



TAXREP 46/13

(ICAEW REP 126/13)

ICAEW TAX REPRESENTATION

GIFT AID AND DIGITAL GIVING

Comments submitted on 18 September 2013 by ICAEW Tax Faculty in response to HM Treasury consultation document *Gift Aid and digital giving* published on 3 July 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document [Gift Aid and digital giving](#) published by HM Treasury (HMT) on 3 July 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. In our view shifting the liability for the donor's tax shortfall to the charity is unacceptable. We are concerned that if the liability is allocated to the charity such declarations may be made recklessly by donors. We wonder whether this could result in less Gift Aid claims being made, as charities would go through the process of making a claim only to have to repay it.
8. If the Gift Aid declaration has not been taken correctly either by an intermediary or a universal Gift Aid declaration database (UGADD) administrator the repayment of the Gift Aid should be their liability and not the charities.
9. The proposed Gift Aid declaration is inadequate as it refers to tax paid, at the start of a tax year it may not be possible for a donor to sign that they have paid sufficient tax at that time but as the tax year progresses they may become chargeable to more tax and indeed pay it. Also no reference is made to other donations made to charities and Community Amateur Sports Clubs that need to be covered by the donor's tax payable for the year. The declaration should go on to explain the consequences for the taxpayer if they have paid insufficient tax.
10. We are not convinced that it is the length of the declaration that deters potential donors from Gift Aiding. The majority of donations, 66%, are made by just 9% of the population ([Charities Aid Foundation report](#)) and the remaining 34% comes from 67% of the population. It is unlikely that the 9% do not Gift Aid their donations if they have sufficient tax to cover the gift so presumably it is the 67% gifting 34% of donations that are the target for any changes and analysing why they do not Gift Aid should be the starting point for changes to Gift Aid.

MAJOR POINTS

Support for the initiative

11. In general any scheme to increase the take up of Gift Aid is welcome.
12. People are donating in increasingly diverse ways and digital giving is very popular so any measures to help such gifts to qualify easily for Gift Aid are welcomed.
13. Younger people are probably very attracted to giving by text or online, although they will continue to give by bucket-rattling and as new and smaller charities may not qualify for the Gift Aid Small Donations Scheme (GASDS) any measures to help all gifts to qualify easily for Gift Aid are welcomed.
14. We would agree (para 1.8) that the current Gift Aid declaration looks long and possibly daunting on a mobile screen but it is little better on paper and we are not convinced that the long declaration accounts for donations not being made under Gift Aid.
15. Not all taxpayers are aware that a Gift Aid donation could reduce their personal tax liability whether they be higher/additional rate taxpayers or over 65 year olds with a restricted age allowance and maybe more education in that area would increase the take up of Gift Aid.
16. The consultation document refers throughout to tax 'paid', instead of tax chargeable.

RESPONSES TO CONSULTATION QUESTIONS

Chapter 1: Introduction

Q 1. Are there any general points about Gift Aid that you would like to raise with Government?

17. Any changes to the operation of Gift Aid need to well publicised. This has not always happened in the past. HM Revenue & Customs (HMRC) seem to assume that all charities are avid readers of their website; this is simply not the case. The changes in the Gift Aid declaration last year are a good example. Charities were not directly made aware of the new wording and anecdotal evidence indicates that many have not updated their declaration. All charities making a Gift Aid claim should have been sent details of the new requirements rather than a press release and a posting on the website being deemed sufficient to make them aware of them.

Q 2. Beyond digital giving, what other barriers to take-up of Gift Aid do charities experience?

18. Many of the small local charities operate largely through volunteers and may find it hard to find someone who is prepared to set up and administer the Gift Aid claim procedure. For those that rely on bucket-rattling the Gift Aid Small Donations Scheme (GASDS) is not available as they do not have the required history of Gift Aid claims.

Q 3. Do you think a phased implementation of the changes to Gift Aid proposed in this consultation document would be the best way to proceed?

