STATUTORY INSTRUMENTS

2016 No. 1195

INCOME TAX
CAPITAL GAINS TAX

The Donations to Charity (Gift Aid Declarations) Regulations 2016

Made - - - -	*7th December 2016*
Laid before the House of Commons - - - -	*8th December 2016*
Coming into force - -	*6th April 2017*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 132 and 133 of the Finance Act 1999(**1**) and now exercisable by them(**2**), and section 428 of the Income Tax Act 2007(**3**).

PART 1

GENERAL AND INTERPRETATION

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Donations to Charity (Gift Aid Declarations) Regulations 2016 and come into force on 6th April 2017.

(2) These Regulations have effect in relation to gifts made on or after 6th April 2017.

Interpretation

2. In these Regulations—

(**1**) 1999 c. 16; section 132 was relevantly amended by paragraph 156 of Schedule 17 to the Communications Act 2003 (c. 21).

(**2**) The functions of the Commissioners of Inland Revenue and the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference, however expressed, to the Commissioners of Inland Revenue or the Commissioners for Customs and Excise is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**3**) 2007 c. 3; section 428 was amended by section 20(3) of the Finance Act 2015 (c. 11) and section 173 of the Finance Act 2016 (c. 24). Section 428 provides that for the purposes of Chapter 2 of Part 8 of the Income Tax Act 2007 a gift aid declaration is a declaration given in a manner specified by Regulations. These Regulations specify the content and manner of a gift aid declaration and make related provision.

"the 2000 Regulations" means the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000(**4**),

"HMRC" means the Commissioners for Her Majesty's Revenue and Customs,

"donor" means an individual who makes a gift to a charity,

"donor intermediary" means a person who is or was authorised by a donor to give a gift aid declaration on behalf of that donor to a charity,

"ITA 2007" means the Income Tax Act 2007, and

"tribunal" means the First-tier Tribunal or, where determined in accordance with the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009(**5**), the Upper Tribunal.

PART 2

GIFT AID DECLARATION

Amendment of the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000

3.—(1) In regulation 1(2) of the 2000 Regulations (effect)—

(a) in sub-paragraph (a) after "6th April 2000" insert "and on or before 5th April 2017", and

(b) in sub-paragraph (b) for "that date" substitute "6th April 2000".

(2) The amendment made by paragraph (1)(a) shall not prevent an appropriate declaration, given under regulation 4 of the 2000 Regulations on or before 5th April 2017 and which is capable of relating to gifts made after that date, from applying to such gifts. This is subject to paragraph (3).

(3) Regulations 5, 6 and 7 of the 2000 Regulations continue to apply to a declaration referred to in paragraph (2) on and after 6th April 2017. Regulations 9, 10 and 11 of these Regulations do not apply to such a declaration.

Manner in which a gift aid declaration may be given

4.—(1) A gift aid declaration may be given—

(a) by a donor to a charity, or

(b) by a donor intermediary to a charity,

(2) A gift aid declaration may be given in writing or orally, including the use of written or oral methods of electronic communications.

Gift aid declaration given by a donor

5.—(1) A gift aid declaration given by a donor under regulation 4(1)(a) must—

(a) contain the name and home address of the donor,

(b) name the charity (or be made in circumstances where the charity is identified),

(c) identify the gift or gifts to which the gift aid declaration relates, and

(d) confirm that the identified gift or gifts are to be qualifying donations for the purposes of section 416 of ITA 2007(**6**) (meaning of qualifying donation).

(**4**) S.I. 2000/2074, amended by S.I. 2003/2155 and 2005/2790.
(**5**) S.I. 2009/273 (L. 1).
(**6**) Section 416 was amended by paragraph 3 of Schedule 8 to the Finance Act 2010 (c. 13), paragraph 11 of Schedule 11 to the Finance Act 2014 (c. 26) and section 20(2) of the Finance Act 2015.

(2) An explanation of the effect of section 424 of ITA 2007(**7**) (charge to tax) must be given to the donor at the time the gift aid declaration in paragraph (1) is given in order for the gift aid declaration to have effect for the purposes of the Income Tax Acts (subject to paragraph (3) and regulations 10 and 11).

(3) A donor is entitled to cancel the gift aid declaration referred to in paragraph (1) by giving notice to the charity.

(4) The notification under paragraph (3) may be given in writing or orally, including the use of written or oral methods of electronic communications.

Gift aid declaration given by a donor intermediary

6.—(1) A gift aid declaration given by a donor intermediary on behalf of a donor under regulation 4(1)(b) must—

(a) contain the name and home address of the donor,

(b) name the charity (or be made in circumstances where the charity is identified),

(c) identify the gift to which the gift aid declaration relates, and

(d) confirm that the identified gift is to be a qualifying donation for the purposes of section 416 of ITA 2007.

(2) Before giving a gift aid declaration a donor intermediary must have—

(a) been authorised by the donor to give a gift aid declaration on behalf of the donor, and

(b) given an explanation of the effect of section 424 of ITA 2007 to the donor,

in order for the gift aid declaration to have effect for the purposes of the Income Tax Acts (subject to paragraph (5) and regulation 10).

(3) A donor intermediary must obtain the authorisation referred to in paragraph (2)(a) and provide the explanation referred to in paragraph (2)(b) in every tax year in which it gives a gift aid declaration on behalf of the donor. This is subject to paragraph (4).

(4) Paragraph (3) does not apply in respect of a tax year if the donor intermediary obtained the authorisation referred to in paragraph (2)(a) and gave the explanation referred to in paragraph 2(b) on or after 1st March in the immediately preceding tax year.

