



HM Treasury

# **Gift Aid and digital giving:** consultation response

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April 2014





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# 1

## Introduction

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**1.1** Gift Aid is an important source of income for charities, with over £1 billion a year going to the charity sector. The government wants as many eligible donations to charity by taxpayers as possible to attract Gift Aid, and for the take-up of Gift Aid to be as high as possible across all methods of giving to charity. This includes spontaneous gifts and donations made by text and online or new channels for giving. Therefore Budget 2013 announced that the government would:

*'consult on proposals to make it easier to claim Gift Aid through a wide range of digital giving channels, including options for enabling donors to complete a single Gift Aid declaration to cover all their donations through a specific channel'*

**1.2** The consultation *'Gift Aid and digital giving'*, which ran from 3 July 2013 to 20 September 2013, set out proposals for new promotional materials on Gift Aid, changes to the Gift Aid declaration, and a new role for digital intermediaries in administering Gift Aid with a view to reducing the number of occasions on which donors need to provide their details. The consultation also sought views on the merits of a universal Gift Aid declaration database (UGADD), and on whether stakeholders felt there were other barriers to their accessing Gift Aid.

**1.3** We received over 100 responses to this consultation, many of which show a deep engagement with some detailed and complicated issues. In addition, stakeholder events were held in July, August and September 2013 and meetings were held with representatives of both charities and intermediaries in early 2014. The government is grateful to stakeholders for taking the time to consider the proposals so carefully.

**1.4** The following chapters summarise responses to the questions that the consultation document posed, and also set out the government's response on each issue. In some places the consultation questions and the summary of responses are grouped, where the questions tackle the same issue from different angles. Specifically, Chapter 2 examines responses on Gift Aid and access to it generally, plus ideas for promotion, as originally covered in the opening chapter of the consultation document. Chapter 3 summarises responses to proposals regarding the Gift Aid declaration, while Chapter 4 covers proposals on intermediaries and their potential role in operating Gift Aid. Chapter 5 summarises views on a UGADD. The consultation document also sought views on the likely impact of proposals in the consultation on take-up of Gift Aid. Responses to these questions will be used to support the final assessment of impacts of proposals, which would be published in a Tax Impact and Information Note (TIIN) alongside draft legislation. They are therefore not discussed further in this response.

**1.5** Reflecting responses to the consultation, and subsequent discussions, Budget 2014 announced that the government will:

- legislate to allow non-charity intermediaries a greater role in operating Gift Aid, with further detail to be set out in regulations
- encourage donors to use Gift Aid on more eligible donations and encourage smaller charities to register for the reliefs they are entitled to. This will include

targeted outreach work, a simpler joint HMRC/Charities Commission application process and improving understanding of donor behaviour

**1.6** More detail on these announcements is set out in the government's response in the following chapters.



# 2

## General comments on Gift Aid and its promotion

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**2.1** The primary focus of the consultation paper '*Gift Aid and digital giving*' was to address barriers in access to Gift Aid when making donations through digital channels, including by text donation and online. However, the government wants Gift Aid to work well across the board and so the consultation document sought views on Gift Aid generally, and on broader barriers to access that charities might experience. It also asked for views on whether introduction of the proposals set out in the document should be phased, and for ideas on what the government could do generally to promote the take-up of Gift Aid.

**2.2** Respondents felt that while digital donations were currently relatively low, the number of donations by text is increasing as a percentage of all donations; and for some respondents the percentage of all digital donations that receive Gift Aid is increasing year on year. Similarly, respondents highlighted that Gift Aid on more traditional types of giving was high and that digital giving, while currently low, could be substantially increased. Respondents estimated that the percentage of donations that could be Gift Aided range from between approximately 60 to 80%.

**Question 1: Are there any general points about Gift Aid that you would like to raise with the Government?**

**Question 2: Beyond digital giving, what other barriers to take-up of Gift Aid do charities experience?**

**2.3** Respondents were broadly positive about changes to Gift Aid; to simplify, publicise and increase its take-up. Respondents felt that while online giving makes up a relatively small percentage of donations charities receive at present, digital giving will increase.

**2.4** Many respondents asserted that the current process for claiming Gift Aid can be complex, slow and bureaucratic. Examples include the difficulty of claiming Gift Aid on sponsorship forms, including tax statements in donor information, the volume of information donors are required to provide and the time to process claims.

**2.5** Respondents also raised concern over the presentation of Gift Aid; highlighting that it focuses too heavily on the individual donor's tax position and not the benefit to the charity; and that donors could feel their tax affairs may come under scrutiny by HMRC.

**2.6** Clearer guidance and a simplification of the treatment of charitable giving in areas such as in the workplace and at charity auctions would be beneficial. Respondents also recommended clarifying how Gift Aid works with benefit rules and membership schemes.

**2.7** Respondents also raised a number of issues and recommendations not addressed in the consultation. These include suggestions such as moving to an opt out rather than opt in system on the assumption that the number of individuals claiming Gift Aid in error is small; considering the position of higher rate taxpayers; and the ability for spouses to make donations together, reflecting their collective tax position.

**2.8** One respondent also thought any change to Gift Aid should be considered alongside extending the Gift Aid Small Donations Scheme.

## Government response

**2.9** The government does want to increase take-up of Gift Aid on eligible donations and reduce the paperwork involved as far as possible. As explained in later chapters, it will be working with the charity sector and behavioural insights experts to amend the model Gift Aid declaration to make it more user friendly, and enabling a single declaration to apply to all donations made via a non-charity intermediary, drawing on better evidence of donor understanding.

