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GENEALOGISTS AND INTERNATIONAL
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TURCAN CONNELL

Webinar with Fraser and Fraser

Presented by

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Hosted by

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Fraser and Fraser

Our Services

- Location of Missing Beneficiaries
- Missing Beneficiary Insurance
- **Free** Family Tree Check
- Risk-free Administrator Search Service
- Overseas Bankruptcy Searches
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Philanthropic Giving in Lifetime and on Death (Scotland)

27 March 2024

Mark McKeown

Legal Director, **Turcan Connell**

Giving in the UK

Sunday Times Giving List 2023

UK's 100 wealthiest people gave £3.4 billion

THE SUNDAY TIMES GIVING LIST 2023 – Ranked by the proportion of wealth given or generated for charity

Rank	Name	Wealth (£m)	Donations (£m)	Giving Index (% wealth)	Main beneficiaries
1	Sir Chris Hohn	5bn	755.2	15.10	Environment, children
2	Alan Parker	2.915bn	401.4	13.77	Environment, child safeguarding, women
3	Henry Engelhardt and Diane Briere de l'Isle	863	95.5	11.07	Wales, children, medical, environment
4	Sir Paul Marshall	800	66.9	8.36	Health, religious, children, humanitarian
5	Lord Rothschild and family	825	65.6	7.95	Jewish, education, arts
6	Steve Morgan	785	59.6	7.59	Children, social
7	Sir Elton John	450	31.0	6.89	HIV/Aids, medical, humanitarian, arts
8	Lord Edmiston	1.097bn	68.1	6.20	Christian
9	Andrew Law	850	51.2	6.02	Art, education, youth, mental health, conservation
10	Sir Michael Moritz and Harriet Heyman	3.33bn	166.7	5.00	Education, community, environment, medical

*For the full 100 go to [sundaytimes.co.uk/richlist](https://www.sundaytimes.co.uk/richlist)

Giving in the UK

Why do donors need professional advice?

“The incentives for philanthropy in Britain are weak, and its institutions are underpowered.”

Giving back Better Report by Onward

January 2024

- Gift Aid is the most used tax incentive, but it is often hard to understand and even harder to use. In 2016, up to **£564 million worth of Gift Aid funding was left unclaimed**, and only a third of all high-net-worth donors claimed Gift Aid relief on their tax returns.
- Almost 85% of those earning over £50,000 are unaware of Gift Aid rules, and 33% expressed frustrations that the Gift Aid process is too complex and time-consuming.
- The institutions that encourage philanthropy are underpowered in the UK. Wealth advice firms that offer philanthropy support services are few and far between.
- Government advocacy for philanthropy is also fragmented. Many parts of the state independently engage with philanthropy, but lack a coordinated plan or empowered leadership.



Motivations behind philanthropy

- Impact
- Creating a legacy
- Family involvement
- Surplus to requirements
- Tax mitigation and maximum charitable receipt

Topics

- Gift Aid
- Qualifying Investment Donation Relief ('Share Aid')
- Gifts of Land
- Aspects of Corporate Giving
- Giving on Death: Inheritance Tax incentives and (Scottish) Will Drafting Points



Gift Aid Scheme

Gift of cash ('qualifying monetary donation') to an HMRC registered charity

Donor deemed to have deducted income tax at basic rate (20%) before making the gift

Charity can reclaim the tax on the donation

Higher/Additional rate taxpayer can claim further relief through self-assessment tax return, at the difference between basic and marginal rate of income tax

Must be a UK taxpayer – cannot be non-resident



Gift Aid Scheme

Worked Examples

Donation of £100,000 by Scottish higher rate taxpayer (liable to Scottish income tax at 42% on taxable income between £43,663 and £125,140)

Gross donation		£125,000
Tax deducted at source	(20%)	(£25,000)
Higher rate tax relief	(42% - 20% = 22%)	(£27,500)
Net cost to donor		£72,500

Donation of £100,000 by Scottish additional rate taxpayer (liable to Scottish income tax at 47% on taxable income in excess of £125,140)

Gross donation		£125,000
Tax deducted at source	(20%)	(£25,000)
Higher rate tax relief	(47% - 20% = 27%)	(£33,750)
Net cost to donor		£66,250

Gift Aid Scheme

Worked Examples

Donation of £100,000 by English higher rate taxpayer (liable to income tax at 40% on taxable income between £50,271 and £125,140)

Gross donation		£125,000
Tax deducted at source	(20%)	(£25,000)
Higher rate tax relief	(40% - 20% = 20%)	(£25,000)
Net cost to donor		£75,000

Donation of £100,000 by English additional rate taxpayer (liable to income tax at 45% on taxable income in excess of £125,140)

Gross donation		£125,000
Tax deducted at source	(20%)	(£25,000)
Higher rate tax relief	(45% - 20% = 25%)	(£31,250)
Net cost to donor		£68,750

Gift Aid Scheme

- There is a limit on benefits for the donor
- Donors can only be individuals, sole traders or partnerships
- Donors can 'carry back' one tax year
- Gift Aid Declaration must be completed (sometimes forgotten!)

