The Benefits of Giving – simplifying the benefit rules for charitable donations to encourage effective fundraising.

Charities Aid Foundation
February 2011

Summary of recommendations

The Charities Aid Foundation (CAF) believes that the current benefit rules relating to Gift Aid and payroll giving create unnecessary complexity and deter charities from maximising the use of the important tax relief on charitable donations.

CAF recommends that there is a fundamental change to the benefit stipulations within legislation, in order to achieve a consistent and simple tax relief system. This change will enable small and large charities to increase the value of their voluntary donations; help fundraisers build relationships and engage donors and support the creation of a stronger culture of charitable giving and philanthropy in the UK.

CAF suggests that the Deregulation Task Force propose a series of small legislative changes, which could be included in the Finance Act 2011. These changes taken together would sweep away a raft of unnecessary bureaucracy and allow simpler guidance to be produced.

The Task Force should recommend that Government:
1. Amend the legislation to update the benefit stipulations and remove the cap of £500 value in benefits to a donor in any given tax year
2. Amend the specific legislation relating to admissions and Gift Aid
3. Amend the legislation to allow the same benefits to be provided for gifts under payroll giving and Gift Aid
4. Amend the legislation to allow the benefits rules to apply to third party charities receiving Gift Aid donations through ‘intermediary’ charities.
5. Take due consideration of the VAT restrictions and ensure that they do not present barriers to simplification
6. Rewrite the detailed guidance and produces simple guides in relation to the Gift Aid scheme and payroll giving scheme.

1. Introduction and Background

The Charities Aid Foundation (CAF) is a registered charity that works to create greater value for charities and social enterprises. We do this by transforming the way donations are made and the way charitable funds are managed. CAF believes that charitable giving is an essential facet of a strong and sustainable society.
CAF has a long and successful history of working with successive governments to help shape the legislative and policy environment in order to secure supportive conditions for the long-term health of charitable giving. We have played a pivotal role in promoting and developing tax-effective giving in the UK and around the world.

Charitable donations in the UK benefit from a generous tax relief system. Gift Aid alone brought over £1bn to civil society organisations (CSOs) in 2009/2010. This income is critical for both small and large organisations striving to deliver vital services and is increasingly important in securing the resilience and sustainability of the sector in the face of wider economic difficulties and public spending cuts.

However the Charities Aid Foundation estimates that, based on current donation levels, around £750m of Gift Aid goes unclaimed every year.

As well as directly providing an essential source of income to CSOs through Gift Aid, the tax relief system encourages charitable giving and acts as an incentive for donors by providing personal tax relief on donations (for example, higher rate tax payers are able to claim the marginal rate of tax on Gift Aided donations; donors giving through payroll giving benefit from full income tax relief as the donation is taken from pre-tax pay).

Both payroll giving and Gift Aid are well established giving mechanisms in the UK. Payroll giving was introduced in 1987 and Gift Aid followed in 1990.

Gift Aid, in particular, has developed considerably over the past 20 years and has been ‘stretched’ in response to innovation and lobbying by the fundraising community (for example, Gift Aid can now be applied to goods donated to charity shops – although the process is convoluted).

This has led to the creation of substantial detailed guidance designed to rightly combat fraud and maintain the integrity of the relief.

However, the system has now become excessively complex and unwieldy, placing a considerable administrative and bureaucratic burden on CSOs (and indeed HMRC), preventing organisations from gaining and using resources for maximum social impact.

‘It can cost more to administer a Gift Aid scheme than the amount that can be recovered…charity funds are being diverted to lawyers, VAT advisors and audit firms to work their way through the red tape involved in Gift Aid’¹

Payroll giving – although in itself a simpler scheme – has grown up separately. The disparity between how the two systems operate (and

particularly the lack of consistency in benefit rules) creates unnecessary barriers for fundraisers and donors.

2. The need for simplification – reform, revision or rewording?

There is a strong consensus amongst all interested parties (Government, CSOs and donors) that the tax relief system for charitable donations plays an important role in building a strong giving culture in the UK, but is now in desperate need of ‘maintenance’ and modernisation.

