CHAPTER TWO

TAX AVOIDANCE AND EVASION

This file contains Chapter 2
Taxation of Charities and Nonprofit Organisations
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Cross references work as links in the Online version of this Chapter, but do not work in this PDF file.

2.1 Avoidance, abuse, evasion

This chapter considers the topics of tax avoidance and evasion.

One should not use the complicated, emotionally charged, and constantly abused term **"tax avoidance"** without some explanation of its meaning.[1]

"Tax evasion" is a relatively straightforward concept. It means conduct which constitutes a criminal offence (fraud on HMRC or similar offences). This normally involves dishonest submission of an incorrect tax return. Dishonesty is essential to the offence.

The topics of avoidance and evasion, though often branded together, have nothing in common. We deal with them in the same chapter as there is not enough to say about evasion to give it a chapter of its own.

Charities have often been used for tax avoidance.[2] Hence the long

1 For which see 6.26.1 (Avoidance).

2 For instance, see *IRC v Universities Superannuation Scheme*: "Charities ... often participated in schemes for dividend stripping relying upon their exemption from tax;" 70 TC 193 at p.212.

history of charity tax anti-avoidance provisions.

Charities have been used to hold “orphan” companies, where it was desired that the sponsor or arranger of the company did not have ownership or control. That might be for regulatory or tax planning reasons, or for some other reason. Chadwick LJ, writing extra-judicially in 2007, saw nothing wrong with that.[3] But charity regulators today might not agree, and we think that the practice is best avoided. If used, the charity trustees need to consider what reward benefit hat the charity should expect for acting.

Charities are sometimes used for tax evasion and there have been some prosecutions.

2.2 Reasonable tax planning

The Charity Commission say:

> Charity trustees are under a fiduciary duty to act exclusively in the best interests of their charity in the management of its affairs and the application of its property to further the charity’s purposes for the public benefit. In so doing, they must exercise reasonable care and skill and act to the standard of an ordinary prudent business person in the conduct of their own affairs. This duty makes it appropriate for them to engage in reasonable and prudent tax planning and to take advantage of available statutory tax reliefs relating to charities where these will assist the work of the charity, encourage genuine donations and coincide with the purposes for which these reliefs were created. In addition, trustees may properly seek to organise their charity’s affairs when carrying out particular activities or transactions in a way which minimises the charity’s liability to tax...
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> **5. The Charity Commission’s regulatory position**
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> The commission encourages charities to take advantage of specific charity tax reliefs, for example Gift Aid and recognises that reasonable

3 Chadwick, “Control of Special Purpose Vehicles” Jersey & Guernsey Law Review 2007 *https://www.jerseylaw.je/publications/jglr/Pages/JLR0706_Chadwick.aspx* “The constitution of the SPV company must ensure that the sponsor does not have legal control. That precludes the sponsor from having a legal or beneficial interest in a controlling shareholding. It is probably safer that the sponsor has no interest as shareholder. The structure in *Mahonia* – where the shares in the SPV company were owned by a charitable trust – provides an obvious way in which this requirement can be met. “

> and prudent tax planning is consistent with the trustees' fiduciary duties to the charity they manage. In certain circumstances the commission may authorise certain arrangements to this effect if judged expedient in the interests of the charity.[4]

In the past the Charity Commission put the point rather more forcefully:

> Trustees ... may be personally liable to account for taxation liabilities which are unnecessarily incurred directly or indirectly as a result of the inefficient administration of the charity. It makes no difference whether the liabilities may arise not from the disqualification of the investment made by the charity, but from the disallowance to the associated trading company of corporation tax relief.[5]

The risk to trustees of personal liability for tax blunders has receded in practice, but it remains in theory and may return.

