

BFI response to:

HM Treasury 'Gift Aid and digital giving' July 2013

20 September 2013

Executive summary

The BFI welcomes the opportunity to respond to this consultation. As an organisation, philanthropy and fundraising are essential to us and we depend on raising a minimum of £4million per annum. We have ambitions to grow this in the coming years and are exploring a variety of ways to achieve this. Therefore, gift aid is terribly important to us and is a significant factor in helping us and other film bodies raise the necessary funds to support our charitable objectives. We welcome the Government's intent to reduce barriers to the take-up of gift aid and support for encouraging take-up in other ways.

While we are supportive of the proposal to shorten the Gift Aid Statement we have very real concerns about the proposal to transfer liability for Gift Aid from the Donor to the Charity as it will increase the financial risk to Charities.

We are supportive of the suggestion of a greater role for intermediaries although our concerns about liability remain.

The proposal to introduce a new database for gift aid is interesting, however the cost of implementation could outweigh the benefits.

Introduction

The British Film Institute (BFI) is the lead organisation for film in the UK. Since 2011, it has combined a creative, cultural and industrial role as a Government arm's length body and distributor of National Lottery funds. Its key priorities are to support a vibrant UK film culture by investing in film education, audience access, filmmaking and film heritage.

In October 2012, the BFI published 'Film Forever, Supporting UK Film 2012-2017', which set out its strategy for the next five years, following an extensive industry consultation. It described the activities underpinning the BFI's three strategic priorities:

- Expanding education and learning opportunities and boosting audience choice across the UK;
- Supporting the future success of British film; and
- Unlocking film heritage for everyone in the UK to enjoy.

The BFI is a registered charity helping to ensure that British Film culture is supported and nurtured. We look after the National film Archive which is a significant and valuable cultural collection. It follows that we support the Government's recognition that gift aid is important to sustain such charitable objectives

Chapter 1:

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

We very much welcome the Government's interest in Gift Aid and making it simpler for donors and charities.

Compared to VAT, Gift Aid legislation is open to interpretation, which can be seen as a positive, but it also means that some charities are anxious about making mistakes and as such often have to employ consultants to ensure that they are operating correctly. This anxiety often means that charities feel the need to get new schemes, such as new membership schemes, approved by HMRC. This added layer of bureaucracy makes the introduction of new schemes a lengthy process, which means that charities cannot act more spontaneously and take advantage of new opportunities as they arise.

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

The complexity of the gift aid system is the biggest barrier to take up.

Question 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?

If the changes proposed in the consultation document are implemented, then yes a phased implementation would be best, but as you will see from the below we are not in agreement with all of the proposed changes.

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

If the government could produce some very simple explanations of gift aid tailored to the consumer, in a form that smaller charities could adapt to make relevant to their activities that could increase the general awareness of the concept.

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

See answer to question 4.

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

No comment.

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

Each charity has its own webpage to explain Gift Aid, and occasionally charities do not update it when changes to legislation are made. It might be a good idea and simpler if there was a permanent Government webpage on Gift Aid that charities could link their website to. This would be a great help.

Chapter 2: The Gift Aid declaration

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

We have concerns with the proposed change and in particular points 2.11 for two reasons:

- i) The shortening of the Gift Aid statement is not sufficiently substantial. Paragraph 2.25 of the consultation suggests that an extra line will be added to make donors aware that the charity could be contacted which lengthens the declaration again.
- ii) In return for this shortening of the statement, the proposals are that the charity would become liable, rather than the donor, if the donor has not paid enough tax. We do not understand how the charity could properly ensure that the donor has paid enough tax in order to claim Gift Aid, because the charity is not party to this type of information about the donor. The donor holds this information and is responsible for their own actions and therefore it seems more fitting that this liability should remain their responsibility. If implemented, these changes might mean a significant increase in risk for charities. The Government is suggesting a threshold for this of donations up to £5,000 maximum, but if a charity were to receive a number of incorrect donations of this size the tax bill could become substantial. It would be difficult for the charity to plan for this risk. It might be that because of this some charities choose not to claim Gift Aid at all.