There has been a long-running debate on what form this improvement should take. In 2008 the Government carried out an extensive consultation with the sector about the barriers to Gift Aid\(^2\), which led to a package of measures intended to ease some of the burdens faced by charities. The Institute of Fundraising commissioned a review of payroll giving in 2009\(^3\) and, in 2010, HM Treasury led a Gift Aid Forum with the aim of identifying the best direction for reform. In addition to this, several research reports have highlighted the challenges and made various recommendations for change\(^4\).

Across all of these initiatives there have been some strong central messages:
- Gift Aid rules are unnecessarily complex and difficult to navigate
- The processes linked to both Gift Aid and payroll giving can create heavy administrative burdens
- Charities, particularly small organisations, are deterred from using Gift Aid for fear of ‘getting it wrong’
- The benefit rules for donations across different tax-effective schemes cause confusion, complexity and can restrict fundraising activity.

The Government’s response to date has been measured ‘tweaking’ of the existing system. The Government and HMRC in particular have been mindful to retain the essential principles of the schemes and to ensure that they are protected as far as possible from abuse.

Although CAF would agree that the schemes are basically structurally sound and that drastic or radical reform (for example, switching to a ‘composite rate’ for Gift Aid) would present risks to the long-term charitable giving infrastructure, we believe that there is more that needs to be done to help giving grow and thrive in the 21\(^{st}\) century.

CAF has recently taken a proposal to the Economic Secretary to the Treasury, Justine Greening MP, to develop an online, digital system for Gift Aid reclaims and donor declarations. We believe that such an online platform would dramatically reduce the administrative challenges and barriers connected to engaging donors, reclaiming funds and storing records. The

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\(^2\) ibid
\(^3\) [http://www.institute-of-fundraising.org.uk/Resources/Institute%20of%20Fundraising/Documents/PDF/Payroll%20Giving%20Review%20Final.pdf](http://www.institute-of-fundraising.org.uk/Resources/Institute%20of%20Fundraising/Documents/PDF/Payroll%20Giving%20Review%20Final.pdf)
\(^4\) For example, the survey of small charities by Small Charities Coalition, 2010, the CFDG-led simplification survey 2010, Respublica’s ‘Digital Giving’ 2010
proposal is designed to be cost neutral to Government. (see annex 1 for further information on this proposal).

However, we recognise that this would not in itself address the problems of complexity and ‘red tape’ associated with the rules governing different fundraising situations or the restrictions placed on fundraising by the benefit stipulations.

CAF has carefully considered the potential to rewrite and simplify the existing detailed guidance. We welcome the move by HMRC to write and publish a series of ‘simple’ guides for different areas of the Gift Aid scheme. However, we strongly believe that the current legislative benefit limits create insurmountable obstacles to substantive simplification or improvement.

3. The benefits of benefits – the importance for fundraising and building a culture of giving

It is widely accepted that in some cases charities may wish to give a token of their appreciation in recognition of the support they have given. Generally charities provide such benefits to maintain good donor relationships, to make donors feel valued and to increase engagement.

It is understood that HM Treasury recognises that this is a reasonable practice for charities to adopt but also fears that the potential for abuse without narrowly defined limits would be unacceptable.

There is concern that the existing restrictions on donor benefits stifle the ability of charities to foster and develop strong relationships with donors, particularly major donors. A more supportive donor benefits regime would allow charities to build relationships with donors. CAF believes that this is essential for building a stronger culture of giving.

‘In my view, someone prepared to donate never does so with the intention of receiving something in return, but by not allowing a charity the ability to say thanks in a concrete way is counterproductive, the government should be fostering a longer term bond between donor and recipient’

Importantly, amending the benefit rules as we suggest below for both payroll giving and Gift Aid would allow for significant simplification of the guidance - combating fear and confusion and encouraging small and larger charities to fully maximise the potential of tax relief through their fundraising activity.

