

# The Taxing Wealth Report 2024

Every politician's guide to  
"How to pay for it".

## The reform of inheritance tax: Reforming charity tax relief rules

### Brief Summary

This note proposes that:

- Tax reliefs available for gifts to charities should be restricted in all cases, including for inheritance tax, where any of the following arise:
  - A material personal gain arises as a result of the gift, even if only by reason of overt publicity.
  - That some degree of control over the gift or the donated asset has been retained.
  - The charity favoured by the gift had not distributed more than 80 per cent of its revenues for charitable purposes in the five years preceding the donation or in the three years following it.
- That measures to achieve these goals should be put in place as a targeted anti-avoidance rule for tax purposes.

<sup>1</sup> This note forms a part of 'The Taxing Wealth Report 2024' published by Finance for the Future LLP, which is UK LLP number OC329502, registered at 33 Kingsley Walk, Ely, Cambridgeshire, CB6 3BZ. See <https://www.financeforthefuture.com/taxing-wealth/>. This note was written by Richard Murphy FAcSS FCA FAIA (Hon), Professor of Accounting Practice, Sheffield University Management School, who is a director of Finance for the Future LLP. © Finance for the Future LLP 2023

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and



Sheffield  
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- That the purposes for making these changes are not to raise revenue (although some savings in relief given may arise) but are instead to:
  - Prevent tax abuse.
  - Prevent the tax system being used in combination with charitable structures to perpetuate the current unequal division of wealth within society.
  - Encourage good governance on the part of charities.
  - Protect the charitable sector as a whole from abuse, meaning that all well managed charities gain from these proposals.

<p><b>The proposal</b></p>	<p>To restrict the tax relief due on gifts to charities, whether for inheritance tax, income tax or capital gains tax purposes, in cases where:</p> <ul style="list-style-type: none"> <li>• A material personal gain arises, even if only by reason of overt publicity.</li> <li>• That some degree of control over the gift or the donated asset has been retained.</li> <li>• The charity favoured by the gift had not distributed more than 80 per cent of its revenues for charitable purposes in the five years preceding the donation or in the three years following it.</li> </ul>
<p><b>Reason for the proposal</b></p>	<ol style="list-style-type: none"> <li>1. To reduce the incentives to avoid inheritance tax and other taxes by using the reliefs available for gifts to charities.</li> <li>2. To close tax gaps.</li> <li>3. To encourage charities to make use of donated funds on a timely basis.</li> <li>4. To support good governance in the charitable sector.</li> </ol>

<p><b>Estimated tax that might be raised as a result of the recommendation made</b></p>	<p>The behavioural responses to this recommendation cannot be known for certain.</p> <p>What can be guaranteed is that the vast majority of donations to charities will be unaffected by this proposal.</p> <p>What will be affected are:</p> <ul style="list-style-type: none"> <li>• Donations from which the donor seeks to secure publicity e.g. by securing the naming of a facility in their own honour.</li> <li>• Donations where the owner retains control of an assets after the gift has been made e.g. as a result of gifting the ownership of share in a company into a charitable trust where control of the board of directors of that company is retained by the donee after the gift has been made.</li> <li>• Gifts to charities that are reluctant to make use of funds donated for charitable purposes, suggesting that they never had need for tax relief in the first place.</li> </ul> <p>The measure is, therefore, an anti-abuse rule to restrict the availability of tax reliefs in all taxes, but which may well have most significance in the case of inheritance tax.</p> <p>No estimate of tax savings that might result from these proposals can realistically be made.</p>
<p><b>Ease of implementation</b></p>	<p>The changes proposed will be relatively straightforward to implement. Experience is now available in writing targeted anti-abuse rules (TAARs) to facilitate this process.</p>
<p><b>Likely difficulties that might result from implementation</b></p>	<p>There is likely to be some public opposition to this proposal, but few large charities and few donors are likely to oppose it because it is about enhancing the reputation of the charitable sector and ending the risk of abuse.</p>

Likely time required to implement the change	Capable of being delivered in any Finance Bill i.e. in a matter of months.
Consultation period required.	A few months, at most.

### Introduction - charity tax reliefs

There are many tax reliefs available for donations to charities made available within the UK tax system. For example, as HM Revenue & Customs (HMRC) says with regard to income tax<sup>2</sup>:

#### Gift Aid

Donating through Gift Aid means charities and community amateur sports clubs (CASCs) can claim an extra 25p for every £1 you give. It will not cost you any extra.

The issues that this gives rise to, including the unfair tax advantage that it provides to higher rate taxpayers, has been discussed in another note within the Taxing Wealth Report 2024<sup>3</sup>. It is suggested there that maybe £740 million of tax might be raised by restricting this relief to the basic rate of tax. Nothing in this note is meant to change that suggestion.

This, however, is not the limit to the reliefs available. As HMRC says<sup>4</sup>:

#### Capital Gains Tax relief

You do not have to pay Capital Gains Tax on land, property or shares you give to charity.

You may have to pay if you sell them [to a charity] for more than they cost you but less than their market value.

There appears to be no estimate published by HM Revenue & Customs on the cost of this relief.

Tax relief on gifts to charities is also available for inheritance tax purposes, about which HMRC says<sup>5</sup>:

<sup>2</sup> <https://www.gov.uk/donating-to-charity/gift-aid>

<sup>3</sup> <https://www.taxresearch.org.uk/Blog/2023/09/14/capping-the-rate-at-which-tax-relief-is-given-on-charitable-donations-under-gift-aid-is-given-might-raise-740-million-in-tax-a-year/>

<sup>4</sup> <https://www.gov.uk/donating-to-charity/donating-land-property-or-shares>

<sup>5</sup> <https://www.gov.uk/donating-to-charity/leaving-gifts-to-charity-in-your-will>

## Leaving gifts to charity in your will

Your will says what will happen to your money, property and possessions after you die.