**2.10** In response to some of the more general points raised around claiming Gift Aid, HMRC have introduced the Charities Online system which has made it easier for charities to submit a Gift Aid claim and for Gift Aid to be paid more quickly.

**2.11** Previous consultations with charity stakeholders have given the strong message that charities are keen to retain Gift Aid as a tax relief. To operate Gift Aid as a tax relief HMRC will always need a certain amount of information about the donor, so that it is possible to link the tax relief claimed on the donation with the individual donor's tax affairs. The government also needs to take reasonable steps to protect donors or whichever entity is liable for overpaid Gift Aid from the risk of over-claiming tax relief.

**2.12** Since the consultation document was published last year, the National Audit Office has undertaken a study into Gift Aid and other reliefs on donations,<sup>1</sup> which included an estimate of the amount of Gift Aid paid to charities by HMRC where the donor had not paid sufficient tax to cover this payment. They estimated that at the very least this amounted to around £55 million in 2012-13, and could be considerably higher. The ongoing increases to the personal allowance also mean that an ever increasing proportion of adults are no longer paying any income tax at all, and many more are paying very little. In 2013-14 more than 40% of adults were out of income tax altogether. The government is therefore clear that any changes made to the Gift Aid declaration should be careful to increase donors' understanding that they must have paid tax in order to use Gift Aid. Changes will need to address the challenge of making it easier for donors to apply Gift Aid to eligible donations, at a time when the number of eligible donors is reducing, while helping to ensure that Gift Aid is not applied incorrectly to ineligible donations.

**2.13** The government therefore considers that donation via intermediaries will continue as an 'opt in' system, but will work with charities and intermediaries to build an evidence base on donor understanding to inform decisions about the most effective safeguards for taxpayers.

**Question 4: What promotional materials – leaflets, website materials and other products – could the Government usefully provide to help increase the take up of Gift Aid?**

**Question 5: What should these materials contain to be the most helpful in encouraging donors and charities to use Gift Aid?**

**Question 6: Might rebranding Gift Aid help increase take up? How?**

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

**2.14** Most respondents saw promotional materials such as leaflets, television adverts and the use of social media as an integral part of promoting Gift Aid.

**2.15** Respondents felt promotional materials should be clear and positive, moving away from a focus on the tax paid and instead on the benefits of Gift Aid for donors, including for higher

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<sup>1</sup> <http://www.nao.org.uk/report/gift-aid-reliefs-donations/>

rate taxpayers, and for charities. This messaging should be promoted across government and the charities sector.

**2.16** Very few respondents felt rebranding Gift Aid was the right thing to do; arguing that to do so would not be value for money, may create unnecessary confusion and could cause damage to a brand that was already well established. However, there was widespread agreement that a new logo or strap line could be beneficial and this should be considered alongside the development of promotional materials.

**2.17** Most respondents agree that the government has a role to play in promoting Gift Aid however the level of involvement was not widely agreed upon. Respondents broadly agreed that a dedicated website would be beneficial, hosting a variety of promotional information, and that this could be a standalone website or HMRC's web pages could be refreshed to hold this information.

**2.18** Respondents also recommended working with behavioural insights experts to pinpoint the most successful types of engagement.

### **Government response**

**2.19** On promotion of Gift Aid: the government has established a new working group on Gift Aid promotion and the Gift Aid declaration. This working group is jointly chaired by HM Treasury and HMRC, and will report to the Charity Tax Forum. Behavioural insights experts are included in the working group, as well as professional fundraisers, and the group will consider opportunities to promote Gift Aid generally to raise the profile of Gift Aid with charities and maximise the chance of eligible donors Gift Aiding their donations. More detail on the group is set out at paragraph 4.60.

**2.20** The nature of the promotion developed will depend on the input from the working group, but the government's intention is that, as stakeholders have suggested, they should place greater emphasis on setting out clearly the benefits to charities from claiming Gift Aid. The government will look to charities and sector representative bodies to play a significant role in disseminating messages and information about Gift Aid to the wider charity population through their existing networks.



# 3

## The Gift Aid declaration

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**3.1** The government has received feedback from charities that the wording of the Gift Aid declaration can sometimes be off-putting to donors, and reduce the likelihood that they apply Gift Aid to their donations. The consultation document proposed changes to allow declarations to be shorter by reducing the 'tax to cover' explanation in return for a shift in liability for over-claimed Gift Aid from the donor, who is currently liable, to the recipient charity (Proposal 1). This was to protect donors who over-claimed Gift Aid because they would not fully understand the risks of doing so, due to a less detailed declaration. Meanwhile to protect charities from liability for large overpayments of Gift Aid, the consultation document proposed an upper limit of between £1,000 and £5,000 for donations covered by such shorter declarations.

**3.2** As the charity, rather than the donor, would be liable for overpayments made on these donations the consultation document also asked for views on how a tax charge should be recovered if the donor had donated to more than one charity that year. Given charities would now be liable for overpayments of Gift Aid which HMRC would seek to recover from them, the consultation document proposed that HMRC should be able to tell charities which of their donors had made such donations so they could act to prevent a repeat situation in future. And in turn, it was proposed that the Gift Aid declaration should make clear to donors claiming Gift Aid that charities may be informed if they had not paid enough tax to cover those claims. Stakeholders' responses to these proposals are set out below.

**Question 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 tax charge where the donor had not paid enough tax to cover the Gift Aid?**

**Question 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?**

**3.3** There was a wide range of views on whether and how the Gift Aid declaration should be shortened, focussing predominantly on the potential impact on charities rather than a limit on donations. Where respondents provided a view on a limit for the amount of individual donations that could be made using a shorter declaration, they tended to agree that a lower limit would be preferable to reduce the level of risk to charities.

