

Gift aid (Lecture P1312 – 16.42 minutes)

Gift aid is the term given to the relief available to individuals in respect of qualifying donations to a charity or other body treated as a charity. Bodies treated as charities include the Trustees of the National Heritage Memorial Fund, English Heritage, The National Endowment for Science, Technology and the Arts and Community Amateur Sports clubs (although for the latter membership fees cannot be qualifying donations).

Points to note about gift aid:

- There is no minimum or maximum size of donation;
- No requirement that donations be recurring;
- The person making the payment must make a gift aid declaration;
- Gift aid only applies to gifts of money and does not cover things like release of loans. There is a relief which applies for gifts of shares, securities and land. A special option relates to donations of assets via charity shops under the retail Gift Aid scheme;
- There are anti-avoidance provisions which provide for the removal or withdrawal of the income tax relief on donations which are 'tainted donations'.

Basic process

The following steps cover how the gift aid process works in basic terms:

- The donor makes a voluntary donation and completes a gift aid declaration;
- The charity receives the money, puts in a claim for gift aid from HMRC and receives gift aid back representing 25% of the net donation;
- If the donor is a higher rate taxpayer, they can claim higher rate tax relief and this operates by way of extension of the basic rate band.

A donor may elect to treat a qualifying donation as having been made in the previous tax year. This election has to be made on or before the submission of the self-assessment return for that previous year and, in any event, by 31 January following that year. This effectively limits carry-back to donations made between 6 April and 31 January because even if no self-assessment return is submitted, the time-limit is still the same.

If the donor's tax income tax and capital gains tax liability for the year is less than the total tax deemed to have been deducted from qualifying donations, the donor's entitlement to certain personal reliefs is restricted as much as is necessary to increase the liability so that it equals the deemed tax deductions.

Those reliefs are:

- personal allowance;
- married couples' allowance;
- blind persons' allowance; and
- relief for payments to trade unions.

If the tax liability falls short, even after making such restrictions, then an assessment will be issued on the donor to collect the shortfall.

A donation to charity is a qualifying donation if:

- It is a payment of money;
- It is not subject to any condition as to repayment;
- It is not made under a payroll deduction scheme;
- It is not deductible in calculating the individual's income from any source;
- It is not conditional on, or connected with, the charity's acquisition of property from the individual or a person connected with the individual;
- It is not by way of waiver of the individual's entitlement to sums due to the individual from the charity in respect of an amount advanced to the charity and in respect of which the donor has obtained social investment tax relief;
- No benefits are associated with the donation other than those within the de minimis limits;
- A gift aid declaration is given.

It is important to note that from 6 April 2017, the condition that a gift aid declaration must be given by the individual is relaxed to allow gift aid declarations to be made by intermediaries acting on behalf of either the donor or the charity. This allows independent fund raisers to work more effectively.

Gift aid can only be claimed on donations, and one area where HMRC are looking very closely at this is fundraising. Ticket and other associated sales do not qualify. A 'required' donation is not a donation and HMRC are not happy with 'minimum' donations either. A 'suggested' donation might be a donation but it depends on expectation. There must be absolutely no obligation to make a donation, without impact if no donation is forthcoming, and HMRC may want to look at the evidence to support this contention. Split treatment may work, so £x entry fee with optional donation above this.

Linked to this, a qualifying donation must not have the result that the donor or any person connected with him receives any benefit which exceeds specified limits. This prohibition on benefits is not limited to benefits provided by the charity concerned. In *St Dunstan's v Major (HMIT)* (1997) Sp C 127, a bequest of a sum of money to a charity as a result of the variation of a deceased's will was held not to be a qualifying donation for Gift Aid purposes because, as a consequence of that bequest, there was a benefit in the form of a saving in inheritance tax.

Two limits are specified; a variable one and an absolute one. If either one is breached the donation will not qualify. These limits are:

1. (the variable limit) the total value of the benefits associated with the donation (if made on or after 6 April 2019) must not exceed:
 - 25% of the amount of the donation (where the donation is £100 or less); or
 - £25 plus five per cent of the excess over £100.
2. (the absolute limit) the total value of the benefits associated with the gift and any associated with previous qualifying donations made by the donor to the same charity in that tax year, must not exceed £2,500

For gifts made before 6 April 2019, the variable limits were 25% of the donation (for donations of £100 or less); £25 for donations between £100 and £1,000; and 5% of the donation in other cases. The absolute limits have remained unchanged.

To prevent exploitation of these limits by receiving benefits of less than £2,500 for a period of less than a year, the benefits received may be annualised for these purposes. Where:

- a benefit associated with a donation relates to a period of less than 12 months;
- a benefit consists of a right to receive benefits at intervals over a period of less than 12 months; or
- the benefit is one of a series of benefits received at intervals and associated with a series of donations made at intervals of less than 12 months,

both the value of the benefit and the amount of the gift are to be taken to be the 'annual equivalent' of their actual value or amount for purpose of applying the limits

In addition, where a single benefit, i.e. one which is not one of a series, is associated with a donation which is one of a series of donations made at intervals of less than 12 months, the amount of the donation is also to be taken as the 'annual equivalent' of its actual amount for these purposes.

