are two sets of conditions that are inadmissible if the charity wishes to claim Gift Aid. These are:

1. That the donor may be able to demand his money back (even if only subject to circumstances).
2. That the charity must use the donation to purchase property from the donor (or connected person).

Beyond this, however, certain restrictions are allowed to the donor. He can make stipulations as to which of the charitable projects carried out by the charity it may spend money on (thus setting up a 'restricted fund'). He can require the money to be paid into an endowment fund rather than being spent immediately. In all of the circumstances, however, care must be taken by the charity not effectively to invalidate the 'no reimbursement' rule by means of allowing the donor to require that any money not spent on the designated activity must return to the donor. For instance, if a charity accepts the donation towards a restricted project, but the project cannot go ahead (because, for example, insufficient donations have been raised to make the project viable) the charity may be unable to fulfil its promise to the donor to spend the money for the restricted activity. If the

Text continues

## **ABOUT THE AUTHOR**

Graham Elliott is the Director of City & Cambridge Consultancy, which advises charities, non-profits, and commercial organisations, on a range of charity taxes and general VAT. Graham was appointed Technical Adviser to the Charity Tax Group in 2016. He writes frequently for the charity technical press and other publications. He is in demand as a public speaker. He is a Chartered Tax Adviser (Fellow) and an MBA.

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Full Version ISBN 978-1-908595-