19. A Given the complexity of the various proposals a phased implementation may be preferable. The implementation needs to be well-publicised, however, particularly to the smaller charities that may benefit.

Q 4. What new promotional materials – leaflets, website materials and other products – could the Government usefully provide to help increase take-up of Gift Aid?

20. The real problem here is not that the Government need to provide new promotional materials but how these materials will reach the smaller charities. Thought needs to be given on how to disseminate information.

Q 5. What should these materials contain to be most helpful in encouraging donors and charities to use Gift Aid?

21. An explanation of the tax relief available to donors could help the take up of Gift Aid. Donors may not realise that there may be a benefit to them personally and so may not think about giving under Gift Aid. Charity begins at home so a gift to a good cause that also benefits the donor personally may make signing the Gift Aid declaration worthwhile.

Q 6. Might rebranding Gift Aid help increase take-up? How?

22. We fail to see how rebranding might increase take up of Gift Aid.

Q 7. How can the Government work with the charity sector and its representatives to disseminate promotional material on Gift Aid?

23. A significant number of registered charities do not make Gift Aid claims and one problem is how to get information to and assist these charities in making a claim if they have donations. Many organisations actively encourage their members or employees to volunteer with smaller charities. Perhaps widening the pool with whom HMRC work to disseminate promotional material would help.

Chapter 2: The Gift Aid declaration

Q 8. Do you agree that it would be helpful to enable charities to shorten the Gift Aid declaration in this way, provided they were prepared to accept liability for a charge to tax where the donor had not paid enough tax to cover the Gift Aid?

24. We would question whether any charity would be well-advised to shorten the Gift Aid declaration leaving them with such an open-ended commitment to pay tax. Many charities operate on a shoestring and have seen donations fall over the last few years, the claim of Gift Aid is an important part of their funding for the year. To introduce uncertainty over the amounts claimed is unreasonable particularly as the charity is unable to identify, and thus quantify, the potential liability. Given that in the shortened declaration (Box 2.B) the donor confirms that they have paid enough tax we see no reason that the liability should not remain with the donor. The option could remain for charities to repay the Gift Aid themselves to protect their relationship with the donor.
25. We would also be concerned that while a charity might welcome the shortened version of the declaration they may not fully appreciate the potential consequences. HMRC would need to make it very clear to those charities that do use the shortened version the potential liability of so doing. We wonder how they would do this.
26. Some smaller charities receive a donation, make an immediate tax reclaim, and spend both before any issue came to light. Making the charity hold the tax claim element back may well frustrate the charity's objectives as smaller charities very often fund raise for a project which is then immediately spent out.
27. Perhaps a way forward would be for there to be a limited time for HMRC to review a Gift Aid claim for a potential liability, say 12 months after the tax repayment claim is submitted. In this way charities could have some degree of certainty over previous claims.
28. However, we find the current wording of the Gift Aid declaration cumbersome. We queried at the time the necessity of the penultimate sentence about VAT and Council Tax. The first sentence makes it quite clear the taxes that need to be paid. The last sentence can easily be

reduced to that on the shortened version. A revision of the declaration would be welcomed, but not if accompanied by an open-ended liability.

Q 9. Do you think a reasonable limit for individual donations that can be made using a shorter Gift Aid declaration, as set out in Proposal 1, would be £1000, £5000 or somewhere in between? If not, what limit would seem reasonable and why?

29. If a limit to the donation is set then a charity choosing to use the shortened version would be required either to have another set of printed forms for larger donations or put in place a procedure whereby a large donor was contacted and had the full declaration read to them. This seems very cumbersome and we wonder how many charities will have the two sets of declarations printed or be able to prove that the donor had the full text read to them.

Q 10. Given the complexities outlined above, how do you think a tax charge should fall to charities where a donor has only paid enough tax to cover some of the Gift Aid on donations they have made in the year?

30. We do not consider that the tax charge should fall on the charity.

Q 11. Do you agree that HMRC should be able to tell charities which donations tax charges relate to?