How is this benefit valued? If it is something which is sold on the open market, then HMRC are going to look at the sale price to non-members or the value of a discount where applicable. HMRC do accept some items have nil value such as voting rights, literature, priority bookings, token items, acknowledgements. Specific events may be harder to value but often there will be a value due to the same provision being made to third parties.

Issues arise with value of benefits where there are charity auctions since HMRC believe that where the retail value of an item bought in a charity auction exceeds the benefit limits, you cannot claim gift aid. It may be possible to split the donor's payment to be split between an amount to 'buy' the item and a donation amount (with the latter then qualifying for gift aid) but then the value of the item must be made clear to bidders before each item is sold. If an item is not commercially available or unique, the benefit for gift aid purposes is the amount it fetches in the auction.

For the purposes of determining whether benefits associated with a donation are within the limits above, no account is to be taken of benefits which comprise the right to admission to premises and property, to which the public are normally admitted on payment of a fee, where that right is a 'relevant right of admission'. A right of admission, for these purposes, is the right of the donor or members of his family to be admitted to premises or property, which are open to the public on payment of an admission fee, either without payment or at a reduced fee.

Such a right is a 'relevant right of admission' if the following conditions are satisfied:

- the opportunity to make a donation and obtain the right of admission is available to the public generally;
- the admission is granted for the purpose of viewing property which is preserved, maintained, kept or created by the charity for its charitable purposes.

The property concerned is not exhaustively defined, but specifically includes buildings, grounds or other land, plants, animals, works of art (but not performances), artefacts and property of a scientific nature and either:

- the right of admission applies during a period of at least 12 months and at all times when the public can obtain admission (except for up to 5 days per 12-month period when special events are to take place); or
- members of the public could purchase the same right of admission and the donation is at least more than 10% more than it would cost the public to gain the same rights.

Sponsored challenges cause some issues. All 'sponsorship' payments are eligible for gift aid if the participants pay the cost of the challenge themselves.

Here is an example from HMRC:

A donor signs up for a sponsored bike ride in Vietnam which costs £1,500 for flights and support costs. The charity asks the donor to raise £2,500, of which £1,000 goes to the charity.

The deposit or registration fee that participants pay in advance of a sponsored challenge is not eligible for Gift Aid.

If a sponsor is connected to the participant, their donations only qualify for Gift Aid if the participant pays the full cost of the trip. This ensures that all the sponsorship money raised goes to the charity.

A 'connected person' is:

- a wife, husband or civil partner;
- a brother, sister, parent or grandchild;
- the wife, husband or civil partner of a relative;
- a company under the control of the donor, or under control of connected persons.

HMRC recognises that a charity or CASC are not expected to check whether a participant and their sponsors are connected. However, you should take reasonable steps to ensure that Gift Aid payments are not received from people or companies connected to a participant. You can do this by including an explanation in any event literature and on the sponsorship form.

The retail Gift Aid scheme allows charity shops to sell goods on behalf of donors. Money raised does not automatically qualify for Gift Aid but charities need to explain to owners of donated items that they will act as agent to sell the goods if the owner then gives the sale proceeds to the charity as a gift aid donation. The key issue is that the charity must notify the donor of the value of the goods sale, with template letters being available to enable this. The scheme was relaxed in certain cases so that the letters only have to be issued once the net sales have reached £20 or every three years, whichever comes first.

Volunteers can be reimbursed for the costs they have to incur and once that volunteer is paid, they can pay it back to the charity as a qualifying gift aid payment. You cannot claim gift aid if the volunteer simply chooses not to claim their expenses.

Finally, there can be issues with schools giving access to educational services or facilities on payment of a 'donation' which is not, of course, a donation. If parents or relatives are asked to make 'voluntary contribution' payments to a school or school charity, which are linked to the provision of services or facilities to related pupils, they are not charitable donations. Payments made for the following are not eligible for Gift Aid:

- tuition fees;
- school holidays;
- extra-curricular activities;
- lessons;
- educational trips;
- tickets for a school production.

This is because these payments are not voluntary gifts, and a student receives a benefit paid for by a relative. Donations made to an appeal or for a specific charitable purpose of the school, may be eligible for Gift Aid. Donations must not be linked to the provision of any benefit to a student related to a donor. Donations given for the following will usually qualify for Gift Aid:

- non-uniform days;
- sponsored events;
- building appeals;
- equipment appeals.