**3.4** A number of respondents felt it would be helpful for charities to have the option to use a shorter declaration where the potential liability for any tax charges is small; this would be particularly beneficial for smaller or one-off donations, or for those made by text.

**3.5** This shorter declaration could provide flexibility for organisations and enable them to integrate Gift Aid more easily in a range of fundraising activities including in newspaper adverts, direct debit forms, church collection envelopes as well as online and in text and phone communications. Some respondents also recommended there should be an opportunity to use a shorter declaration where appropriate, with a longer declaration remaining in use for other types of donations.

**3.6** Others however felt that the proposed shortening could complicate Gift Aid further, arguing the suggested change is not sufficiently radical to make the prospect of taking on new liabilities appealing, potentially damaging charity/donor relationships where a shortfall in tax paid has been identified. Respondents also felt that shortening the declaration could leave charities liable for a tax charge which may not have occurred with a longer, more comprehensive declaration. This was a particular concern for smaller charities.

**Question 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?**

**Question 11: Do you agree that HMRC should be able to tell charities which donations tax charges relate to?**

**Question 12: Bearing in mind the need to retain a link to donor's 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?**

**3.7** Many respondents felt that requiring charities to warn donors that HMRC may share details of their tax affairs could prove off-putting and may damage Gift Aid take-up. However, others argued that receiving relevant information from HMRC of where the tax charge has come from will help charities manage their forecasting and planning.

**3.8** Additionally, some respondents argued that if multiple donations to a number of charities are made by the same donor and insufficient tax is paid to cover all donations, HMRC should provide information which relates to the relevant tax charges and agree a fair way to process any claims for repayment. Similarly, should charities become liable when a donor has not paid enough tax to cover the Gift Aid, some respondents recommend that the liability should be time-limited so that charities are not subject to a large bill.

**3.9** Some respondents also argued that where some charities may accept liability for tax, where the amounts are significant this could severely affect a charity's balance sheet; this would be especially problematic for smaller charities. To overcome this issue, and ensure donors are aware of their tax liabilities, it was recommended that where a donation is made over a certain threshold, a charity could send a letter with a longer tax statement to ensure the donor is aware of the tax implications.

**3.10** Respondents proposed a number of additional recommendations to improve the Gift Aid declaration. These include:

- charities to develop their own tax statement for HMRC to approve so these can better target their audience
- ensure any statement is clear for all to understand, eliminating the risk of misunderstanding

## **Government response**

**3.11** Given charities' concerns regarding the proposed change to shift liability for over-claimed Gift Aid from the donor to the recipient charity, the government is not minded at this point to introduce the proposals for a shorter and less detailed Gift Aid declaration with a shift in liability for repaying over-claimed tax to protect donors.

**3.12** However, the government is committed to exploring how the Gift Aid declaration can best be worded and presented to maximise take-up whilst protecting donors, charities and the Exchequer against claims made in error. This will be a focal point of the new working group on

Gift Aid and its promotion, involving behavioural insights experts and professional fundraisers as well as charities, HM Treasury and HMRC. One of the objectives of the group will be to develop a new model declaration within the existing rules that charities can use with confidence and to consider how its presentation can make it more attractive to eligible donors. Further detail on this work is set out in the following chapter (paragraphs 4.60– 4.64).





# 4

## Gift Aid: the role for intermediaries

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**4.1** To make it easier and therefore more likely for Gift Aid to be claimed on eligible donations made online and by text message, the consultation document proposed changes to the Gift Aid rules to allow operators of such services (referred to as ‘intermediaries’) a greater role in administering Gift Aid. While giving already occurs through digital channels operated by fundraising intermediaries, the consultation document highlighted a number of potential barriers to Gift Aid being applied to these donations, and set out approaches that could address these barriers. The approaches proposed would require changes to primary legislation. They would allow each intermediary to ask donors to fill out a single Gift Aid declaration that would cover all their donations to different charities through that particular service.

**4.2** This was the central issue on which the consultation sought views, and the consultation document proposed two options for achieving this. Under Proposal 2, non-charity intermediaries would be allowed to operate the Gift Aid declaration, and also collect Gift Aid from HMRC and distribute it to charities. Under Proposal 3, intermediaries would operate the Gift Aid declaration, but they would then pass a copy of the declaration to the recipient charity which would then, in turn, claim the Gift Aid due from HMRC.

**4.3** Both proposals have implications for charities, intermediaries and donors, which were explored in the consultation document and on which views were sought. In particular each option would require regulation of intermediaries operating declarations. These proposals also raise questions about flows of data about donors, and how liability for the correct operation of the Gift Aid declaration, and also for Gift Aid claimed in error, should be handled. Finally, the consultation document sought views on whether and how more HMRC guidance would help intermediaries operate more user-friendly systems for Gift Aid under the current legislation.

**4.4** In addition to the formal consultation, the government held a series of discussions with both charities and intermediaries on the proposals in August-September 2013 and in early 2014. These discussions enabled some of the issues raised in the consultation to be explored in more detail, and highlighted the need to ensure that any new legislative framework was able to support new and emerging payment models. The government’s response also reflects the outcome of these discussions.

### Information about intermediaries

**4.5** The consultation document sought views and information on intermediaries, to help inform general policy development in this area.

**Question 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?**

**Question 15: What sorts of features do you think intermediaries would need to have? What sorts of organisations should be able to be intermediaries?**

**4.6** Respondents identified a number of existing intermediaries including well known charity focused web-based intermediaries, but also wider payments systems that might potentially enter

this market – including the Payments Council’s Mobile Payments Service (MPS), loyalty card operators, web-based shopping websites, banks and building societies. Many respondents felt that more commercial organisations may be tempted to enter the charity fundraising arena.

**4.7** One respondent believed that the proposed changes would see the emergence of two distinct types of intermediary – large professional intermediaries seeking to profit from the Gift Aid market and a number of small and medium sized intermediaries for niche charity sectors. However, some respondents felt that it would be difficult to predict what new intermediaries would emerge until the nature of any changes to Gift Aid are agreed. Respondents also suggested that an increase in the number of intermediaries should not be a sign of success if it does not result in an improved experience for donors and an increase in Gift Aid take-up. Another respondent felt that the proposals over-complicated the situation, and that the existing system worked well. They instead suggested that the most beneficial change would be to amend the requirements so that the Gift Aid declaration does not have to include the charity name but could include the name of a charity’s agent.

**4.8** Many respondents felt the integrity of any future intermediary is important and that they would need to demonstrate robust administrative processes and controls. Other points emphasised were that intermediaries:

- would need to be well-established and have a good reputation
- would be handling confidential data and liaising with HMRC, government, charities and donors so they would need to be regulated and have strict privacy policies in place
- would need to have well-established IT systems
- for the sake of accountability and transparency, all intermediaries should perhaps be registered as UK entities such as private limited companies, companies limited by guarantee and public companies
- would also need to be subject to audit by HMRC and/or the Financial Conduct Authority (FCA)

**4.9** A small number of respondents believed that there was no reason why intermediaries should be limited to any particular type of organisation, as long as they meet the regulatory requirements.

### **Views on Proposal 2: allowing non-charity intermediaries to operate the Gift Aid declaration and claim the Gift Aid due from HMRC**

**4.10** Proposal 2 in the consultation document would allow non-charity intermediaries to both operate the Gift Aid declaration and also to collect the Gift Aid due from HMRC, and distribute it to charities, by allowing non-charity intermediaries to be named in the declaration. This would mean that Gift Aid could then be applied to all eligible charities via the named intermediary rather than – as at present – requiring a separate declaration for each charity. To ensure intermediaries operate the Gift Aid declaration properly, and that donors, charities and the Exchequer are protected, legislation will need to be put in place allowing HMRC to regulate intermediaries and govern the standards of their operations.

**4.11** The consultation document set out requirements to protect taxpayers from the risk of donating in error, where they had not paid enough tax to cover their Gift Aid. Under this model intermediaries would be required to remind donors each time they made a donation that they had made a Gift Aid declaration, which applied to all of their donations via that channel, to give them an opportunity to opt out of applying Gift Aid. In addition, declarations relating to donations via a single intermediary would last for one year only, and at the end of this period, donors would need to make a new declaration relating to donations via the particular

intermediary. The consultation sought views on some of the issues this raises. The consultation document also asked for views on the implications for charities of Proposal 2. The questions below are grouped around these themes, and do not always follow the sequence of the questions as they appeared in the consultation document.

## **Protecting donors from over-claiming Gift Aid under Proposal 2**

**Question 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 over-claiming?**

**4.12** The majority of respondents opposed the suggestion of a time-limited declaration, although it was generally acknowledged that some form of reminder to donors that they are claiming Gift Aid is needed.

**4.13** One respondent suggested that in order to reduce donors over-claiming, intermediaries should display the total Gift Aid repaid (or in process of being repaid) through that intermediary in the tax year-to-date; and a simple opt-out mechanism.

**4.14** A number of respondents recommended an option of ‘opting out’ of Gift Aid or to cancel the declaration should the donor need to, instead of having a time-limited declaration.

## **Requirements placed on intermediaries under Proposal 2**

**Question 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?**

**Question 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?**

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

**4.15** The majority of respondents felt that it was very important for intermediaries to be appropriately regulated and welcomed the proposed features of the regulatory regime, sharing the view that the process should be transparent and auditable. Many strongly believed that any fees charged by intermediaries for the processing and distribution of payments should be capped.

**4.16** A range of further proposals was put forward, including regulating intermediaries operating Gift Aid under the FCA’s Payment Services Framework, intermediaries having a separate listing with the Charity Commission for England and Wales (CCEW) and charity funds being ring-fenced at all times.

**4.17** However, a small minority took an opposing view on the degree of regulation required, believing that the proposed requirements were too onerous in their present form and would negate the benefits of the initial proposal.

**4.18** The majority of respondents agreed that intermediaries should inform donors of how much they had donated each year and the amount of tax required to cover Gift Aid on those donations. A few respondents suggested additional requirements: that it would be helpful to the donor if the annual statement of donations was prepared within one month of the end of the tax year; and that it could also provide a list of the charities supported and when the charity received the funds.

**4.19** However, one respondent felt that the government should not specify in any detail the form or means by which intermediaries should tell donors the amount they have donated in the tax year. Instead, they suggested that the government could specify that intermediaries must maintain an accessible record of the amounts donated and the dates on which the donations were made, or provide receipts clearly showing this information.

## **Liability issues under Proposal 2**

**Question 19: What do you think the consequence of the intermediary taking on liability might be?**

**Question 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 Gift Aided donations should fall to the intermediary? Or would be more appropriate for the liability to fall to the charity?**

**4.20** Most respondents felt that the main consequence of the intermediary taking on liability would be an increase in the fees and charges for their service, with perhaps a smaller proportion of the donation reaching the charity.

**4.21** The majority of charities felt that if the intermediary is empowered to reclaim Gift Aid, the liability for any charges should sit with them as they would have control over the process. However, a small number of charities were not in favour of the liability resting with the intermediary. One believed that intermediaries should only be liable for tax charges arising in instances where their own administrative systems were at fault. They were concerned that, should they also be liable where the donor has not paid enough tax to cover a Gift Aid donation, it could disincentivise intermediaries' involvement or lead to increased costs to charities as intermediaries try to mitigate their potential liability.

**4.22** A number of intermediaries appeared open to the opportunity of collecting and distributing Gift Aid on behalf of charities, but did not want the liability for tax shortfalls. It was felt that it would be unlikely that intermediaries would be willing to take on liability for tax charges to cover insufficient tax as they will already have passed the money to the charity at the point when the need for a refund is identified.

## **Impact on charities of Proposal 2**

**Question 21: What might the advantages and disadvantages of Proposal 2 be for charities?**

**Question 22: How can charities' relationships with their donors be protected under Proposal 2?**

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

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

**4.23** Charities were concerned that Proposal 2 might reduce contact between themselves and the donor, given they would not automatically have access to the Gift Aid declarations and the donor information contained within them. This would reduce charities' ability to contact donors to thank them for their donation, and to keep them updated on their work. Some respondents felt that this would be a big disadvantage and a strong disincentive to use this scheme. A loss of control of the overall process of claiming Gift Aid was also seen as a disadvantage by some larger charities.

**4.24** However, smaller charities were able to see the benefits of outsourcing their administration to a third party, receiving donations and Gift Aid repayments through them.

**4.25** A number of stakeholders felt that allowing intermediaries to receive and process declarations could lead to an uptake of Gift Aid on donations given through online platforms and digital devices – particularly if a single Gift Aid declaration is required per intermediary.

**4.26** Others, however, were concerned that more intermediaries in the marketplace could mean additional fees being placed on charities and result in increased costs; that proposal 2 would potentially reduce the amount paid to the charity due to higher charges intermediaries would introduce; and that confusing contractual arrangements on liability could emerge.

**4.27** One prominent intermediary felt that proposal 2 would allow intermediaries to build innovative new services. However intermediaries may then selectively choose which charities to work with.

**4.28** There were a number of views on the issue of donor data and how this should be handled. A number of charities believed that intermediaries should be required to pass on all donor information to the charity. However one charity felt that intermediaries should offer donors the option of having their details passed on to the charity, but that this information should not be shared unless they have the donor's permission to do so, believing it was important for donors to be able to remain anonymous. This was a common view among intermediaries who did not feel comfortable passing donor details to charities, with one intermediary commenting that market research explicitly indicated that unwanted charity mailings and contact had had a negative effect on donors' willingness to donate. Another intermediary highlighted that under Data Protection law, intermediaries must seek permission from donors to pass on their details to charities, and Gift Aid requirements should not conflict with this.

**4.29** Many intermediaries felt that offering Gift Aid across more donation channels would allow donors to Gift Aid more often. However, they felt this would also be dependent on greater awareness and promotion. Nevertheless, some charities were concerned that the benefit of new donations could be eroded by increased charges from intermediaries under the proposals.

**4.30** The majority of charities believed that changes under proposal 2, whilst potentially increasing the proportion of donations that receive Gift Aid, are unlikely to result in an increase in overall donations to charity. Several charities commented that previous research has suggested that tax relief does not motivate people to make donations; it only affects the value of the donations that they do make once they have decided to give. Intermediaries' views were mixed: some felt the impact of Proposal 2 was difficult to predict, whilst others believed that overall donations would increase.

### **Views on Proposal 3: allowing non-charity intermediaries to operate the Gift Aid declaration, but requiring a copy of the declaration to be passed on to the recipient charity**

**4.31** Proposal 3 in the consultation document would allow non-charity intermediaries to operate the Gift Aid declaration, by naming them in the declaration, but would require a copy of the declaration to then be passed on to the recipient charity who would then claim the Gift Aid due from HMRC. As intermediaries would still have a role in operating the declaration, legislation would still need to be changed to enable them to be the object of a Gift Aid declaration and to ensure HMRC could regulate them in this role. The consultation document sought views on whether intermediaries would operate Proposal 3, subsequent liability issues and the advantages and disadvantages of Proposal 3 over Proposal 2. The consultation document also asked whether it would be helpful to allow intermediaries to operate either Proposal 2 or Proposal 3 – to have both systems running in parallel.

### **Liability issues under Proposal 3**

**Question 27: Do you agree that intermediaries should be liable for 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?**

**Question 28: If proposal 1 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 fall on the intermediary?**

**4.32** Most respondents felt that intermediaries should be liable for any penalties caused by mistakes or problems in the operation of the Gift Aid declaration as they would be in control of the process. However, it was also strongly felt that it would be unfair for intermediaries to be liable for any invalidity resulting from donor misinformation and therefore, under proposal 3, liability for repaying Gift Aid where donors have paid insufficient tax to cover the amount should not fall to the intermediary.

**4.33** One respondent stressed that there would need to be a proper apportionment of liability depending on which of the parties was responsible for the error, whilst another suggested further scoping is required to determine where liability should sit.

**4.34** Opinion was very much divided on where liability should fall if Proposal 1 (shortening the declaration and moving liability to the charity) and Proposal 3 were adopted in combination; most charities felt that the tax to cover liability should remain with the donor. One charity argued that removing liability from the intermediary would remove an incentive to administer the scheme efficiently. Alternatively, if the charity were liable for underpaid tax they would be made aware of the situation long after the donation had been received and therefore charities would likely hold inflated reserves. As a result, primary responsibility should not be removed from the donor. In contrast to this, the majority of intermediaries believed that where a declaration was received in good faith by the intermediary, but the donor had not paid enough tax, the liability should rest with the charity receiving the Gift Aid repayment.

### **Advantages/disadvantages of Proposal 3 over Proposal 2**

**Question 25: What are the advantages and disadvantages of Proposal 3 over Proposal 2?**

**Question 29: Would intermediaries be content to operate Proposal 3?**

**Question 30: What would the advantages and disadvantages to charities of Proposal 3? Are there any advantages or disadvantages for donors?**

**4.35** Many of the larger charities felt that proposal 3 offered greater advantages than proposal 2, given they would have control over the timing at which the Gift Aid claims are submitted and, most importantly, access to the donor's details. Another significant advantage cited by some charities was that it would potentially enable a streamlined integration with existing processes.

**4.36** Most charities shared the view that the ability to retain donor funds and the justification for charging higher fees for a more enhanced service would mean most intermediaries would prefer to operate under proposal 2 as opposed to proposal 3. One prominent intermediary stated that they would not support proposal 3.

**4.37** However, smaller charities were attracted to the idea of outsourcing the service of administration and claiming Gift Aid which proposal 2 would provide. This difference of view across the sector was acknowledged by many of the larger charities who could understand why smaller charities would favour this approach.

**4.38** Respondents also raised a number of additional points. An additional advantage of proposal 3 was that it was seen as posing less risk to the intermediary, making it more appealing to commercial providers and bringing new intermediaries into the market. However, intermediaries entering the market could increase fee-charging Gift Aid claiming services and add to charities' administration costs. One charity suggested that donor frustration may develop where desired charities are not registered with a particular intermediary, which might result under either proposal.

**4.39** Many intermediaries felt that proposal 3 would not be right for them. A few intermediaries noted the potential benefits to both charities and themselves – most notable being that charities would need to make fewer changes to their existing processes and that they would need to be less stringent on auditing charities. Most intermediaries also cited the additional administrative costs which charities would incur under proposal 3 as a disadvantage. In particular, one intermediary stated that the format of donor information could be different for each charity which could create extra costs in creating uniformity.

**4.40** Several charities suggested that proposal 3 might potentially result in an increase in the take-up of Gift Aid, but what was seen as the main advantage, which many of them highlighted, was the opportunity to maintain and develop links with the donors. Meanwhile several large intermediaries suggested caution here, stating that the sharing of personal data for administration of Gift Aid is not the same as consent for marketing purposes.

### **Operating Proposals 2 and 3 in parallel**

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

**4.41** Most intermediaries were not in favour of operating Proposals 2 and 3 at the same time. A common belief was that it would create too much confusion for the sector as a whole, though subsequent discussion indicated that some intermediaries were prepared to contemplate several models in operation side by side.

**4.42** Charities themselves were divided in opinion on whether the two models should operate together. Some felt that both options should be available to enable charities to decide what works best for them whilst others were of the view that it would be too confusing – both for themselves and intermediaries.

### **Providing additional guidance for intermediaries under the current rules**

**4.43** Some intermediaries have been able to put arrangements in place under the current Gift Aid legislation that have eased the process for donors and reduced the amount of form-filling required. The consultation document asked for views on a fourth proposal, on whether more bespoke guidance and support for digital platforms would make it easier to claim Gift Aid on digital donations under the current rules, without requiring the legislative changes of proposals 2 and 3.

**Question 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?**

**Question 32: What sort of support could HMRC usefully provide in this area?**

**Question 33: Would more support in this way be sufficient to improve the user experience of Gift Aid?**

**4.44** Many respondents recommended additional guidance from HMRC to support both intermediaries and charities.

**4.45** The majority of respondents felt that, under the current system, additional guidance would be required to help digital providers, charities and donors to increase their understanding of the process and that this might enable improvements to be made to the way data is collected to better support the Gift Aid process.

**4.46** Several charities felt that the current HMRC guidance focuses more on the traditional methods of providing a Gift Aid declaration. This feeling was echoed by a prominent intermediary who suggested that efforts to provide more bespoke guidance for digital platforms would be welcome.

**4.47** The most common suggestions concerned providing best practice advice on completing Gift Aid declarations and clearly setting out the process for making claims with the aid of flow charts and FAQ documents. Another suggestion was to consider the use of multi-media guidance to help supplement the written guidelines.

**4.48** However, one charity felt that rather than advice on best practice, more technical guidance and specific wording on what to include would be welcomed. They argued that this would significantly help charities when it comes to auditing the process, stressing the need for absolute clarity on what HMRC requires charities to store digitally. Many charities collect information in different ways and greater guidance would therefore help charities to design their websites more effectively.

**4.49** Respondents also highlighted that if any of the proposals in the consultation were implemented, clear guidance for intermediaries on what constitutes an acceptable Gift Aid declaration and on liability would be useful; clear guidance materials would likely lead to greater awareness of the Gift Aid process and potentially increase take-up; and HMRC could improve the user experience through public advertising campaigns.

### **Question 3: Do you think phased implementation of the changes to Gift Aid would be the best way to proceed?**

**4.50** Most respondents recommended a phased implementation for any changes to Gift Aid; stating this would be preferable to a single, immediate change. However, all respondents felt that sufficient time was needed to manage the process and that this should be supported with appropriate communications and guidance for charities and donors alike.

### **Government response**

**4.51** The government has concluded, following consultation with the sector, that there is scope to increase Gift Aid take-up by making it easier for eligible donors to claim Gift Aid on their donations, by enabling intermediaries to play a greater role in the process.

**4.52** Although the consultation suggested a reluctance to operate multiple intermediary models, subsequent discussions have highlighted that online and mobile platforms could have different requirements, and that in particular the new Mobile Payments Service will interact with users and underlying systems in a different way again. As this area is developing rapidly, the government believes that there is a strong case for ensuring that any changes can support a range of different models.

