

Charitable giving from April 2024 (Lecture P1413 – 13.46 minutes)

There are many aspects to achieving charitable status for tax purposes:

- Gift aid becomes available meaning that:
 - A company can claim a deduction for the donation;
 - An individual can claim higher and additional rate tax relief on payments to charities;
- The charity can reclaim the basic rate tax deemed to be paid on an individual's donation;
- Capital gains tax reliefs are available of gift of qualifying assets to a charity;
- Any gift, either in lifetime or on death, is not liable to inheritance tax;
- The charity will not pay tax on most of its income and gains if it uses the money for charitable purposes;
- Discounts are available on business rates;
- No stamp taxes are paid on acquisition of property to be used for qualifying charitable purposes or where the income will be so used; and
- Special rules apply for VAT purposes.

Historically, a charity was defined as follows:

1. A body established for charitable purposes only which is defined in the Charities Act 2006;
2. It is located in a member state of EU or EEA and be within the authority of a UK court or be subject to control by a court in the corresponding jurisdiction in which it is located;
3. It must be registered in the relevant jurisdiction; and
4. It must be managed by persons who meet the 'fit and proper' test.

However, as part of the post-Brexit changes to tax legislation in the UK, this is now changing.

The ability to have a non-UK charity qualify was removed in FA2023 by alteration of the second condition above. There is a transitional period, so that a charity which had asserted its status before 15 March 2023 will continue to qualify until 1 April 2024 (for company donations) or 5 April 2024 (for individual donations). After that, no relief will be available where donations are made to non-UK charities. This will be the case even if those overseas charities have UK activities.

Whilst we have no real information about whether any issues are arising about the charities which have asserted their status before the above date, HMRC have stated that only 20 EU or EEA charities are in that position so they are not expecting many to fall within the transitional provisions. UK taxpayers will need to obtain evidence of asserted status in order to claim any relevant UK tax reliefs.

Charities situated outside the EU or EEA have never been able to benefit from these reliefs so will be unaffected by the change.

Similar reliefs as are outlined above are available for Community Amateur Sports Clubs (CASCs) and they will also be affected by the changes. For CASCs, the change means that it must be based in the UK and provide facilities for eligible sports in the UK. As for charities, these changes take effect from 15 March 2023 unless the CASC has asserted its status and then the change is delayed until the dates indicated already.

It should be noted that it was not always straightforward to get HMRC to accept that a non-UK charity qualified under the above provisions, as is probably illustrated by the small number which have asserted their status. The definition of charitable purpose is wide (including relieving poverty, education, religion, health, art, human rights, environmental protection and animal welfare) but it has not always been easy to prove this point in relation to an overseas charity. There is also an overriding concept that a charity must exist for the public benefit.

This has given rise to an interesting case seen by the author in relation to IHT planning.

An individual is resident in the UK and is assumed to have acquired a domicile of choice in the UK although their domicile of origin is outside the UK. On this basis, the worldwide assets are liable to IHT in the UK.

One asset held by the individual is a house in the country of origin. This will be liable to IHT in that country although there will be double tax relief available.

The individual is intending to donate all of the proceeds from the sale of the house to charity which will leave no actual IHT payable in the overseas jurisdiction. However, the charities which will benefit are within the overseas country rather than the UK so will not be eligible for IHT exemption in the UK. This will apply after 5 April 2024 and may already apply if those overseas charities have not asserted their charitable status in the UK. It is our understanding (having taken local advice) that there may be problems with the relief in the overseas jurisdiction if the money is brought to the UK and paid to UK charities.

There is a treaty between the relevant country and the UK with regards to IHT. However, there is no reference to any relaxation relating to charitable donations. It states, 'in determining the amount on which tax is to be computed, deductions shall be allowed in accordance with the law of the State in which the tax is imposed'. This means (effectively) you only get a deduction in the UK if their laws allow it but if it doesn't (which is the likely case), then you can't get the deduction.

Contributed by Ros Martin