Gifts of Shares

Qualifying Investment Donation Relief ('Share Aid')

Criteria:-

- Shares or securities listed or dealt in on a recognised stock exchange
- Units in an authorised unit trust
- Shares in an open-ended investment company
- An interest in an offshore fund

Must give the whole of the beneficial interest in the investment



Gifts of Shares

Tax benefits for donor:-

- Donor makes gift on a no gain/no loss basis for CGT purposes
- Shares are out of donor's estate, reducing value of estate for IHT purposes
- Deduction made in taxpayer's liability to income tax equal to the full market value of the qualifying investment at date of the gift, plus taxpayer's costs of transfer

Recipient charity to consider ESG matters prior to deciding if appropriate to hold shares

Shares could then either be retained, and charity receives future dividends OR be sold, free of CGT (may be preferable to donor selling / realising a capital gain, then gifting sale proceeds to charity)

Gifts of Shares

Gifts where shares to be gifted are not 'qualifying investments'?

- Shares in a private or family business, or a private investment company, will not qualify
- Donor can still make gift on a no gain/no loss basis for CGT purposes, but will not obtain income tax deduction
- Shares are out of donor's estate for IHT purposes
- Dividends declared on class of share gifted to recipient charity go direct to that charity (cf. donor receiving dividend, then gifting cash received to charity)

As with qualifying investments, charities should do due diligence, and donor must check company constitution allows charity shareholder

Gifts of Land

‘Qualifying interest in land’ (in terms of English law, a freehold or leasehold interest in land)

Gift exempt from CGT and Land Tax (SDLT, LTT or LBTT)

Donor must donate their entire beneficial interest in the land (NB care to be taken when land owned jointly!)

Benefit to charity if income-generating, e.g. rental property portfolio

Charity due diligence – what comes with the land? (Careful of gifts of agricultural land which may have let cottages, agricultural workers etc attached to it)

Aspects of Corporate Giving

A form of Gift Aid applies to corporate entities

Relief applies by deducting amount of qualifying donations from company's total pre-tax profits

Charity receives gross donation but nothing further

No need for Gift Aid Declaration

Gift cannot be conditional, nor does it apply if charity is a shareholder



Establishing ‘Personal or Family’ Charitable Entity

Donor establishes own entity: trust, company or charitable incorporated organisation

Philanthropic objectives over longer term

Income tax, IHT and CGT relief on donations by donor to charitable entity

Entity can make grants/donations to other charities but no tax relief on those

Needs a significant initial fund to be worthwhile – perhaps minimum £500k for a ‘small’ grant-giving trust

Ongoing compliance obligations depending on entity

An element of anonymity – grants/donations not being made personally

NB – Donor Advised Funds...

Gifting on death

Create a legacy

Major driver is often IHT saving (gifts to 'qualifying charities' wholly exempt)

Care to be taken by donors where Wills leave residue of their estates to charitable and non-charitable beneficiaries: requirement to 'gross up' IHT due.

Reduced rate of IHT from 40% to 36% where 10% or more of net estate passes to qualifying charity...



Gifts on death

How does 36% rate reduction work?

- Deaths post-5th April 2012
- Estate divided into component parts for IHT purposes:
 - Free estate; Survivorship; Settled; Reserved
- Calculate value of property gifted to charity
- Calculate net value of assets in relevant component ('baseline amount'), that is the value after deducting nil-rate bands, any other exemptions and value of any relieved property
- If value of property gifted to charity is equal to or greater than baseline amount, estate will qualify for 36% rate (NB – you can merge components if needed)



Gifts on death

Example: Estate of £700,000 on death with % to charity and balance to family (no NRB)

Charity's percentage share	3%	4%	9%	10%
Rate of IHT	40%	40%	40%	36%
To Charity	£21,000	£28,000	£63,000	£70,000
To Revenue	£271,600	£268,800	£254,800	£226,800
To Family	£407,400	£403,200	£382,200	£403,200
Family (as %)	58.2%	57.6%	54.6%	57.6%

Clear that if giving 4% to charity, you might as well give 10% if supporting good causes anyway!

Gifts on death

Example: Ultra High-Net Worth Estate on death

Based on an estate of £100m:-

• Estate	£100,000,000
• Less: Nil Rate Band	(£325,000)
• Taxable estate	£99,675,000

No Charitable legacy

• IHT at 40%	£39,870,000
• Estate available for distribution (after IHT)	£59,805,000

Legacy of £9,967,500 to Charity (i.e. 10% of taxable estate)

• Taxable Estate less Charity exemption	£89,707,500
• IHT at 36%	£32,294,700
• Estate available for distribution (after IHT and donation)	£57,412,800
• <i>Charity also receives £9,967,500.</i>	
• <i>Total estate for distribution, including legacy to charity, is therefore</i>	<i>£67,380,300</i>



Will drafting and the Charities (Regulation and Administration) (Scotland) Act 2023

- Risk that a legacy can be lost to the third sector where a charity changes its legal form or merges with another charity because the charity named in the will has ceased to exist.
- *Vindex Trustees Ltd* [2021] CSIH 46
- This is a concern: gifts in wills raise over £90 million annually for Scottish charities.
- 2023 Act creates a register of charity mergers providing for the transfer of legacies.

Questions?



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