31. We agree that if the scheme is implemented it is necessary to advise the charity of the donation that any tax charge is related to; without this information a charity could continue to face tax charges by receiving donations from the same donor.

Q 12. Bearing in mind the need to retain a link to donors' tax affairs in order to retain Gift Aid's status as a tax relief, are there any other changes you think it would be possible and helpful to make to the Gift Aid declaration?

32. We consider that the first sentence should read 'I confirm that I have paid or **will pay**....'. If a donation is made very early in the tax year a donor could not properly sign the declaration.

Chapter 3: Gift Aid: a greater role for intermediaries

Q 13. What intermediaries exist now? If the Government makes changes to Gift Aid to make it easier to claim on donations made through intermediaries, what new intermediaries might emerge to support donations to charity?

33. Several types of intermediaries already exist such as Justgiving, Charities Aid Foundation and no doubt new ones will emerge but they are likely to be more of the same. It is our opinion that all intermediaries should have to make their charges much clearer, perhaps for each donation on-line a pop up box saying how much of the donation will be taken in administration charges. Currently, it is not always immediately apparent how much the intermediary is charging.

34. Mobile phone operators could be encouraged to be intermediaries to collect Gift Aid on text donations where the subscriber has signed a Gift Aid declaration.

Q 14. What are your views on the requirements placed on non-charity intermediaries and the regulatory powers the Government would need to take under Proposal 2?

35. Model 2 under the current rules works well and unless the changes in Proposal 2 would result in a reduction in the administrative costs leading to more funds with the charities we do not think such a change is necessary.

Q 15. What sorts of features do you think intermediaries would need to have to have? What sorts of organisations should be able to be intermediaries?

36. See earlier responses.

Q 16. As set out above, the Government intends to put in place two requirements under Proposal 2 – a time limit on declarations, and a requirement to ask donors if they wish to Gift Aid each donation – to reduce the risk of Gift Aiding a donation in error. Are there other methods to protecting donors against the risk of overclaiming?

37. Other than the proposal set out in Q17 we have no other suggestions.

Q 17. Would it be helpful to place a requirement on intermediaries to inform donors how much they had donated that year, with the amount of tax required to cover Gift Aid on those donations?

38. We consider that this would be helpful.

Q 18. Do you think intermediaries will offer to claim Gift Aid on behalf of charities as set out under Proposal 2?

39. If such a scheme is introduced intermediaries will only operate it if there is a benefit compared to model 2 of the existing scheme.

Q 19. What do you think the consequences of the intermediary taking on liability might be?

40. The intermediaries may increase their administration charges to cover the estimated cost of paying tax for donors with insufficient tax chargeable and this would reduce the amount paid over to charities and so would be detrimental for the charities.

Q 20. If the proposals in Chapter 2 are adopted, do you agree that the liability for tax charges arising where the donor has not paid enough tax to cover a Gift Aided donation should fall to the intermediary? Or would it be more appropriate for the liability to fall to the charity?

41. As the intermediary is responsible for the operation of the Gift Aid we consider that the liability should be theirs or the donors, but see our concerns expressed in the response to Q19..

Q 21. What might be the advantages and disadvantages of Proposal 2 for charities?

42. Many charities receive gifts from anonymous donors and are thus not able to claim Gift Aid. Donors may wish to withhold their names for a variety of reasons but if they could remain anonymous, by refusing to let the intermediary reveal their identity to the charity, a Gift Aid claim could be made by the intermediary. Charities could thus benefit under this proposal and the donor would remain anonymous to them.

Q 22. How can charities' relationships with donors be protected under Proposal 2?

43. The intermediary could provide the charity with the donor's details, as suggested in para 3.30, but only with the express permission of the donor. They could then build a relationship with that donor if they chose to do so.

Q 23. Do you think Proposal 2 would lead to an increase in Gift Aid going to charities? What is the evidence for this?

