

Tax relief on gifts to charities

Synopsis: Outline of the income tax, capital gains tax and inheritance tax reliefs

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The Government has, for some time, encouraged charitable giving by making a variety of tax reliefs available to donors. These reliefs benefit charities indirectly since the relief is likely to have the effect of increasing the total amount received by the charity that can be applied for charitable purposes.

There are reliefs in respect of income tax, capital gains tax and inheritance tax. Some of these - such as the ability for a taxpayer to nominate a charity to receive all or part of a tax repayment that is due to them are advertised on the tax return, making it easier for taxpayers to donate.

Gifts to charities are not taken into account in determining whether the cap on unrestricted tax reliefs introduced in April 2013 (the greater of £50,000 and 25% of income) has been breached by an individual in a tax year.

Income tax reliefs

Income tax relief on cash gifts to a charity can apply in three sets of circumstances...

- Gift Aid donations (“qualifying donations”).
- Payroll Giving scheme (also called “give as you earn”).
- Where gifts are made under a deed of covenant (“covenanted payments”).

Gift Aid

The Gift Aid scheme allows individuals and companies to make one-off or regular payments to a charity. The payments are treated in the same way as covenanted payments for tax purposes and the charity can claim back basic rate tax from HMRC. In fact, up to 5 April 2011 the charity could reclaim 22% tax as opposed to the 20% basic rate. Higher/additional rate donors can claim higher/additional rate tax relief, as appropriate, against income tax or capital gains tax.

Finance Act 2000 abolished the previous minimum limit of £250 and allows relief against capital gains tax and to taxpayers who pay tax below the basic rate (although if the donor has not paid enough tax to cover the tax deducted from their Gift Aid donation(s), HMRC may ask the donor to pay the difference). The original written certificate has been replaced by a written, oral or electronic declaration to make the scheme easier to administer and there is now no need for the donor's signature, National Insurance number or tax reference number.

A simple declaration will cover any number of donations already made, or intended to be made in the future. The declaration is not legally binding in the way that a

deed of covenant is and payments can cease at any time. Charities, therefore, still welcome deeds of covenant which provide an assured income.

The charity can reclaim 20p for every £1 (gross) donated and higher rate taxpayers can reclaim the difference between the basic and higher/additional rates, i.e. 20p or 25p for every £1.

Companies no longer need to deduct income tax on their donations and to give a certificate; with the £250 minimum limit for companies also abolished.

Payroll Giving scheme

This scheme allows an employee to make gifts to a charity by having sums deducted by their employer from their salary through PAYE. The donations are made after National Insurance contributions are calculated but before income tax is worked out and deducted. This means that the employee gets tax relief on their donation immediately - and at their highest rate of tax. The payroll giving scheme offers considerable scope for charitable fund raising provided both the employer runs (or is willing to start) a payroll giving scheme and the employee is willing to donate. These schemes are often popular to raise funds for local charities.

There is no upper limit to the amount that can be deducted. Employers are also able to make donations by deed of covenant. The scheme also extends to certain public bodies e.g. the British Museum. The cost of administration may put off some smaller employers.

Covenanted payments

Prior to 1990 tax relief for charitable donations was only available via a formal deed of covenant which had to be capable of exceeding three years. Payments by individuals and companies under a deed of covenant were paid after the deduction of basic-rate tax. The charity was able to reclaim the basic-rate tax from HMRC.

Strictly, a deed of covenant was an outright gift. In practice, in the case of membership subscriptions, HMRC accepted that the provision of membership benefits of up to 25% of the payment (maximum £100) did not prejudice the tax position. Also, certain admission rights were not treated as consideration for the purposes of deeds of covenant.

Since 6 April 2000 there is no longer a separate tax relief for individuals or companies for payments made under a deed of covenant. All payments from that date fall under the Gift Aid scheme. As a transitional measure, charities were not required to obtain a signed Gift Aid declaration form for donors who had entered into a deed of covenant prior to 6 April 2000.

For any deeds of covenant executed after 6 April 2000 a charity must also ensure that the donor has signed a valid Gift Aid declaration form. It is possible to incorporate the requirements of both a deed of covenant (providing some degree of certainty as to future levels of income) and a Gift Aid declaration form into the same document.

Operation of tax relief for individuals

Cash gifts

HMRC has made repayments of tax to charities primarily through Gift Aid relief since the Government expanded that relief in 2000. Previously, charities received other types of tax repayments, most notably deeds of covenant which provided tax relief for regular, fixed donations to charity over a period of at least three years. Gift Aid replaced covenants as a more flexible and accessible relief for donors.