2.3 Avoidance and charitable status

The ire of the Public Accounts Committee was raised by an abusive tax avoidance scheme involving a charitable trust claiming Gift Aid relief.[6] They thought that the trust should not have been registered as a charity:

> 4. In our view it is absolutely clear that the Trust's purposes were not 'exclusively charitable' since its purpose was also tax avoidance. Neither did it provide public benefit. The Gift Aid received by the Trust and the tax relief given to 'donors' would far exceed any grants for charitable purposes and would be a diversion of taxpayers' money from other projects.[7]

In our view:

(1) A tax avoidance purpose does not prevent funds from being applied

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4 Charity Commission, "Charity tax reliefs: guidance on Charity Commission policy" (January 2015) *https://www.gov.uk/government/publications/charity-tax-reliefs-guidance-on-charity-commission-policy/charity-tax-reliefs-guidance-on-charity-commission-policy*

5 Charity Commissioners Report 1988 para 44; the same point was made in CC35 (Charity and Trading) April 2000 para 5 but it is not in the current guidance.

6 For the scheme, see 15.5 (Gift in tax avoidance context).

7 Public Accounts Committee, "Charity Commission: the Cup Trust and tax avoidance" (May 2013) *http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/138/138.pdf*

for charitable purposes only.

(2) A tax avoidance purpose does not prevent what would otherwise be a charitable body from being a charity.

Campbell v IRC 45 TC 427 was such a case. Moreover, the charitable expenditure rules clearly assume that a payment made with a tax avoidance motive may be an application for charitable purposes.[8]

One might as well say that a trust was not "exclusively charitable" because its purposes included tax mitigation, or "sensible tax planning", which would rule out many if not most family charities.

The Public Administration Select Committee has also addressed this issue. It did not purport to state what the charity law currently is, but it had no doubt as to what the law should be:

> 21. Charities should not be used as a tax avoidance vehicle. ... Having reviewed [the cup trust] case, if the Commission still feels that it was restricted in its legal abilities to prevent such organisations from obtaining charitable status, we would welcome its proposals for a change in the law on the criteria for registering as a charity.[9]

The Cup Trust scheme was on any view abusive, and in principle[10] such schemes should not succeed. The fact is however that the scheme did not succeed, and was judged to have little if any prospect of success. The remedy for tax avoidance schemes is best placed in tax legislation and not charity legislation; and the administration of tax (including combatting tax

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8 See 6.26 (Tax avoidance condition). See too *Altus Group v Baker Tilly* [2015] STC 788 at [124](2):

> "...expenditure does not fail the 'wholly and exclusively' test simply because the taxpayer has arranged its business in a manner specifically and deliberately designed to involve deductible expenditure. ... many companies structure their affairs in ways specifically designed to be tax-efficient; this is not usually taken to indicate duality of purpose as regards section 54 CTA 2009 [expenses incurred wholly and exclusively for trading purposes]."

The position will need to be reviewed when the case is final, but an appeal is not likely to upset that point.

9 Public Administration Select Committee "The role of the Charity Commission and "public benefit": Postlegislative scrutiny of the Charities Act 2006" (May 2013).

10 We say "in principle" because we respect the view of Lord Simon in *Ransom v Higgs* 50 TC 1 at p.94: "Disagreeable as it may seem that some taxpayers should escape what might appear to be their fair share of the general burden of national expenditure, it would be far more disagreeable to substitute the rule of caprice for that of law."

avoidance) is best conducted by HMRC and not by the Charity Commission. On this occasion neither the legislation nor its administrators seem to have badly failed the test of practice. HMRC also now have the weapon of the GAAR. We do not see any need for charity law reform. We do not share the view of William Shawcross, Chair of the Charity Commission 2012-2018, who described the issue of the Cup Trust as "a disaster for the charity sector"[11] even if it were the case that the charity concerned should have been investigated more promptly. It was, perhaps, a public relations disaster.