Head teachers may not charge parents for any school trip that is part of the national curriculum. However, the head teacher may ask for a voluntary contribution towards a trip. You must not discriminate against the children of parents who do not contribute. Voluntary contributions are eligible if:

- they're non-refundable even if the trip does not go ahead or if their child does not go on the trip;
- any benefit (for example, travel costs, trip insurance, cost of entry) does not exceed maximum levels of allowable benefit for the donation;
- the school tells parents that the contribution is not compulsory.

There is a relaxation of the gift aid provisions where there are small donations of £30 or less under the Gift Aid Small Donations Scheme (GASDS). From 6 April 2017, this can also be used for donations made using contactless technology, such as a contactless credit or debit card. This cannot be used to cover part of a larger gift or for donations where a valid gift aid declaration has been made. The tax relief is the same as for normal gift aid donations.

The charity or CASC does not need to know the identity of the donors or collect Gift Aid declarations. The conditions are that the organisation must:

- have claimed Gift Aid in the same tax year as you want to claim a top-up payment;
- not have incurred a penalty on a Gift Aid or GASDS claim in the current or previous tax year.

The maximum amount of small donations that can be treated in this way is the lower of £8,000 or 10 times the amount received in gift aid donations. Records of the donations must be kept including the denomination of coins and notes, the date the money was collected and confirmation that no individual donation was greater than £30.

It is important to keep the proper records. Charities need to keep records to show how much has been received from each donor who's made a declaration. Charities must keep sufficient records to show that their tax reclaims are accurate. In other words, they must keep records that enable them to show:

- an audit trail linking each donation to an identifiable donor who has given a valid Gift Aid declaration;
- that all the other conditions for the tax relief are satisfied, for example provision of benefits.

If a charity does not keep adequate records it may be required to pay back to HMRC the tax reclaimed, with interest. It may also be liable to a penalty under the Self-Assessment rules.

Gifts of assets

Although gift aid is only due on cash gifts, an individual may also claim an income-tax deduction in respect of gifts to charities of 'qualifying investments'.

Broadly, the relief is available where the individual disposes of the whole of the beneficial interest in the qualifying investment to a charity otherwise than by way of a bargain made at arm's length, either by way of an outright gift or by a sale at an intentional undervalue.

Relief, which has to be claimed, is given by deducting the 'relievable amount' in the calculation of the individual's net income for the tax year in which the disposal is made. This relief for income tax is in addition to the capital gains tax relief for gifts of shares, securities and other assets to charities. No gift aid can be reclaimed by the charity.

A 'qualifying investment' is defined as:

- Shares or securities listed or dealt on a recognised stock exchange;
- Units in an authorised unit trust;
- Shares in an OEIC;
- Interest in an offshore fund;
- Qualifying interests in land.

A qualifying interest in land is a freehold or leasehold interest in UK land or equivalent.

The disposal must be of the whole of the person's beneficial interest in the qualifying investment. This would mean, for example, that a freeholder granting a lease to a charity out of his freehold interest would not have satisfied this condition, as he would still have retained the freehold reversion. However, in this situation, and that of a leaseholder granting a sub-lease, it is to be regarded as the disposal of the whole of a beneficial interest in a qualifying investment, i.e. the leases or sub-lease itself.

In the case of an outright gift, the relievable amount is the value of the benefit to the charity plus the incidental costs borne by the individual donor in making the gift less any benefits received by the donor as a consequence of the disposal. If it is a sale at undervalue, the value is the excess of the value of the benefit to the charity over the consideration given. If the calculation gives a negative value then no relief is available.

The value of the benefit to the charity is measured at the time of the disposal or immediately afterwards, whichever produces the lower value. This value is normally the market value of the qualifying investment, but is replaced by the acquisition value where this is lower than market value in cases where:

- the qualifying investment (or anything from which it is derived) was acquired by the individual disponent within the previous four years;
- that acquisition was made as part of a scheme, arrangement or understanding, (whether enforceable or not); and
- one of the individual's main purposes of entering into the scheme was to obtain this relief or an increased relief.

In cases where relief is claimed on gifts of qualifying interests in land, relief to be withdrawn where a 'disqualifying event' occurs at any time within the 'provisional period' which begins on the date of the disposal to the charity and ends on the fifth anniversary of the normal self-assessment filing date in respect of the tax year in which the gift was made, i.e. five years and ten months after the end of the tax year in which the disposal took place. Where such an event occurs, the donor, and in the case of joint owners of land, each owner who is also an individual is treated as never having been entitled to relief and relief previously granted will be withdrawn by such assessments and adjustments as are necessary.

A disqualifying event occurs if, without giving full consideration in money or money's worth, the donor, or, in the case of jointly-owned land, an owner who is an individual, or a connected person becomes entitled to an interest in all or part of the land or is party to an arrangement where he enjoys some right in relation to all or part of the land. This does not apply if the interest comes via inheritance.

Contributed by Ros Martin