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## Briefing Note

### Tax Efficient Gifting to Charities

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For many years the Government has been committed to creating and sustaining an environment which offers tax incentives to individuals to make gifts to charities. There are several tax efficient ways in which an individual can give to charity. These are gifts of cash under the Gift Aid scheme; leaving assets to charity on death; gifts of cash out of earnings via Payroll Giving; and gifts of assets such as qualifying shares, land or buildings.

Each of these methods of tax efficient giving is considered in this Briefing Note.

#### Gift Aid

Gift Aid for charities or Community Amateur Sports Clubs (CASCs) applies to any monetary qualifying donation, whether large or small, regular or one-off.

#### Tax relief for donors

In making a gift under the Gift Aid scheme, the donor is deemed to have deducted income tax at the basic rate before making the gift. Thus, where the donor makes a Gift Aid donation of £100 when the basic rate of income tax is 20%, the donor is deemed to have made a "gross" donation of £125 out of which they have deducted £25. If the donor is a higher- or additional-rate tax payer, further tax relief is obtained via their self assessment tax return on the gross donation, at the difference between their marginal tax rate and the basic rate of tax. This is done by extending the basic rate tax band by the amount of the gross donation. Therefore, if for the year of donation the basic rate of tax applied to income up to £31,785 (i.e. the threshold for tax year 2015/16), a gross donation of £125 would extend this to £31,910.

Assuming that the basic rate of tax is 20% and the higher rate is 40% for the year of donation, the amount of higher rate relief on a gross donation of £125 is £25 (i.e. 40% less 20%). The combination of tax deducted at source and higher rate relief via the self assessment tax return means that a gross donation of £125 has actually cost a donor who is a higher rate taxpayer only £75, as shown below:

Gross donation		£125
Tax deducted at source	(20%)	(£25)
Higher rate tax relief	(40% - 20%)	(£25)
Net cost to donor		£75

For those individuals who are liable to income tax at 45% on taxable income in excess of £150,000, the tax relief is more generous. In these circumstances, a gross donation of £125 will cost the donor £68.75 as the following calculation illustrates:

Gross donation		£125.00
Tax deducted at source	(20%)	(£25.00)
Higher rate tax relief	(45% - 20%)	(£31.25)
Net cost to donor		£68.75

Note: The donor must pay at least as much UK tax (whether income tax and/or capital gains tax) as the amount of income tax relief that they are reclaiming through the Gift Aid scheme.

### “Carry back” election

A donor may elect to treat a Gift Aid donation as having been made in the tax year immediately prior to the year in which the donation is made. The time limit for making the carry back election is the later of the date on which the self assessment tax return for the previous year is filed or 31st January in the tax year in which the donation is made.

### Tax Benefit for Charities

Using the above example of a £125 “gross” donation, the charity or CASC received a net sum of £100 from the donor. The charity or CASC is then entitled to reclaim from HM Revenue & Customs (HMRC) the basic rate tax which the donor deducted at source (£25) so that in aggregate it receives the full amount of the gross donation (£125).

### Donations that qualify for Gift Aid

Gift Aid can be claimed on gifts of money from individuals, sole traders or partnerships. The gift can be made in the form of cash, cheque, direct debit, credit or debit card, postal order, standing order or telegraphic transfer.

The following gifts however do not qualify for relief under the scheme:-

- Donations of money from a company (although there is a similar corporation tax relief from which they can benefit)
- Donations in the form of a loan waiver or debt conversion
- Gifts made on behalf of other people
- Gifts with conditions attached about repayment
- Gifts with certain enforceable conditions about how the money is used
- Payment received in return for goods or services
- Gifts where the donor receives an associated benefit in excess of the permitted limits (see below).

### Gift Aid declarations

Before a charity can reclaim tax on a donation by an individual, it must have received a Gift Aid declaration from the donor. Without this, a donation will not qualify for tax relief under the scheme.

The declaration must contain the following:-

- The donor's name and home address
- The name of the charity
- Identification of the gift(s) to which the declaration relates
- Confirmation that the identified gift(s) are to be treated as Gift Aid donations
- Confirmation that the donor has been given a suitable explanation of the tax that must be paid and the types of taxes which do and do not qualify.

The declaration can be made before, during, or at any time in the four years after the end of the accounting year (or, in the case of charitable trusts, the tax year) in which the donation is made. The charity must keep adequate records to be able to link the donor to the making of a declaration.

Measures which came into effect on 6<sup>th</sup> April 2013 allow charities to dispense with the requirement to obtain Gift Aid declarations where they receive small donations of £20 or less. This can only apply to the first £5,000 worth of donations each year (rising to £8,000 in April 2016), and a claim must be matched by a Gift Aid claim equal to 10% or more of the small donations claim. The charity must also meet various conditions in respect of their past compliance record in order to qualify. The available relief is restricted for connected charities, but charities (other than CASCs) operating from community buildings will be able to benefit from a separate allowance for each building.

### Providing benefits in return for donations

If any donor benefits significantly from their donation, then the donation will not qualify for Gift Aid. However, within limits, the charity/CASC can give donors modest, low value benefits as a token of appreciation. These limits are:

- For donations up to £100 the value of the benefit must not exceed 25% of the donation;
- For gifts between £101 and £1,000 the value of the benefit must not exceed £25; and
- For donations over £1,000 the value of the benefit must not exceed 5% of the donation, or a maximum of £2,500.