2.3.1 *Reform definition of charity*

A short, shallow discussion paper was published in March 2014 entitled "Approaches to preventing charities being set up to avoid tax".[12] The idea was that bodies established for a tax avoidance purpose should not qualify as charities within the tax definition. But in July 2014 the proposal was dropped. A press release at the time provided:

> **Government decides against charities anti-avoidance legislation**
> Following consultation, the government has decided not to legislate in Finance Bill 2014 on a new test allowing HMRC to deny recognition to charities being established for tax avoidance purposes.
> ... Based on responses to that discussion paper and engagement with the sector, the Government has decided not to legislate in Finance Bill 2014. Feedback confirmed that the 2 approaches outlined in the paper would have a disproportionate and unacceptable effect upon the charity sector and legitimate donors. Possible damage to innocent charities and our existing and new controls mean that changing the law is not justified at this point.
> HMRC already has a wide range of tools available to tackle avoidance and has recently had considerable success in the courts in challenging certain schemes....[13]

This was the right decision for the right reason. Proposed tax avoidance measures are not usually abandoned just because they incur unanimous

11 Oral evidence before the Public Accounts Committee, 7 March 2013, HC (2012-13) 1027-i, Q 13.

12 *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327853/avoid-tax-charities.pdf*

13 [2014] STI 2283.

disapproval of tax practitioners and affected taxpayers. The explanation may be that HMRC were not much in favour of the proposal, and the purpose of the consultation paper was internal government politics; HMRC needed to be seen to be addressing the criticism from politicians on the Public Accounts and Public Administration Select Committees. But that is a matter of speculation.

2.4 Duties of charity involved in avoidance

2.4.1 *Independent advice*

Charities involved in a tax avoidance scheme must take independent advice (ie advice from someone other than those acting for the scheme promoter). In *Mountstar v Charity Commission*:

> If considering embarking upon an untested tax avoidance fundraising scheme, the charity trustee must carefully examine all aspects of it, fully understand it, require all directors to properly and fully disclose and declare their interests and take any necessary independent advice.[14]

The Charity Commission say:

> **2.1 Trustees' responsibilities**
> Where trustees seek to enter into tax planning arrangements they must satisfy their duty of prudence and ensure:
> [1] the arrangements are lawful
> [2] they have power to enter into the arrangements in question
> [3] they are neither conflicted nor have the potential to benefit personally from any arrangement
> [4] they take and consider appropriate independent specialist advice about obtaining fiscal relief or minimising tax in the context of their responsibilities, such advice being independent of both the charity

14 CRR/2013/0001 at [246]
http://www.judiciary.gov.uk/judgments/mountstar-charity-commission-decision-18102013
The same point is made in *Mountstar v Charity Commission* CA/2013/0001 at [170].
https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/mountstar-charity-commission-decision-17102013.pdf
The Mounstar cases illustrate a catalogue of problems which arose in the absence of independent advice.

and the promoter of any proposed arrangements[15]

[5] a record is kept of their decision-making including any tax law, tribunal decision or professional advice upon which they are relying

[6] they take into account and consider any published guidance and advice as to the lawfulness of the proposed arrangements offered or available from HMRC

[7] by entering into the arrangement, that they do not expose any of the charity's property to undue risk

[8] that the proposed transactions will not damage the reputation of the charity and that they have considered how the character of the arrangement fits with the aims of the charity and the ethos of its donors and beneficiaries

[9] overall, that the arrangements are in the best interests of the charity[16]

2.4.2 *Entering into avoidance scheme*

The Charity Commission discourage tax avoidance:

> **1. Trustees' fiduciary duty**
> ... Trustees will however risk scrutiny and potential investigation by the commission if they engage in tax arrangements which exploit tax legislation artificially, particularly where they serve to benefit private interests, as well as those of the charity. The use of such arrangements is likely to be in breach of trustees' duties and responsibilities to act prudently and in the best interest of the charity. Reputational damage to the charity is highly likely to arise from their involvement in such arrangements...
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> **3. Tax avoidance involving charities**
> Tax avoidance is challenged by HMRC and can be subject to regulatory scrutiny by the commission...

The Charity Commission give examples of schemes and then set out four objections:

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15 Authors' footnote: Of course the advice should be independent of the promoter, who has a conflicting interest, but we do not understand why or indeed how the advice could be independent of the *charity*.