(5) A donor is entitled to cancel the authorisation referred to in paragraph (2)(a) by giving notice to the donor intermediary.

(6) The notification under paragraph (5) may be given in writing or orally, including the use of written or oral methods of electronic communications.

(7) Where a donor notifies a donor intermediary under paragraph (5), the authorisation ceases to have effect from the date on which the donor intermediary receives that notification, or if the notice specifies a later date, from that date.

Record keeping by donor intermediaries

7.—(1) For each authorisation given by a donor under regulation 6(2)(a), a donor intermediary must maintain a record of—

(a) the name and address of the donor, and

(b) the date on which the authorisation was received,

in a form, and to a standard, which can be inspected and audited by HMRC.

(**7**) Section 424 was amended by S.I. 2009/2859 and paragraph 79 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(2) The donor intermediary must preserve that record for six years from the end of the tax year, or where regulation 6(4) is relied upon from the end of the final tax year, to which the authorisation applies.

(3) For each gift aid declaration given on behalf of a donor under regulation 6, a donor intermediary must maintain a record of the date on which the explanation of the effect of section 424 of ITA 2007 was given to the donor in accordance with regulation 6(2)(b), in a form, and to a standard, which can be inspected and audited by HMRC.

(4) The donor intermediary must preserve that record for six years from the end of the tax year in which the gift aid declaration is given.

(5) For each notice of cancellation of authorisation received from a donor under regulation 6(5), a donor intermediary must maintain a record of—

(a) the name and home address of the donor, and

(b) the date on which notice of cancellation was received,

in a form, and to a standard, which can be inspected and audited by HMRC.

(6) The donor intermediary must preserve that record for six years from the end of the tax year in which the notice of cancellation is received.

(7) An officer of Revenue and Customs may by notice in writing require a donor intermediary to produce a record referred to in paragraph (1), (3) or (5) for inspection.

(8) Where a donor intermediary is required by a notice under paragraph (7) to produce a record for inspection, the donor intermediary must do so—

(a) within such period,

(b) at such time, by such means and in such form (if any), and

(c) at such place, other than a place used solely as a dwelling,

as is reasonably specified in the notice.

Annual statement to be provided by donor intermediaries

8.—(1) By the 31st May immediately following the end of a tax year during which a donor intermediary has given a gift aid declaration on behalf of a donor under regulation 6, the donor intermediary must send the donor a statement in writing, or details as to how the donor can access a statement in writing stating—

(a) the aggregate value of donations made by the donor which have been subject to a gift aid declaration given by the donor intermediary during that tax year (the "gift aided donations"),

(b) the maximum amount of gift aid which charities may claim on the gift aided donations,

(c) that the statement does not include any gift aid declarations given by other donor intermediaries on behalf of the donor, or given by the donor directly to a charity, and

(d) that if the donor paid less income tax and capital gains tax in that tax year than the amount of gift aid claimed by charities on all the donor's donations in that tax year, it is the donor's responsibility to pay any difference.

This paragraph is subject to paragraph (2).

(2) Paragraph (1) does not apply to a tax year during which—

(a) the aggregate value of the gift aided donations is £20 or less, or

(b) only one gift aided donation is made.

(3) The donor intermediary must maintain a record of annual statements and details as to how to access annual statements sent under paragraph (1), in a form, and to a standard, which can be inspected and audited by HMRC.

(4) The donor intermediary must preserve that record for six years from the end of the tax year to which the annual statement relates.

Record keeping by charities

9.—(1) A charity must either—

(a) maintain an auditable record of the gift aid declarations received from a donor or a donor intermediary in respect of which it submits a claim for gift aid relief, or

(b) comply with paragraphs (5) to (10) in relation to each such gift aid declaration.

This paragraph is subject to paragraph (4).

(2) The charity must preserve the auditable record for six years from the end of the tax year in which a gift aid declaration is given.

(3) An auditable record is a record of evidence—

(a) of gift aid declarations and the giving of them, and

(b) that (whether or not separate from the gift aid declarations) statements explaining the effect of section 424 of ITA 2007 were given to donors in accordance with regulation 5(2) or regulation 6(2)(b), as the case may be,

in a form, and to a standard, which can be inspected and audited by HMRC.

(4) If HMRC notify a charity that a record relating to a particular gift aid declaration or class of gift aid declarations, in respect of which it submitted a claim to HMRC, does not satisfy HMRC, the charity must comply with paragraphs (5) to (10) in relation to the gift aid declarations in question.

(5) In each case where paragraph (1)(b) or (4) applies, the charity must send the donor a written statement containing—

(a) the information required by regulation 5(1)(a) to (d) or 6(1)(a) to (d), as the case may be,

(b) an explanation of the effect of section 424 of ITA 2007(**8**),

(c) the date on which the charity sends the statement to the donor, and

(d) a statement that the donor is entitled to cancel the gift aid declaration by giving notice to the charity within 30 days beginning with the date in sub-paragraph (c).

(6) The statement required by paragraph (5) must be sent—

(a) within 30 days beginning with the day on which the charity receives—

(i) the gift aid declaration, in a case falling within paragraph (1)(b), or

(ii) the notification from HMRC, in a case falling within paragraph (4), or

(b) by such other time as may be agreed between an officer of Revenue and Customs and the charity.

(7) Where paragraph (5) applies, the donor is entitled to cancel the gift aid declaration by giving notice of cancellation ("cancellation notice") to the charity.

(8) The cancellation notice may be given in writing or orally, including the use of written or oral methods of electronic communications.

(9) The charity must maintain a record of—

(**8**) 2007 c. 3; section 424 was amended by S.I. 2009/2859 and paragraph 79 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8).