Benefits received need to be valued from the point of view of the recipient, rather than the cost to the charity providing the benefit, and some benefits are overlooked: normally printed materials, newsletters and reports are excluded, and naming rights or recognition for donors acknowledge their gift also normally have no attributable value. There is an additional exemption to the benefits rules which can apply to certain rights of admission to historic houses and other properties.

### Claiming the tax back on Gift Aid donations

A donor does not have to register to claim Gift Aid but the charity must be recognised by HMRC as a charity for tax purposes. The charity/CASC must nominate a signatory/claimant who can claim and receive money from HMRC.

### Inheritance Tax

Gifts to charity are exempt from Inheritance Tax (IHT). Therefore, unlike other lifetime gifts which are only potentially exempt from IHT subject to the donor surviving the date of the gift by seven years, there is no requirement to survive a gift to charity.

## Charitable Legacies

As with lifetime gifts there is no IHT charged on assets left to charity on death. In addition, the Government introduced measures in 2012 that reduce the rate of IHT payable on other assets bequeathed on death to 36% where a person has left part of their estate to charity. In order for the reduced rate to apply, charities must receive at least 10% of the net value of the chargeable estate, after deducting any reliefs and exemptions (such as the Nil Rate Band, which is currently £325,000, or spousal exemption). The government hopes that this will provide an additional incentive to including charitable donations in wills. The following illustration gives an example of how this relief operates:

Estate	£1,000,000
Less: Nil Rate Band	£325,000
Taxable estate	£675,000

### No Charitable legacy

Tax at 40%	£270,000
Estate available for distribution	£730,000

### Legacy of £67,500 to Charity

Taxable Estate less Charity exemption	£607,500
Tax at 36%	£218,700
Estate after tax	£781,300
Estate available for distribution (after tax and donation)	£713,800

(Charity also receives £67,500. The estate available for distribution, including the legacy to Charity, is £781,300.)

## Payroll Giving

Where operated by participating employers or pension providers, payroll giving enables employees and individuals in receipt of pension income to make cash donations to charity via the payroll through which their earnings or pension is paid. Donations made in this way are paid out of earnings or pension income before income tax is applied under the PAYE system. There is no limit on the amount of donation the individual can make under the scheme.

The benefit of this scheme is that the donor obtains tax relief at his or her marginal tax rate on the full amount of the donation at the time the donation is made, while the charity obtains the benefit of regular cash donations.

## Tax relief on shares, land or buildings

A gift of shares, land or buildings is an alternative way for individuals to donate to charities tax efficiently, but this tax relief does not apply to gifts to CASCs.

Gifts of shares, land or buildings do not fall within the Gift Aid scheme as they do not take the form of a payment of cash. No tax is deducted from the gift so the charity does not have to reclaim any tax from HMRC.

The charity receives the full value of the gift and an entitlement to any future income, for example dividends, that the asset may provide on a tax free basis. If the charity chooses to sell the asset, this will be free of capital gains tax.

Individual donors enjoy a potential triple tax benefit when gifting shares, land or buildings to a charity. Firstly, they do not have to pay capital gains tax on any gain on the asset when it is gifted. (If instead of gifting the asset, the donor sells it to a charity at less than market value, there is a reduction in the donor's capital gains tax liability.)

Secondly, individuals enjoy income tax relief on an amount equal to the value of the asset gifted to the charity, plus any incidental costs of the transfer (e.g. legal or broker fees), less any benefits received by the donor in consequence of the gift. Unlike Gift Aid, the relief is given in the form of a deduction from the donor's income for the tax year in which the gift is made. Effectively this means income tax relief is available at the donor's marginal tax rate.

Thirdly, as with cash donations, gifts of assets to charities are exempt from IHT under the normal "seven year" rule.

### Points to note

For the purpose of the tax relief, "shares" means shares or other securities listed on a recognised stock exchange or dealt in on any designated market in the UK, including the Alternative Investment Market (AIM). The term also includes units in an authorised unit trust, shares in an open ended investment company (OIEC) and an interest in an offshore fund.

Where the asset gifted is shares, the charity has to ensure that ownership of the shares has been transferred to them. A stock transfer form and share certificate has to be sent to the Stock Exchange registrar. Once the charity owns the shares, it can retain them and receive the dividend income, or sell them (free of CGT) and use the sale proceeds.

### Personal charitable trusts

Many philanthropic individuals choose to set up their own charitable trust as a vehicle for their and their family's charitable giving. One of the main advantages of this type of arrangement is that, having established charitable status for the trust, gifts of cash and other qualifying assets can be made to the trust with the benefit of tax relief as described above.

As the charitable trust is not liable for any form of taxation, funds held in the trust can grow tax free thus increasing the value of the trust funds in a highly tax efficient manner. The Trustees (who can include the donor) can then decide which charitable organisations or purposes to benefit and when.

This note is intended as a brief summary of the taxation and legal position of Tax Efficient Giving to Charities as at February 2016. Taxation is subject to change and depends on the individual circumstances of each client. Legislation is also subject to change. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. © Turcan Connell February 2016