44. No comment.

Q 24. Do you think Proposal 2 would lead to an increase in overall donations to charities? What is the evidence for this?

45. No comment.

Q 25. What are the advantages and disadvantages of Proposal 3 over Proposal 2?

46. We do not think proposal 3 offers any advantages.

Q 26. What are your views on the option that both Proposals 2 and 3 should be available in parallel?

47. We see no advantage in having both proposals in operation; we think it might be confusing to both donors and charities as to which type of intermediary they were using and what their responsibilities were.

Q 27. Do you agree that intermediaries should be liable for invalid Gift Aid declarations and any repayments required or penalties issued in relation to these? Or should charities be liable, given they will have received any Gift Aid paid out on these incorrect claims?

48. The liability should remain with those who have assumed the responsibility ie the intermediary if the declaration is invalid or the donor if they have made a false declaration.

Q 28. If Proposal 1 (in Chapter 2) and proposal 3 are adopted in combination, should the charity be liable for tax charges where the donor has paid insufficient tax to cover the Gift Aid on the donation? Or should the liability for the tax charges fall on the intermediary?

49. We consider that the tax charge should fall as stated for the previous question.

50. We note the comment in point 2 of para 3.39 that the intermediary would not have received the repayment and would thus not have the funds to settle any charge. We assume that not all intermediaries would be 'not for profit' organisations and so would be able to fund a liability out of their charges.

Q 29. Would intermediaries be content to operate Proposal 3?

51. No comment.

Q 30. What would be the advantages and disadvantages to charities of Proposal 3? Are there any advantages or disadvantages for donors?

52. Other than those noted in paras 3.42 and 3.43 and the question of where any over reclaimed tax liability falls we are not aware of any others.

Q 31. Do you think additional HMRC guidance and support would help digital providers to operate Gift Aid more efficiently and make it easier for donors to claim Gift Aid on their donations through digital channels?

53. More education about the benefits of Gift Aid for the charity and the donor may be a bigger factor.

Q 32. What sort of support could HMRC usefully provide in this area?

54. For taxpayers not in self assessment a reminder, possibly with the notice of coding that donations made under Gift Aid could reduce their tax liability but a claim needs to be made and an explanation as to how to make the claim.

Q 33. Would more support in this way be sufficient to improve the user experience of Gift Aid?

55. Yes.

Chapter 4: A universal Gift Aid declaration database (UGADD)

Q 34. What model for a UGADD would you prefer to see in place?

56. No comment.

Q 35. What are the advantages and disadvantages of a UGADD compared to either Proposal 2 or 3 set out in the previous chapter, for charities, donors and intermediaries?

57. Our concern is that many charities would fail to register with UGADD if there was a cost involved and they only received a small number of donations. They would thus lose out on Gift Aid as they would be unable to access the database. Although we note at para 4.16 that it is the intention that the fee level set should enable all charities to access it.

Q 36. How might the introduction of a UGADD fit with charities' current systems for managing Gift Aid? Would the benefits outweigh any costs?

58. This proposal would most benefit those charities who receive a significant amount of donations online or by text. It is difficult to see how it would benefit the smaller charities who receive their donations in the main by cash, cheque or bank transfer or online sponsored events. They will hold, or obtain for a one-off donation, valid paper Gift Aid declarations. It should also be remembered that in smaller charities the Gift Aid reclaim is often undertaken by a volunteer and there is no associated financial cost, other than time. Any costs of being registered to a UGADD would thus outweigh any potential benefits.

Q 37. What functions should a UGADD have, and why?

59. No comment.

Q 38. What information should a UGADD pass on to charities about their donors? How, and why?

60. The initial way that a charity establishes a relationship with the donor is by thanking them for their gift. If a UGADD is set up which makes the Gift Aid claim electronically to HMRC information about the donor, to enable the charity to thank them, should be available, but only with the permission of the donor.

Q 39. Should Gift Aid be claimed directly by the charity, or should the UGADD claim the Gift Aid on the charity's behalf?