‘It is surprising that a set of rules presumably intended to stop the purchase of goods and services being gift-aided has so many potential traps for the unwary. Perhaps it is time to revisit them’

5 Response from a small charity to a recent consultation with CAF customers to inform our response to the Cabinet Office Giving Green Paper, 2011
6 Mike Truman, Not so Angelic – article in Taxation magazine, Dec 2010 (this article highlights the complexities in various case studies)
4. Current limits to the benefits of tax-effective giving

Gift Aid

Under current rules (as set out in the ITA 2007), two limits apply to the value of the benefits that a charity may provide to a donor for the purposes of determining whether a donation qualifies as a Gift Aid donation. These are calculated using the relevant value test and the aggregate value test. If the value of the benefits received exceeds either of these limits the donation will not qualify for Gift Aid.

Associated benefits – current position
a) Relevant Value Test:
The relevant value test sets the maximum value of a benefit for a particular donation

<table>
<thead>
<tr>
<th>Amount of donation</th>
<th>Maximum value of benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0-100</td>
<td>25% of the donation</td>
</tr>
<tr>
<td>£101-1000</td>
<td>£25</td>
</tr>
<tr>
<td>£1001 +</td>
<td>5% of the donation</td>
</tr>
</tbody>
</table>

b) Aggregate value test:
Benefits provided to donors by charities must also pass the aggregate value test. This test is that the value of benefits provided to a donor by a charity in any given year must not exceed £500.

If a donation failed either test and as a result did not qualify as a Gift Aid donation then the recipient charity would not be entitled to claim the tax relief in respect of the donation that would otherwise be available to it. In addition, if the donor was a higher rate tax payer, the donor would not be entitled to claim the tax relief available to them either.

Case Study 1 – The impact of benefit limits on small donations

A charity runs a joint fundraising appeal and awareness campaign, asking for £10 per month donation.

Supporters receive a charity branded cuddly toy, mug and t-shirt which the charity hopes will help to further engage the donor and raise wider awareness of the campaign.

The charity is also selling this merchandise for £30. The individual giving £120 over a year is therefore deemed to be in receipt of a benefit worth £30.

This exceeds £25 (the current limit on donations between £100-1000) and Gift Aid is denied (The potential value of the annual donation is reduced by £30).
Rules for Admissions – current position

In addition to the basic benefit limits (last reviewed in 2007) the Government introduced new, more restrictive rules around visitor attractions claiming Gift Aid on admissions to visitor attractions in April 2006. This means that payment for admission can only be Gift Aided if the donation gives the right for either annual admission or if the donation is 10% or more than the usual ticket price. Previously visitors had a choice of paying an entry fee or making a donation allowing entry.

A 2007 report by Tourism South East suggests that the impact of these provisions was a reduction in Gift Aid claimed on donations for such admissions of 2.8%. The new rules seemed to have had little impact on overall take up of Gift Aid but have greatly added to the administrative burden of the charities concerned and the length of time taken to process visitor admissions. With popular charities, such as The Eden Project, the additional administrative resources required have been considerable.

For other charities, the complexities of the rules have prohibited them from claiming Gift Aid at all.

"Many museums... choose not to recover Gift Aid on any ticket sales, firstly because there is a lack of clarity as to when it is permissible, but also because of the difficulty in convincing people to pay a differential price and the administrative burden of collecting gift aid information in a ticket queue."

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[http://www.industry.visitsoutheastengland.com/xsdbimgs/Measuring%20the%20impact%20of%20the%20changing%20Gift%20Aid%20rules%20on%20charitable%20attractions%281%29.pdf](http://www.industry.visitsoutheastengland.com/xsdbimgs/Measuring%20the%20impact%20of%20the%20changing%20Gift%20Aid%20rules%20on%20charitable%20attractions%281%29.pdf)

Benefits provided by third party charities – the current position

HMRC interpretation of the current legislation means that in order for a benefit to be allowable or exempt for Gift Aid purposes, it must be provided by the charity that receives the donation direct from the donor.

This, therefore, means that when a donor gives to a grant receiving charity which in turn makes a donation to a third party charity, the end beneficiary charity is unable to provide any benefits to the original donor without making the donation ineligible for Gift Aid.

This appears to be an unintended consequence of the legislation which impacts on many charities receiving donations through intermediary organisations.

Payroll Giving

Under the current legislation, as set out in the Income Tax Employments and Pensions Act (ITEPA) there are no allowable benefits for donations under payroll giving. HMRC appear to recognise that this is problematic as, by concession, (as published in their detailed guidance) they ignore very small tokens of recognition, such as cheap pin badges and ‘newsletters’.

This restriction has, however, led to charities that wish to offer membership or provide other benefits, that would be allowed under Gift Aid, to have to refuse donations through payroll giving.

<table>
<thead>
<tr>
<th>Case Study 3 – RAF Association</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Association has a combination of members who donate through Gift Aid and those who give through payroll giving (mostly active service personnel).</td>
</tr>
<tr>
<td>The members receive a pin badge and a quarterly magazine printed on low quality paper.</td>
</tr>
<tr>
<td>While being an acceptable benefit under Gift Aid, the magazine is not an acceptable benefit under payroll giving (it is deemed to be of greater value than a ‘newsletter’).</td>
</tr>
<tr>
<td>The Association are therefore considering providing separate benefits for Gift Aid and payroll givers.</td>
</tr>
</tbody>
</table>
5. Mending the rules – a simple solution

CAF proposes that the legislation is now amended to allow an increased level of benefits for both Gift Aid and Payroll giving donations. These benefits should also be allowable for third party charities. In addition we make recommendations for Government to revert to a simpler scheme for admissions to visitor attractions. This would particularly help arts and heritage organisations to reduce their costs and maximise the use of Gift Aid at a time when many are facing a sharp decrease in funding.

These measures would support the Government’s own objectives of building a stronger culture of charitable giving and philanthropy in the UK.

These minor legislative changes would facilitate a significant simplification of the necessary guidance across the schemes - enabling an easy to understand ‘rule book’ to be written.

Gift Aid

Associated benefits – proposed change

a) Revised relevant value test:

<table>
<thead>
<tr>
<th>Amount of donation</th>
<th>Maximum value of benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0-500</td>
<td>25% of the donation</td>
</tr>
<tr>
<td>£501- 2500</td>
<td>£125</td>
</tr>
<tr>
<td>£2501 +</td>
<td>5% of the donation</td>
</tr>
</tbody>
</table>

b) Aggregate Value test:
CAF recommends that the cap on benefits of £500 in any tax year is removed and that a maximum of 5% of all aggregate donations is applied.

Proposed draft legislation (amend ITA 2007, s418) to read:

<table>
<thead>
<tr>
<th>Restrictions on associated benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>418 Restrictions on associated benefits</td>
</tr>
<tr>
<td>(1) For the purposes of section 416(7), the restrictions on benefits associated with a gift are breached if the condition in subsection (2) is met.</td>
</tr>
<tr>
<td>(2) The total value of the benefits associated with the gift exceeds the variable limit, which is—</td>
</tr>
<tr>
<td>(a) 25% of the amount of the gift, if the amount of the gift is £500 or less,</td>
</tr>
<tr>
<td>(b) £125, if the amount of the gift is more than £500 but not more than £2,500,</td>
</tr>
<tr>
<td>(c) 5% of the amount of the gift, if the amount of the gift is more than £2,500.</td>
</tr>
<tr>
<td>(3) This section needs to be read with sections 419 to 421.</td>
</tr>
</tbody>
</table>
Gift Aid Admissions rules - proposed change
CAF recommends that the legislation is amended within the relevant sections 420/421 of the Income Tax Act (ITA 2007), so that the position reverts to pre 2005 rules whereby donations can be made for the right of admission to charity property without any restrictions.

Proposed draft legislation (amend ITA 2007, s420 and remove s421):

<table>
<thead>
<tr>
<th>Admission rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>420 Disregard of certain admission rights</strong></td>
</tr>
<tr>
<td>(1) A benefit associated with a gift is ignored for the purposes of this Chapter if the benefit consists of a relevant right of admission.</td>
</tr>
</tbody>
</table>
| (2) “Right of admission” means a right which—
  (a) benefits the individual who makes the gift or that individual and one or more members of that individual's family (whether or not the right must be exercised by all of them at the same time),
  (b) authorises admission to premises or property to which the public are admitted on payment of an admission fee, and
  (c) authorises admission to those premises or that property without payment of the admission fee or on payment of a reduced fee. |
| (3) A right of admission is a relevant right of admission if—
  (a) conditions A and B are met in relation to it. |
| (4) Condition A is that the opportunity to make a gift and to receive the right of admission in consequence is available to the public. |
| (5) Condition B is that the right of admission is a right granted by the charity for the purpose of viewing property preserved, maintained, kept or created by a charity for its charitable purposes. |
| (6) The property mentioned in subsection (5) includes, in particular—
  (a) buildings,
  (b) grounds or other land,
  (c) plants,
  (d) animals,
  (e) works of art (but not performances),
  (f) artefacts, and
  (g) property of a scientific nature. |
Benefits provided by third party charities – proposed change
CAF proposes that s416 of the ITEPA is amended at subsection (7) to cover benefits provided by both the recipient charity and third party charities.