Under Gift Aid the donor gives a cash sum and the charity is treated for tax purposes as if it had received a sum grossed-up at 20% from which tax was deducted at 20%. For example, on a gift of £800 from the donor the charity is treated as receiving £1,000 from which £200 has been deducted. The charity receives £800 and claims £200 from HMRC. The donor, if a higher rate taxpayer, receives higher rate relief on £1,000 (i.e. £800/0.8).

Although there is no statutory limit to the amounts which can be given by Gift Aid, in practice a limit will arise because a tax efficient payment can only be made within the taxable income of the individual. If an individual makes a gift to charity in excess of their taxable income they will face a charge to tax under section 423 ITA 2007.

Where an individual has paid enough tax, Gift Aid donations can be carried back to the previous tax year (by election under ITA 2007 s 426). However, care is needed as the Gift Aid legislation requires that an election to carry back a qualifying donation must be made on or before the date on which a tax return is delivered for the **previous** tax year, (i.e. the tax year for which relief is to be given), and not later than the normal self-assessment filing date for that previous tax year.

The timing of the Gift Aid declaration is very flexible and can be made in advance of the donation, at the time of the donation, or after the donation (subject to the normal time limit within which tax can be reclaimed – normally around four years).

Non-cash gifts

Income tax relief is available on a non-arm's length disposal after 5 April 2000, by an individual to a charity of the whole of the beneficial interest in a qualifying investment. A qualifying investment is any of the following...

- Shares or securities listed or dealt on a recognised stock exchange.
- Unlisted shares and securities dealt with on a recognised stock exchange, such as the Alternative Investment Market (AIM).
- Units in an authorised unit trust or shares in an open-ended investment company.
- An interest in an offshore fund.

- A qualifying interest in land (a freehold interest, or leasehold which is a term of years absolute, in UK land).

The market value of the investment at the time of the disposal, or the excess of that value over any consideration given for the disposal, is deductible in computing the donor's total income for the tax year of disposal. As with cash gifts, the deduction is disregarded for the purposes of computing top-slicing relief in respect of gains on life policies. Market value is determined in the same way as for capital gains tax purposes.

Again, if the donor receives a benefit from the gift, the amount deductible from income is reduced accordingly. Gifts in kind to charities are exempt from capital gains tax.

In terms of the practicalities of gifting shares or holdings in collective investments to charity, many charities will guide an individual through the procedure involved. If the shares are held in a nominee account, the stockbroker will transfer them on behalf of the individual - there is likely to be a charge, but income tax relief can be claimed on this.

If the individual holds the share certificate, they should contact the company registrar and request a stock-transfer form - they should keep a photocopy of the completed form to claim income tax relief.

To donate holdings in a collective investment, the individual should ask the fund management company for a transfer form - the company should then arrange for the ownership of the holding to be changed.

If an individual gifted shares worth £1,000 to a charity, they could claim £200 tax relief as a 20% basic rate taxpayer or £400/£450 tax relief as a 40%/45% higher rate taxpayer. They would be exempt from capital gains tax.

Further information is available from the [Charities Aid Foundation](#) - telephone 03000 123 000. [Sharegift](#) - telephone 020 7930 3737 - pools donated shares and gives the sale proceeds to a number of charities and could be useful if there are only a few shares or the individual wishes to make the donations anonymously.

There are also some specific reliefs in relation to non-cash gifts made by traders. Traders are able to obtain relief for donations of...

- Articles manufactured by the donor in the course of their trade.
- Articles of a class or description sold by the donor in the course of their trade.
- Articles used by the donor in the course of their trade, vocation or profession on which machinery and plant allowances would be claimed.

Where trading stock is donated, the relief is given by allowing the trader to account for the transaction at nil proceeds (as opposed to the normal sale price as required

by Sharkey v Wernher 36 TC 275). As far as gifts of plant or machinery are concerned, the disposal is accounted for with nil disposal proceeds.

Unlike the other forms of gift aid, relief for non-cash gifts must be made as part of the trader's computation rather than as a charge on income.

If the donor or any connected person receives any benefit in any way attributable to the gift, an amount equal to the value of the benefit must be taken into account as a trading receipt.

Where trading stock is donated to a charity, this counts as a taxable business supply for VAT purposes and the trader will need to account for VAT on the goods given away at the appropriate rate, depending on what the items are - either the standard rate (20%), the reduced rate (5%), or zero rate.

However, the supply can be zero-rated - even if normally the goods are standard-rated or reduced-rated - if the donation is made specifically so that the charity can...

- Sell the goods.
- Hire out the goods.
- Export the goods.

Capital gains tax and charitable gifts

It must be remembered that Gift Aid only provides tax relief in respect of gifts of cash. A gift of an asset to a charity will however qualify for capital gains tax relief - no capital gains tax arises on a gift to a charity or on a sale at a price which does not exceed the base cost.

In most cases, unless the base cost of the asset was very low, the benefit of income tax relief on the gift would outweigh the avoidance of the capital gains tax charge on sale so the donor would normally do better to sell an investment and gift the cash proceeds to the charity.

If the base cost was low and there is a substantial gain, then clearly a gift of specific assets may produce a bigger advantage (due to the capital gains tax relief).

However, if the cost of the asset was relatively high so that no substantial capital gains tax charge would arise, it would be advantageous to sell the asset (for example, a picture) to the charity and then to give the charity the cash to make the purchase in such a way as to qualify for income tax relief.

Although the legislation on Gift Aid specifically provides that the relief under Gift Aid will not apply if the gift is conditional or associated with or part of an arrangement involving the acquisition of property by the charity, in practice it may be possible to arrange a gift to one charity to qualify for relief if the actual purchase is made by another charity.

Where the disposal of the asset would otherwise give rise to a loss for capital gains tax purposes, it would be better for the taxpayer to realise the loss by disposing of the asset to a third party. In such circumstances, the cash donation would qualify for relief under the gift aid.

Note that where land or quoted shares are gifted to charity, a donor may claim both income/corporation tax relief as well as the relief from capital gains tax.

When limited companies are taken over, it is common for loan stock to be issued as an alternative to cash as consideration for shares. One attraction of this is that the seller can stagger the crystallising of capital gains over several years (taking advantage of the annual exemption each year).

If the purchasing company becomes insolvent, the seller is unable to obtain a repayment of the debt represented by the loan stock. Not only will the seller have lost the chance of realising their investment in the original company, but they might also face a capital gains tax bill in respect of proceeds.

A solution might be for the loan stock to be gifted to charity. Although the charity would gain nothing from receiving worthless stock, the taxpayer can take advantage of section 257 TCGA 1992 (no gain in gift to a charity) and eliminate the gain – (HMRC confirmed this in the May 1992 issue of its Tax Bulletin).

Inheritance tax and charitable gifts

There is a general unlimited exemption from inheritance tax on any gifts to a charity made during lifetime or by Will. However, it must be remembered that the Gift Aid provisions do not apply to gifts by Will so no income tax relief will apply as is the case for lifetime gifts.

As a matter of planning, it may sometimes be recommended that the testator leaves the legacy to an individual and not to a charity, while expressing a wish that the beneficiary should make a legacy to a charity, and the legatee then makes the gift to charity which qualifies for Gift Aid relief. Of course, this would only be relevant where the testator can rely on the particular beneficiary being willing to carry out their wishes.

The advantage would be that the charity will receive an additional benefit and there will be an income tax benefit for the beneficiary of the Will, particularly if they are a higher rate taxpayer, as the grossed-up donation is fully relievable at the higher rate of tax.

Even where there is no charitable legacy in the Will and/or the deceased did not contemplate making such a gift, if a beneficiary of a Will intends to make a charitable donation, a deed of variation of the deceased's Will could be carried out so that the legacy itself is treated (subject to it being made within two years of death and the appropriate election having been made) as made by the deceased under section 142 IHTA 1984 for inheritance tax purposes, but for income tax purposes the original Will beneficiary will be able to obtain tax relief under the Gift

Aid rules since for income tax they are treated as the donor of the gift to the charity.

From 6 April 2012 the rate of inheritance tax payable on a deceased person's estate was reduced by 10% (to 36%) if the deceased leaves at least 10% of their net estate to charity.

Community Amateur Sports Clubs (CASCs)

Donors making gifts to CASCs are able to take advantage of the following reliefs...

- Gift Aid for individuals.
- Gifts of assets to a CASC on a no gain/no loss basis for capital gains tax purposes for both individuals and businesses.
- Gifts of trading stock and plant and machinery by businesses.
- Inheritance tax relief.

In addition, corporate Gift Aid is available for company donations to CASCs made on or after 1 April 2014 as a consequence of legislation included in Finance Act 2014.

To qualify as a CASC a sports club must...

- Provide facilities for, and promoting participation in, one or more eligible sports.
- Be open to the whole community, with at least 50% of members participating in the sport at least 12 times a year.
- Be organised on an amateur basis, with players unable to receive more than £10,000 per year for playing for the club.

CASCs also enjoy exemption from...

- Corporation tax on interest.
- Corporation tax on trading income up to £50,000.
- Corporation tax on income from property up to £30,000.
- Capital gains tax on disposals of assets.

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