If these proposals are introduced, we would be interested in greater clarity on whether the option of using a longer, rather than the shortened declaration still exists. The comment in paragraph 2.19 which states that a longer declaration will reduce (but not eliminate) this risk, appears to suggest the longer one can still be used but that the liability would still be with the charity.

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?

Some charities might choose to use the longer statement with all donations. As outlined above, we do not agree that the liability should shift from the donor to charities and as such we feel that the issue of a reasonable limit should not apply. However, if these changes do go ahead we would strongly argue for this reasonable limit to be set lower than £1000. It should be noted that a significant donation for some is £100.

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?

This question reveals some of the possible impracticalities of managing this system. Charities can claim Gift Aid four years after the gift so any ordering of the gifts might unfairly penalise those who cannot submit their Gift Aid claim immediately, which might perhaps be smaller charities. Perhaps the fairest way would be to share the tax liability between all the charities who benefited during that year from that specific donor – but could that be managed in practice when all those charities would have submitted their Gift Aid claims at different times?

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

We do not agree that HMRC should tell charities which donations tax charges relate to. There is a sensitive relationship between charity and donor. The involvement of the charity in the individual financial tax situation of a donor could damage that relationship and this in turn could mean that that donor no longer gives to that organisation.

Question 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?

Given the complex parameters, we think it is fine as it is.

Chapter 3: Gift Aid: a greater role for intermediaries

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?

No comment.

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?

No comment.

Question 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?

No comment.

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 overclaiming?

No comment.

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?

We are sure it would be helpful – but as not all donors give all their donations through these intermediaries, it would not give the full picture anyway for those donors.

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

No comment.

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

No comment.

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 a Gift Aided donation should fall to the intermediary? Or would it be more appropriate for the liability to fall to the charity?

As stated earlier, we believe that the responsibility should remain with the Donor.

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

No comment.

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

No comment.

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

No comment.

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

No comment.

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

No comment.

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

No comment.

Question 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?

As stated earlier, we believe that the responsibility should remain with the donor. They are the only person who knows everything about the charities who they have donated to, the amounts and their own personal tax situation. Making anyone else liable when they do not have access to all the information needed seems a challenge.

Question 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?

See answer above.

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

No comment.

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

No comment.

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?

Our experience at the BFI is that take up of gift aid is greater via digital platforms, therefore anything that can increase this would be welcomed.

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

No comment.

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

No comment.

Chapter 4: A universal Gift Aid declaration database

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

We have concerns over the cost/benefit of introducing this sort of UGADD. If it were to go ahead, the identifier should be the NI number – all taxpayers will already have one. Joining UGADD could be included as an option on the Gift Aid declaration form.

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?

A UGADD would apply to all donations, rather than just donations channelled through an intermediary.

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

We believe that as proposed, the UGADD would have limitations. If it only records whether the donor has a valid Gift Aid declaration, it would not remove the need to ask the donor if they want to Gift Aid a particular donation – as they might not want to do so given how much tax they have paid that particular year. So there will always be the need to discuss Gift Aid with the donor anyway.

We have concerns that the work needed to streamline any UGADD with the organisation's existing database would be incredibly expensive and complicated.

Our view is that at a time when charities have to do more with less money, the introduction of a UGADD would not deliver enough benefit in relation to the money that would need to be spent on the new system.

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

No comment.

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

No comment.

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

No comment.

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?

No comment.

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?

No comment.

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

No comment.

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?

Liability should be with UGADD. The point of UGADD is to confirm the validity of the Donor's status.

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?

As stated before, we believe that the Donor should be liable and in control of their own tax affairs and donations. It is each taxpayer's responsibility to ensure they pay the correct amount of tax due. (Although of course UGADD/the Charity must be able to provide a statement of the law if requested.)

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

No comment.

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?

No comment.

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

No comment.

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?

No comment.

Question 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?

Yes we do.

Chapter 5: Assessment of impacts

Question 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?

You would need to collect data from all charities to get an exact figure for this. Charities are all very different. Some receive large amounts of small donations from digital sources – these are likely to be large national charities that run mass marketing campaigns such as adverts on television. Other charities, such as small local charities or middle to large arts charities, like ourselves, are less likely to receive large amounts of digital donations (such as text donations) when compared with different types of charities.