Your donation will either:

- be taken off the value of your estate before Inheritance Tax is calculated.
- reduce your Inheritance Tax rate, if 10% or more of your estate is left to charity.

You can donate:

- a fixed amount
- an item
- what's left after other gifts have been given out

In summary what this means is that all gifts to charities are exempt for the purposes of inheritance tax and if more than ten per cent by value of an estate is left to charity then the tax rate charged on that estate is then reduced to 36% from the standard 40%.

In 2020/21, which is the last year for which reliable inheritance tax data is available from HMRC, a total of 2,590 estates out of 27,100 estates that were subject to an inheritance tax charge<sup>6</sup> made sufficiently large donations to charity to have their inheritance tax charge rate reduced from the standard 40% to the reduced rate of 36%, which is only available for this reason. As a consequence, they saved approximately £52 million in inheritance tax.

## Discussion

In principle, UK society is keen on charities and the tax system has a bias in their favour which reflects that fact. It is, however, known that charitable tax reliefs can be, and are, abused. HM Revenue & Customs published<sup>7</sup> a discussion paper on this issue in 2014. It has not entirely gone away. As a result, another consultation<sup>8</sup> is in progress in 2023.

This note presumes that the UK's existing general anti-avoidance rule<sup>9</sup> can be used to tackle the more extreme forms of such abuse that are purely tax motivated. This does not,

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<sup>6</sup> <https://www.gov.uk/government/statistics/inheritance-tax-statistics-table-122-exemptions-and-reliefs>

<sup>7</sup> <https://assets.publishing.service.gov.uk/media/5d287a8b40f0b61247b08bd3/avoid-tax-charities.pdf>

<sup>8</sup> <https://www.gov.uk/government/consultations/charities-tax-compliance/consultation-charities-tax-compliance>

<sup>9</sup> <https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules> As a matter of full disclosure, the author of this note was involved in the development of the UK general anti-avoidance rule, including sitting on Treasury committees to assist drafting guidance.

however, prevent other potential abuses. The most significant of those are what HM Revenue & Customs describes as 'tainted donations'. There is also a significant issue with donee charities not appearing to make appropriate use of donated funds.

Tainted donations can presently arise in situations described by HM Revenue & Customs as those where the following conditions exist:

1. The donation to the charity and arrangements entered into by the donor are connected.
2. The main purpose of entering into the arrangements is for the donor, or someone connected to the donor, to receive a financial advantage directly or indirectly from the charity.
3. The donation isn't made by a qualifying charity-owned company or relevant housing provider linked with the charity to which the donation is made.

All three conditions have to apply.

It is suggested that this definition is too narrow.

Condition (1) must remain in any new rule.

Condition (2) is defined far too narrowly. It only considers identifiable financial advantages. It should consider situations where indirect advantage, e.g. undue or overt publicity, might arise as a result of the gift. If this does arise then that should make it what is considered to be a 'gift with a reservation of title' as defined for inheritance tax, invalidating the tax deductibility of the gift. Clear guidance would be needed, but the term 'undue' or 'overt' would, for example, apply if a facility was named in honour of the donor by the recipient charity, from which the donor might then secure advantage, social, financial, or otherwise. In contrast, being on a list of donors would not prejudice the gift.

Condition (2) also needs to allow for the potential to secure advantage as well as the fact that one has occurred. So, in particular, if shares in a private company are donated into trust and de facto control of the company remains with the donor because they can, in practice, control the board of the company whose shares were donated then this obvious way of seeking to keep control of wealth (which would be especially relevant if inheritance tax business property relief was reformed as suggested<sup>10</sup> in the Taxing Wealth Report 2024) would be blocked.

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<sup>10</sup> <https://taxingwealth.uk/2023/10/16/taxing-wealth-report-2024-reforming-inheritance-tax-business-property-relief-might-raise-3-2-billion-of-tax-a-year/>

Condition (3) is too narrow and rarely relevant.

The problem of donations being made to charities that do not then distribute their funds has also to be addressed. As the Financial Times reported<sup>11</sup> in October 2023:

UK charitable foundations with collective assets of more than £12bn are giving away only a small fraction to good causes each year, according to a think-tank analysis. Hundreds of grant-making trusts and foundations (GMTFs) were identified in the research by Pro Bono Economics shared exclusively with the Financial Times.

The analysis showed that if GMTFs distributed 3 per cent or more of their assets, this would generate at least an additional £300mn a year for good causes.

“A huge amount of money lies unused and the mechanisms do not exist to encourage foundations hoarding cash to deliver it to the causes that need it,” said Nicole Sykes, director of policy at PBE.

It is inappropriate that tax reliefs on funds donated be abused by charities that do not make use of the funds in question. It is suggested that unless a charity uses at least eighty per cent of its funds for charitable purposes in the five years before a donation is made to it or during the three years after it is made than HM Revenue & Customs should have the power to deny tax relief on that donation. A de minimis sum below which investigation would not take place would remove risk for most taxpayers from this provision, which is targeted very largely at private foundations.

The object of these proposals is to:

- Prevent tax abuse.
- Prevent the tax system being used in combination with charitable structures to preserve the current unequal division of wealth within society.
- Encourage good governance on the part of charities.
- Protect the charitable sector as a whole from abuse, meaning that all well managed charities gain from these proposals.

The sum that might be raised as a result of these proposals cannot be known at present. No estimate is made as a result. That is not the purpose of these proposals, which are meant to prevent the abuse of charities and the tax system by those with wealth.

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<sup>11</sup> <https://www.ft.com/content/b3d6926c-fcc5-48d5-ad7d-bd9f6719687e>