Proposed draft legislation to read:

<table>
<thead>
<tr>
<th>416 Meaning of “qualifying donation”</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A gift made to a charity by an individual is a qualifying donation for the purposes of this Chapter if—</td>
</tr>
<tr>
<td>(a) conditions A to [F]¹ are met, and</td>
</tr>
<tr>
<td>(b) the individual gives the charity a gift aid declaration relating to the gift (see section 428).</td>
</tr>
<tr>
<td>(2) Condition A is that the gift takes the form of a payment of a sum of money.</td>
</tr>
<tr>
<td>(3) Condition B is that the payment is not subject to any condition as to repayment.</td>
</tr>
<tr>
<td>(4) Condition C is that the payment is not a sum falling within section 713(3) of ITEPA 2003 (payroll deduction scheme).</td>
</tr>
<tr>
<td>(5) Condition D is that the payment is not deductible in calculating the individual's income from any source.</td>
</tr>
<tr>
<td>(6) Condition E is that the payment is not conditional on, associated with or part of an arrangement involving, the acquisition of property by the charity from the individual or a person connected with the individual.</td>
</tr>
<tr>
<td>An acquisition by way of gift is ignored for the purposes of this condition.</td>
</tr>
<tr>
<td>(7) Condition F is that—</td>
</tr>
<tr>
<td>(a) there are no benefits associated with the gift, whether provided by the recipient charity or a charity it makes payments to, or</td>
</tr>
<tr>
<td>(b) there are benefits associated with the gift, whether by the charity or a charity it makes payments to, but the restrictions on those benefits are not breached.</td>
</tr>
</tbody>
</table>

See sections 417 to 421 for provision about benefits associated with gifts.
Payroll Giving

CAF proposes that the legislation in relation to payroll giving is amended to add a clause (d) to s714 of the ITEPA.

Proposed draft legislation (amend ITEPA, s714)

<table>
<thead>
<tr>
<th>714 Meaning of “donations”</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) For the purposes of this Part “donations” means sums which -</td>
</tr>
<tr>
<td>(a) are withheld by the payer under a scheme which is an approved scheme at the time of the withholding,</td>
</tr>
<tr>
<td>(b) constitute gifts by the individual to one or more specified charities under the scheme, and</td>
</tr>
<tr>
<td>(c) satisfy the conditions (if any) set out in the scheme.</td>
</tr>
<tr>
<td>(d) sums withheld by the payer will still constitute gifts for the purposes of this section provided that any benefits provided by charities as a consequence of their receipt of the sums withheld do not exceed those allowed under gift aid as detailed under S.417-421 of ITA 2007.</td>
</tr>
</tbody>
</table>

5. VAT implications and considerations

HMRC should explicitly confirm in their detailed guidance that the benefits allowable for Gift Aid will not as a consequence mean that the donations are regarded as consideration for a supply of goods and services, and so are subject to VAT (except for the benefit of literature, which HMRC already allows to be regarded as a zero rate supply for VAT purposes).

6. Making the rules and guidance benefit charities and donors

CAF welcomes the work being embarked upon by HMRC to write a series of simple guides, aimed at small organisations. We believe that if the recommended changes are implemented, this will allow for significant simplification of the detailed guidance and the production of user-friendly tool kits. This will help to encourage all CSOs to fully realise the potential of this generous tax environment and help to create a strong and resilient culture of charitable giving in the UK.

We would be happy to provide further details concerning the suggested legislative changes. CAF would also be willing to draft simple guidance, in line with the proposed new rules.

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