61. Perhaps this could be a choice for the charity.

Q 40. How could a UGADD best be encouraged to emerge? What might be the best role for Government in supporting a UGADD's development?

62. We consider the costs of a charity registering with UGADD and the administration involved will be the critical factors for the smaller charity.

Q 41. How should the UGADD and charities identify donors, given the Government's requirements on accuracy and security as set out above? Would donors find this easier than providing a new Gift Aid declaration?

63. A unique identifier issued by UGADD seems the most straightforward option. However, we would agree that many donors are likely to lose/forget this identifier and it is certainly easier to just provide a new Gift Aid declaration for most donors. We also query whether enough of the population make multiple donations to different charities in such amounts as to make registration to a UGADD worthwhile for them. Many donations are spontaneous, while watching a charity appeal for example, and this might be the sole donation of the year by that individual. Foresight on charitable giving is required if a UGADD is to be used.

Q 42. How can a UGADD be developed in a way that allows access for a wide range of charities?

64. See our answer to Q40 above.

Q 43. Where a Gift Aid declaration has not been taken correctly so it is invalid, should the UGADD administrator or the charity be liable for the repayment of the Gift Aid? Why?

65. Whoever assumed responsibility for taking the declaration should be liable, in this case the UGADD administrator or back to the donor for a revised declaration and if insufficient tax to cover the donations the tax charge should fall back on the donor.

Q 44. Where a donor has paid insufficient tax to cover a Gift Aid claim made on a donation, should the donor, the charity or the UGADD operator be liable to make up the shortfall in tax? Why?

66. The donor should bear the liability if they made a false declaration, whether or not this was done intentionally.

Q 45. How can the Government get sufficient assurance that taxpayers' confidential information is adequately protected by the operators of a UGADD?

67. We have nothing to offer in this respect, although we consider it a crucial point to be addressed if donors are to be persuaded to use the service.

Q 46. How much do you think it would cost to build and/or administer a UGADD, and how do you get to that figure?

68. No comment.

Q 47. How do you think the costs of building and/or operating a UGADD should be covered?

69. As noted for intermediaries any administration charges made by the UGADD should be clear and transparent.

Q 48. If charities had to pay to use a UGADD, how can these costs be kept low and transparent, to avoid greater Gift Aid administration costs than is currently the case?

70. For many charities the Gift Aid claim is done by volunteers so there are no administration costs. As a result we wonder how many charities will register.

Q 49. Do you believe that the costs to charities of using a UGADD would be outweighed by the benefits e.g. a higher take-up of Gift Aid?

71. See Q48 response above.

Chapter 5: Assessment of impacts

Q 50. In your view, what proportion of relevant donations to charity are made through 'new' digital giving channels compared to more traditional forms of giving?

72. No comment.

Q 51. Are these genuinely new donations, or would they otherwise have been made through a different channel?

73. We have no evidence to support but anecdotally many donations are made on the spur of the moment by text or on line whilst watching an appeal on television that perhaps would not be made if the donor had to obtain a piece of paper and write a cheque, or complete a credit card form and put in the post together with a Gift Aid declaration.

Q 52. What proportion of the donations made through new digital channels is currently Gift Aided? How does this compare with other donations of a similar size?

74. No comment.

Q 53. Given the size of the donations, what is the maximum proportion of these donations that might practically be Gift Aided?

75. No comment.

Q 54. In your view, what effect might the proposals in this document have on the proportion of donations that are Gift Aided, taking into account:

- a only donations made through ‘new’ channels;**
- b all donations?**

76. No comment.

Q 55. In your view, would the proposals in this document have the effect of imposing extra costs on your organisation? How? Would these be start-up costs or ongoing costs? How large would they be?

77. No comment.

Q 56. Do you agree with the assessment of impacts set out in the summary of impacts table? In your view, are there any impacts that have not been mentioned here?

78. No comment

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx))