

Making your gift go further

Elizabeth Small and **Oliver Claridge** consider how gift aid can make a charitable gift go further while also providing an element of relief to the giver – and even potentially restoring a higher-rate taxpayer's personal allowance.

Gift aid exists to encourage individuals (which includes partnerships and sole traders) to make charitable donations.

Many taxpayers give to charity (or community amateur sports clubs, which also qualify for gift aid) from a purely altruistic perspective, but by properly utilising gift aid they can make their gift go further, boosting the value of what they give to the charity of their choice as well as potentially obtaining an element of tax relief themselves.

Back to basics

From April 2024 (1 April for companies and charitable entities, 5 April for individuals), taxpayers will need to review and understand whether their charitable donations are going to UK or non-UK charities as there will be a significant difference to the tax benefits.

Previously, charities in the EU, Norway, Iceland or Liechtenstein were able to benefit from gift aid and UK taxpayers who donated to them were potentially able to obtain an element of tax relief themselves. However, due to legislative changes gift aid has now been restricted to UK charities only.

Key points

- From April 2024 taxpayers will need to review if their charitable donations are going to UK or non-UK charities: legislative changes mean gift aid has now been restricted to UK charities only.
- Whether a charity is a UK charity or not is a question of fact; and any gift to the charity must not fall foul of any anti-avoidance legislation.
- Gift aid can help 'restore' a personal allowance where a taxpayer earns above £100,000.
- Individuals may wish to re-assess their charitable donations ahead of the April 2024 deadline to ensure that they are giving in the most tax efficient manner.



When a gift is made, gift aid means the charity is able to claim back the basic rate of tax that the taxpayer paid on the gift, while the taxpayer, if a higher or additional rate taxpayer, can claim relief on their gift.

This allows the charity to benefit from more than the value of the gift, without the taxpayer having to give more. We set out some examples below.

Example 1: Paulie

Paulie, a basic rate taxpayer, gifts £1,000 to an eligible charity in January 2023. He completes all the necessary procedural formalities for gift aid to apply to his gift. The basic rate of income tax at the time of Paulie's gift is 20%.

The charity can claim back the basic rate tax that Paulie paid on the gift. This is done by multiplying the gift (in this case, 1,000) by (100/80).

The gross sum is £1,250, so the charity can claim a further £250 from HMRC, ie the equivalent to Paulie making the gift out of his pretax income and not suffering tax upon it.

Equally, the taxpayer can, if they are a higher or additional rate taxpayer, benefit from tax relief themselves, which can, potentially, be carried back to a previous tax year.

Example 2: Tony

Tony, a higher rate taxpayer, donates £5,000 to an eligible charity in January 2023, complying with all requirements to allow the gift to be eligible for gift aid.

The charity reclaims the basic rate of tax as it did for Paulie's gift in example 1.

$5,000 \times (100/80) = £6,250$, so the charity claims a further £1,250.

The grossed-up amount contributed is £6,250, so Tony claims higher rate relief by multiplying £6,250 by 20%, thereby getting £1,250 of relief.

Therefore, overall:

- the charity gets £6,250;
- Tony pays £5,000 and benefits from £1,250 of tax relief, meaning that the true cost of the gift to him was £3,750;
- the remaining £2,500 of the gift comes from HMRC.

In total, Tony contributes 60% of the gift while HMRC contributes 40%; in line with the rates of tax Tony is subject to.

Conditions for gift aid

There are a number of conditions that must be met to allow a claim for gift aid:

- The beneficiary of the gift must be a charity located within the UK:
 - The standard tests for determining whether an organisation is a charity for tax purposes are used:
 - Is it established for charitable purposes only?
 - Is it subject to the jurisdiction of the High Court in England, Wales or Northern Ireland or the Court of Session in Scotland?
 - Has it complied with the Charity Commission's requirements to be registered as a charity (or, if outside England and Wales, has it complied with any registration requirements of its territory)?
 - Are the managers of the charity fit and proper persons?
 - Changes brought in by the Finance (No 2) Act 2023 mean that from 1 April 2024, charities located in the EU or EEA, which were previously entitled to charitable tax reliefs, will no longer be entitled. Charities outside the UK which had not already been recognised by HMRC have been unable to register to claim tax benefits since 15 March 2023.
 - The above, therefore, limits gift aid to UK charities only. Whether a charity is a UK charity or not is a question of fact. For most charities that are set up and run in the UK this will be obvious, however, where there is doubt one needs to look at:
 - What law is stated in the governing document of the charity as governing the charity?
 - Where do most of the charity's trustees live?
 - Where is most of the charity's property?
 - Where is the charity's centre of administration?

If the charity is expressly subject to the jurisdiction of a foreign court, it is unlikely that it will be deemed a UK charity.
 - As a matter of practice, in order to benefit from gift aid, the charity will need to be recognised as a charity by HMRC. This recognition will not be given if HMRC does not believe that the charity meets the conditions. The charity must register its details with HMRC in order to receive gift aid.
 - Any gift must be of money only and not of assets (this includes cryptoassets). However, a waiving of repayment of a loan or a right to receive a refund can be eligible.
 - The taxpayer must be liable, in the same tax year as the gift, to UK tax of an amount which is at least equal to the amount of tax (income tax, capital gains tax (CGT) or the annual remittance basis charge) that the charity which receives the gift will reclaim. A failure to pay enough tax

will see the taxpayer face a further charge from HMRC to make up for the shortfall. For example, if a taxpayer has only paid £100 in tax but has instructed charities to claim gift aid on donations such that £150 of tax is reclaimed by the charities, then HMRC will levy a £50 charge on the taxpayer, so the amount that the taxpayer has paid is equal to the amount of tax reclaimed by the charities.

- The taxpayer must not receive benefits from the charity in return for the gift (save for modest benefits as thanks for the gift). The maximum permitted benefit will depend on the value of the donation. For donations of up to £100, the maximum value of the benefit (that is, the value to the recipient, not the cost to the charity) is 25% of the donation. For donations above £100, it is £25 + 5% of the value of the benefit less £100 with a maximum cap of £2,500 on the total benefit value.
- The gift must not fall foul of any anti-avoidance legislation (in general, where the taxpayer enters into arrangements with regards to the gift in order to obtain a financial advantage (either for themselves or someone connected to them)).
 - For example, HMRC highlighted where parties attempt to abuse gift aid provisions in *Gift aid with no real gift* (Spotlight 9) in 2010. In the example a charity acquired £100,000 worth of gilts (presumably as a result of a loan by the individual) which it then passed through a third party to the individual for £10. Such individual would make a sale of the gilts (outside the ambit of CGT) and gift the £100,000 to the charity. Conditions are included that provide that the gilts must be returned to the charity if it does not receive the gift within a short timeframe (one or two days). The charity would attempt to claim gift aid and the individual would attempt to get tax relief on the £100,000 'gift'. Neither claim is permissible.

Gift aid administration

The taxpayer must make a gift aid declaration (if the gift is above £20). While there is no set form for this, it must, at a minimum, include:

- the charity's name;
- the taxpayer's name;
- the taxpayer's home address;
- a clear description of the gift;
- details as to whether the declaration covers the present declaration or both past (up to six previous years) and future gifts;
- a statement that the amount is to be treated as a gift aid gift; and
- a statement that the taxpayer has received an explanation of the tax implications of making a gift aid gift.

Where the taxpayer is a basic rate taxpayer nothing further needs to happen from the taxpayer's perspective. They can donate to the charity of their choice, make their declaration and if the above conditions are met then the charity will do the further work in reclaiming the tax.

As gift aid only allows the charity to claim back basic rate tax, higher or additional rate taxpayers are able to claim back these elements of tax on the gift.

The power of gift aid

Gift aid can also help 'restore' a personal allowance where a taxpayer earns above £100,000. For every £1 a taxpayer earns above £100,000, they lose 50p of their personal allowance (the nil rate income tax band). The current allowance is £12,570 meaning that a taxpayer who earns £125,140 and above will have a personal allowance of nil.

However, the personal allowance is increased by £1 for every £2 of gross gift aid charitable gifts.

Therefore, taxpayers who earn just above £100,000 can benefit even further from making a gift aid gift, getting both higher rate tax relief and an increase in their personal allowance.

Example 3: Johnny

Johnny earns over £100,000. His personal allowance is £5,000. He makes a £12,000 gift to an eligible charity and complies with the conditions to make gift aid applicable.

The charity reclaims the basic rate of tax: $12,000 \times (100/80) = £15,000$ so the charity reclaims £3,000.

Johnny reclaims the higher rate by multiplying £15,000 by 20% to get £3,000 of relief.

The £15,000 gift increases Johnny's personal allowance by £7,500 to £12,500. This is worth $£7,500 \times 40%$ to Johnny = £3,000.

So, from a gift of £12,000 Johnny gets £3,000 of relief and £3,000 of reduced tax due to a larger personal allowance, meaning that the real cost of the gift to him is £6,000.

The charity gets a total of £15,000, meaning that HMRC's contribution is £9,000. This means that HMRC contributed 60% of the gift; in line with the marginal 60% tax rate a taxpayer faces when earning between £100,000 and £125,140, due to the removal of the personal allowance.

Retail gift aid

Although, as mentioned above, only gifts of cash, not assets, attract gift aid, one way of dealing with a taxpayer wanting to gift assets is for the charity, or indeed its trading subsidiary if it has one, to act as agent for the taxpayer.

The charity then sells the assets for the taxpayer and the taxpayer donates the proceeds to the charity. Many trading subsidiaries will covenant up their profits to the charity so that no tax charge is levied at the subsidiary level.

There are conditions to be met for this to apply, as outlined below:

- The taxpayer must retain both legal and beneficial title to the assets until sale, ie the assets cannot be transferred to the charity; it must be clear that the charity is acting purely as the taxpayer's agent.
- The taxpayer must be made aware that they can choose to retain the money made from the sale of the assets or gift any part of it to the charity; any gift aid declaration made in advance of the gift must not require the taxpayer to make such a gift.
- The normal gift aid declaration must be made in respect of the money that is gifted to the charity from the asset sale.
- The charity itself must keep records, including that the proceeds were offered to the taxpayer and the decision of the taxpayer to gift those proceeds (or part of them) to the charity.

Gifts of assets

While gifts of assets are not eligible for gift aid, they do benefit from different reliefs. Where an asset is gifted or sold to a charity at below base cost, then the disposal is treated as being at a price where there is no chargeable gain (or allowable loss).

If, instead, the asset is sold to the charity for less than market value, but for more than base cost, then the taxpayer will be taxed on the gain between the base cost and what they receive.

Gift aid carry back relief

As noted above, higher or additional rate taxpayers can elect to have their tax relief carried back to the previous tax year.

An election must be made for this treatment to apply and this will result in the gift being treated as if it was made in the previous year. The election cannot be used to treat part of a gift as being made in a previous year; it must be the whole.

Such an election can only be made in the original return for the previous year (as self-assessment returns are made in later years) and no later than the normal self-assessment filing date for that previous year. An amended return cannot be used, so if a taxpayer has already submitted a return early then they cannot amend this to carry back the tax relief (see the First-tier Tribunal decision in *Cameron* (TC415)).

Conclusion

Gift aid is a valuable relief for taxpayers and charities, but in order to benefit, it is important for both the taxpayer (ie the donor) and the charity (ie the donee) to ensure that they meet all of the administrative hurdles.

Individuals may wish to re-assess their charitable donations ahead of the April 2024 deadline to ensure that they are given in the most tax efficient manner, both for the potential recipient and for themselves. ●

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