**4.53** Charities and intermediaries have indicated that they would welcome radically simplifying the declaration process – potentially moving from an opt-in to an opt-out process, or providing greater visibility over amounts donated via Gift Aid to help understand whether there is sufficient tax to cover, as part of the creation of an enhanced role for intermediaries in the administration of Gift Aid. However, as outlined in Chapter 3, they do not, on the whole, want



to see a move of liability from the donor to the charity in the case of over-claimed Gift Aid with insufficient tax to cover.

**4.54** As the donor would therefore continue to be liable for any over-claimed Gift Aid that was not covered by their tax paid, it is vitally important that donors are informed and understand their tax position. This therefore significantly limits the scope for radical simplification within a new framework for intermediaries.

**4.55** However, the government recognises that there is more we can do to understand how donors interact with Gift Aid – both in terms of making Gift Aid easier to access and more attractive for eligible donors, but also building up a clearer picture of donor understanding of the Gift Aid process, and in particular the requirements in relation to eligibility.

**4.56** The consultation indicated support for moving liability where there are problems or mistakes in the operation of the Gift Aid declaration from the charity to the intermediary, where the intermediary is responsible for administering and potentially also collecting and distributing Gift Aid. The government shares this view, but is clear that questions of data sharing and the balance of risk, liability and cost, which have been raised by charities, will need to be addressed contractually between charities and intermediaries, based on their own legal advice. The government believes that there is scope for representative bodies to take a role in supporting smaller charities in engaging in this process.

**4.57** Therefore, in the light of the consultation, and further discussions with the sector, the government announced at Budget 2014 that it will legislate in Finance Bill 2015 to enable intermediaries to take a greater role in the Gift Aid process. This would give intermediaries a role in administering Gift Aid directly and in collecting and passing on Gift Aid declarations to charities (or other intermediaries) to make the Gift Aid claim (both proposals 2 and 3).

**4.58** The government envisages taking powers in primary legislation to be able to set out the following detail in secondary legislation:

- The definition of an intermediary and the different functions it can exercise – in administering Gift Aid and potentially also in passing on Gift Aid declarations.
- The regulatory framework for intermediaries. As highlighted in the consultation, it is envisaged that this will have some of the characteristics of the regulatory regime for Payroll Giving agencies.
- Changes to the declaration to allow a single declaration to cover multiple charities through a single intermediary. The nature and extent of changes to the declaration process will be informed by work with the sector on donor understanding as outlined below to ensure appropriate safeguards for donors (paragraph 4.64).
- The allocation of liability where there have been problems in the administration of the Gift Aid declaration.

**4.59** Putting the detail of changes in secondary legislation will make it easier to ensure that the legislative framework can support developments in business models and the underlying technology, to be reflected in future regulations. This also reflects the views of the majority of stakeholders who felt that further discussion on the detail of how the intermediary proposals would work in practice would be helpful before the rules are changed.

**4.60** As announced at Autumn Statement, the government has set up a Gift Aid promotion and declaration working group, to look at how to increase overall Gift Aid take-up on eligible donations among charities and individuals, as outlined in Chapter 2. This group will also have a role in providing input into a programme of research to build up our understanding of donor behaviour.

**4.61** This research will look in particular at how donors understand the tax to cover requirements and what scope there is for amending the existing process while still ensuring that donors give informed consent for their tax relief to be paid to a charity.

**4.62** The research will be supplemented by 'customer closeness' work, to gain an insight into donor understanding of Gift Aid and the declaration process, and testing of alternative declarations in a live environment by behavioural insights experts to identify the best way to present the declaration to encourage eligible donors to apply Gift Aid. It is envisaged that this work will reach initial conclusions by autumn 2014.

**4.63** The working group will also consider research carried out by charities and intermediaries, to broaden the evidence base on donor behaviour further.

**4.64** The outputs of this work will help to inform decisions on future requirements for the declaration in relation to intermediaries, to be set out in regulations. While the government's position is that an opt-in and time-limited declaration provides the most effective protection for donors giving to several charities via a single intermediary, the government is also open to considering evidence of other safeguards that ensure donors only apply Gift Aid to eligible donations. Alongside this, the government will work with both charities and intermediaries on the different potential roles for intermediaries in relation to the administration of the declaration and the accompanying regulatory framework. The government expects to publish regulations in draft on both of these areas during the passage of Finance Bill 2015.

# 5

## A universal Gift Aid declaration database

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**5.1** While there are no current plans to introduce a universal Gift Aid declaration database (UGADD), this section of the consultation sought views on what services, and how, a UGADD should provide to both charities and donors. Responses to the UGADD questions varied considerably.

**Question 34: What model for a UGADD would you prefer to see in place?**

**Question 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?**

**Question 36: How might the introduction of a UGADD fit with charities' current systems for managing Gift Aid? Would the benefits outweigh the costs?**

**5.2** Respondents were broadly supportive of a UGADD; however many felt that further information on how a UGADD would be developed was necessary before being fully supportive of its use. This was reflected in respondents' wide ranging views on what a successful model could look like.

**5.3** Respondents highlighted a number of requirements for a UGADD, the main ones being high quality functionality and administration, simplicity and ease of use for both charities and donors and the cost of implementation and maintenance.

**5.4** Many respondents recognised that a UGADD could vastly simplify the administrative requirements for Gift Aid. Respondents recognised that a UGADD could provide a better customer experience for donors, up-to-date information on an individual's tax arrangements for charities, help for charities to forecast Gift Aid declarations and potentially increase the take-up of Gift Aid.

**5.5** A number of respondents recommended ways in which to link a UGADD to an individual's tax records, for example through the use of a National Insurance number; highlighting that this would provide assurances as to whether an individual is able to claim Gift Aid as well as tackle administrative issues such as mis-matching data, name changes and spelling errors.

