

GIFT AID

Gift Aid is an effective method for a charity to increase the value of donations received from individuals. Provided the appropriate records are maintained the charity can reclaim from HM Revenue & Customs (HMRC) the equivalent of the basic rate of tax. For donations between 6 April 2008 and 5 April 2011 the charity can also reclaim a supplement of 3p per pound donated.

Gift Aid can only be claimed on donations of money. By structuring a donation appropriately a charity can claim Gift Aid on some transactions that initially appear ineligible for Gift Aid.

Expenses not claimed

Many trustees, employees and volunteers choose not to claim the expenses to which they are entitled. As the 'donation' is not money it is not eligible for Gift Aid.

However, the individual could claim their expenses and then make a donation to the charity under Gift Aid. It is important that payment of the expenses to the individual, and payment of the donation to the charity physically occur. It is advisable that payments are made by e.g. cheque or BAC's, so that evidence is available, if required, to prove that 'money' was donated. It is also important that this arrangement is entirely voluntary. Any contractual obligation that the money must be returned as a donation after the expenses have been paid will invalidate the Gift Aid claim.

Loan Waivers

If an individual makes a loan to a charity and subsequently decides that repayment is not required, this also does not qualify for Gift Aid as it is not a donation of 'money'.

However, as with expenses, it is possible to make the sum eligible for Gift Aid. The charity should repay the loan following which the individual can make a donation of the same or similar amount. Again there must be no contractual arrangement

regarding a donation being made following the loan repayment.

Donated Goods

There are a number of options available if an individual wishes to donate goods to a charity. The appropriate approach will depend upon;

- whether the charity wishes to retain the item for their own use or utilise the proceeds from the sale of the item.
- the frequency with which donated goods are received/sold.

Regardless of whether they are retained or sold, goods donated to a charity are not eligible for Gift Aid

i) Retention of Donated Goods

Instead of donating the asset itself, the donor could make a donation of money under Gift Aid. The charity could then purchase the asset from the donor for the net amount of the donation. Assuming that the individual is a basic rate tax payer, and no capital gains tax is due on the disposal, the donor's position will be unchanged compared to donating the asset. The charity however will be able to claim Gift Aid on the money donated and will be better off by this amount.

Care must be taken that the charity does not pay more than market value for the asset. (It may be advisable to obtain evidence of the market value either from a third party or by searching the internet for similar items). Frequent transactions with the same individual are also open to accusations of 'backhanders' and that the donor is trading.

ii) Sale of Donated Goods

If the charity receives the asset as a gift and subsequently sells it, Gift Aid cannot be claimed.

However, the charity could draw up an agreement to sell the item on behalf of the owner. After the item is sold the owner is free to donate the proceeds of the sale to the charity who can then claim Gift Aid. Strict requirements must be followed to ensure that HMRC allow the Gift Aid claim.

- It must be clear from the sale agreement that the goods remain the property of the owner until they are sold.
- the owner must have the right to keep the net proceeds of the sale.
- the charity must contact the owner after the goods have been sold advising them of the amount realised. They must offer to pay the owner the proceeds but can also invite the owner to donate the proceeds to the charity.

Alternatively the charity can write to the owner advising of the proceeds and stating that if the owner does not contact them within 21 days the charity will assume that the proceeds are to be treated as a donation. The owner must be given at least 21 days to respond.

- The owner must make a Gift Aid declaration. This may be done before the item is sold, but neither the sale agreement nor the Gift Aid declaration should include any obligation for the owner to donate the proceeds.

The above are only a few of the more common areas where appropriate

structuring enables Gift Aid to be claimed. In all cases it is essential that the correct procedures are followed and appropriate paperwork maintained.

It is also important to consider whether there are any other implications for the charity and its supporters before deciding how to structure a transaction or series of transactions. Factors to consider include;

- whether the activity will be classed as trading.
- VAT implications
- Capital Gains Tax liabilities for the donor.

Charities must also seek confirmation from the donor that they have/will pay UK income or capital gains tax at least equal to the basic rate of tax on the amount donated. If the donor has not paid sufficient tax HMRC can approach the donor and request payment of any shortfall in tax paid.

Please contact us if you would like assistance establishing a Gift Aid scheme, or advice on whether Gift Aid can be claimed in a particular circumstance.

FILING OF ACCOUNTS WITH THE CHARITY COMMISSION

As part of being publicly accountable, charities with income over £25,000 have to file their annual accounts with the Charity Commission. These accounts go onto the Charity Commission website and are accessible by any member of the public. Historically, these accounts had to contain Trustee's original signatures.

As the occurrence and awareness of identity theft has increased, the availability of Trustee's signatures on the Charity Commission website has become an area of increasing concern.

There are two options available for Trustees who prefer the accounts on the Charity Commission website not to include their signatures.

Accounts filed on line

These do not need to include the signatures of the Trustees.

Accounts filed manually

Accounts filed manually must include

Trustees original signatures.

However, the Charity Commission will now accept the simultaneous submission of two copies of accounts. One copy should be signed by the Trustees and is for the Charity Commission's records only. The second copy is unsigned and is for inclusion on the Charity Commission's website. A covering letter should be sent with the accounts stating that this is the case.

If you require further information or assistance on the subjects covered in this bulletin please contact Brian Carruthers or Elizabeth Smith at:

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