

The Charity First Series

THE GIFT AID GUIDE

Rules relating to charity donations by individuals

Graham Elliott

Withers LLP

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The Charity First Series aims to provide practical and straightforward guidance on the challenges confronting charity operations today, with fundraising in the spotlight. Its individual subjects range from those concentrating on the UK and Ireland to non-profit issues in the EU and other jurisdictions, from traditional to digital fundraising and from basic help for those just entering the third sector to specialist areas for the more experienced.

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Rules Relating to
Charity Donations by Individuals

Graham Elliott
Withers LLP

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1 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 made by businesses, although there is some cross-over. Traditional partnerships donations are deemed to be donations by individual partners and therefore donations by individuals and these are included, although no further separate reference will be made to this fact, since the rules are the same as for 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 this particular 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 to tax for higher rate tax payers. Deployed successfully it can give an immense boost to charity resources at the expense of the public exchequer. For this reason it is particularly unfortunate that there have been some examples in recent years and months (up to 2013) 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 booklet will not touch on anything that may inspire such ideas. If the reader thinks that he sees something in this booklet that is the kernel of an idea of that kind, then the author hereby disassociates himself from that motive.

Prior to 2000 a general tax relief on individual giving could only be achieved under the covenant system or, for a period, under a Gift Aid system that required a donation of more than £250. From 2000 to the present day 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 booklet is to look at those more legal aspects. We do not entirely ignore the process or administrative issues, but on the whole these are best reviewed in conjunction with the information publicly available on HMRC’s website.

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 black and white 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 booklet. There is much that is open to interpretation, and the reader of this booklet 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 booklet 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.

2 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.

A waiver of loan does *not* count as cash paid.

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

Text of full version continues .../

About the Author

Graham Elliott is a Transaction Tax Consultant at Withers LLP. Graham mainly advises clients on VAT (Value Added Tax). He also advises on Gift Aid for charities, general charity transactions, and SDLT (Stamp Duty Land Tax). Regarding VAT, his main areas of focus are: real estate, charities and international services. Most of Graham's practice involves advising clients on what the tax law legitimately allows so that they do not pay more tax than they ought or is fair. This occasionally involves recouping (potentially substantial sums of) overpaid tax. It can also involve defending a client's existing position, or negotiating the fairest settlement where tax is due.

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