**5.6** However, respondents also highlighted that there could be significant risks and disadvantages associated with the introduction of a UGADD. Respondents highlighted issues such as the cost outweighing the benefit, both in monetary and administrative terms, and that a UGADD could be particularly burdensome for smaller charities.

**5.7** Respondents were also concerned about the implications for charities and donors where donations exceeded the tax they had paid.

**5.8** Some respondents felt that a UGADD would remove the role for intermediaries. However, there was some concern that this would increase the administrative burden for charities as they would be required to undertake more administrative tasks, previously dealt with by intermediaries. There was also agreement that a UGADD would need a robust regulatory system which ensured donor confidentiality.

**Question 37: What functions should a UGADD have, and why?**

**Question 38: What information should a UGADD pass on to charities about their donors? How and why?**

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

**5.9** Respondents would like to see a UGADD system that is simple, comprehensive, agile and compatible with specialist software. Respondents advised that large sets of data in common formats would need to be accessed and that charities would need to be confident in its ability to cope with large volumes of information.

**5.10** Respondents were broadly consistent on the level of information they felt a UGADD should provide to charities about their donors; with many arguing a UGADD should pass on all details currently collected and held, plus some additional information such as whether a valid declaration is held for a donor. Charities argued this type of information was necessary, to keep donors up-to-date on their work and to thank them for their donations. There were however some concerns that the donor-charity relationship should remain the responsibility of the charity to maintain, rather than using the UGADD to collect and distribute information on donors who may have wanted to remain anonymous.

**5.11** Respondents' views varied on who should claim Gift Aid and whether this should be claimed directly by the charity or whether the UGADD should claim on the charity's behalf. Some respondents argued that allowing the UGADD to claim the Gift Aid would be simpler, with others concerned that this may lead to higher cost and risks for the charity.

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

**5.12** Most respondents believe there is a role for government in developing and implementing a UGADD; however respondents' views varied considerably on the level at which government should be involved. Some respondents argued HMRC's involvement should be limited to the introduction of legislative changes only, while others recommended HMRC should be responsible for the development of the whole project, from design through to the administration and maintenance.

**Question 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?**

**5.13** A high number of respondents recommended a UGADD should provide donors with a unique identification number. A unique identifier would ideally enable donors to edit personal details, cancel any enduring declaration and view any claims made by charities against their declaration.

**5.14** A number of respondents recommended ways in which to link a UGADD to an individual's tax records, for example through the use of a National Insurance number; highlighting that this would provide assurances as to whether an individual is able to use Gift Aid as well as to tackle administrative issues.

**Question 42: How can a UGADD be developed in a way that allows access for a wide range of charities?**

**5.15** Many respondents linked the success of a UGADD accessible for all charities to the set up and maintenance costs, arguing that where these were high, charities may be less inclined to engage. Respondents recommended a range of solutions, from the set up costs being covered

by government or a corporate sponsor, to the running costs being taken as a small percentage from charitable donations or Gift Aid.

**Question 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?**

**Question 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?**

**5.16** Respondents' views varied on who should be liable where a Gift Aid declaration is taken where there is a failing in the declaration process. Some took the view that the UGADD administrator should be responsible if they are responsible for storing and managing Gift Aid declarations, while others felt this should fall to the charity if Gift Aid has been claimed on ineligible income.

**5.17** Similarly, respondents' views varied on who should be liable to make up a shortfall in tax where the donor has paid insufficient tax to cover a Gift Aid claim. A number argued that where the fault lies with the donor, the tax should be recovered from the donor or charity; where the UGADD administrator is at fault, the tax should be recovered from them.

**5.18** A small number of respondents recommended that if a UGADD is linked to a donor's current tax records, the risk of over-claiming would be greatly reduced.

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

**5.19** Respondents raised the importance of donor confidentiality across a number of answers, making it clear that data protection was a requisite for any UGADD. To ensure taxpayer confidentiality, some recommended HMRC should be responsible for the administration of a UGADD. Others suggested relevant security controls that meet certain compliance standards would suffice.

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

**Question 47: How do you think the costs of building and/or operating a UGADD should be covered?**

**Question 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?**

**Question 49: Do you believe that the costs to charity of using a UGADD would be outweighed by the benefits e.g. a higher uptake of Gift Aid?**

**5.20** A number of respondents estimated how much a UGADD would cost to build or administer, with estimates ranging from £1 million – £2 million to £10 million – £20 million. Respondents argued the cost would depend on the level of complexity and whether it used existing investment and tools within government and payment systems. Some respondents recommended considering the ongoing administrative costs for charities during any development to make sure a UGADD was accessible to all charities.

**5.21** Respondents' views varied on how a UGADD should be paid for, both initially and for any running costs. Some felt the start up costs should be covered by the government, with any ongoing costs paid for as a percentage of Gift Aid claimed. However others suggested development costs could be covered by a corporate sponsor, or a combination of the two.

**5.22** A small number of concerns were raised around donors and charities having sufficient trust in a new system. Respondents suggested that if run by a private company, donors may be

concerned about the safety of personal information, and charities may be concerned that they would be unlikely to increase the take-up Gift Aid.

**5.23** Respondents were broadly consistent in the view that should a successful UGADD be implemented, with all concerns and risks addressed and at a reasonable cost, then Gift Aid take up may increase, with fewer errors and administrative burdens.

### **Government response**

**5.24** While there are no current plans to introduce a universal Gift Aid declaration database, the information provided by those responding to the consultation will be of use in supporting longer-term thinking about the future of Gift Aid administration.



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