16 Charity Commission, "Charity tax reliefs: guidance on Charity Commission policy" (2015) *https://www.gov.uk/government/publications/charity-tax-reliefs-guidance-on-charity-commission-policy/charity-tax-reliefs-guidance-on-charity-commission-policy*

> [1] The principal aim of such arrangements is to confer advantage on private businesses or individuals with any benefit to the charity being a by-product of the scheme rather than its principal aim.
> [2] Apart from being subject to a challenge from HMRC, such arrangements are not consistent with trustees' duties to act prudently and to further the charity's purposes in its best interests for the public benefit.
> [3] The risks to the charity involved include damage to their reputation.
> [4] Of great concern to the commission are the risks of wider damage to the reputation of the charity sector in the eyes of the general public and Parliament, and the potential loss of other tax reliefs to the sector as a result of, or as a necessary by-product of, action to stop or close such schemes...

Objection [1] is a question of fact, and not the case for every tax avoidance scheme. Moreover the issue is not the aim of the arrangements (if such a thing can be identified) but the aim of the trustees in participating in them. Objection [2] is likewise a question of fact and not the case for every avoidance scheme. But see 3.10.5 (Tax avoidance behaviour).

What is one to make of objections [3] and [4], that a charity should not enter a tax avoidance arrangement because of the effect on the reputation of (a) the specific charity and (b) the charity sector?

> CASSIO: Reputation, reputation, reputation! Oh, I have lost my reputation! I have lost the immortal part of myself, and what remains is bestial. My reputation, Iago, my reputation!
> IAGO: ... Reputation is an idle and most false imposition, oft got without merit and lost without deserving. You have lost no reputation at all unless you repute yourself such a loser.

Iago is not, admittedly, a role model; but like all Shakespearian villains, he makes a good point. Reputation - largely measured by disapproval in newspapers - is important for charities which raise funds from the public, such as Oxfam.[17] Reputation of that nature may be unimportant for other

17 Fortunately no-one suggested that Oxfam lost reputation when it argued, unsuccessfully, twice, that it should not pay the tax imposed by parliament and by law. *Oxfam v HMRC* [2010] STC 686; or (in an earlier generation) that the Church of England lost reputation by entering into an avoidance scheme in *IRC v Church Commissioners* (1976) 50 TC 516.

charities.

Over-emphasis on reputation moves charity regulation from the courts and the charity commission and gives undue power to the press and public-relations people. It is perhaps worth noting at this point that William Shawcross, the chair of the Charity Commission 2012-2018, was a former journalist.

The reputation of the charity sector in the eyes of the general public is indeed a matter for the Charity Commission. The same may apply to potential loss of charity tax reliefs as a result of action to stop avoidance; though one might say that the correct response is to lobby for properly targeted anti-avoidance rules. As far as we are aware the Charity Commission have left tax avoidance issues to HMRC, and they are right to do so. But individual charities should have regard to the interests of their own beneficiaries, not the interests of other charities. The issue arose in *Charity Commission v Mountstar* which supports the same conclusion:

> ... the real argument against pursuing the appeal [the charity's appeal in support of its abusive avoidance scheme] ... is the potential damage it would inflict on the charitable sector as a whole. So the question becomes whether it is legitimate either for the Interim Managers [of the charity], or for the Charity Commission in giving them advice, to take account of these wider considerations when taking a decision in relation to this particular charity.
> [Counsel] ... indicated that when it came to taking a decision of this sort, he thought that any charity trustee would be entitled to say that his priority had to be the interests of his own charity, and that it was the Charity Commission which had overall responsibility for the well-being of the charity sector as a whole.[18]

We would agree with that. But see 3.10.10 (Trustee disqualification).

> **5. The Charity Commission's regulatory position**
> ...The commission considers, tax fraud, tax evasion and tax avoidance to fall within an area of regulatory concern. In addition the commission expects charities to fulfil their obligations under tax law fully and to take every reasonable step to ensure that the charity is not a party to, and does not enter into, any tax planning arrangements that are imprudent in the ways described above or could bring the charity or the charitable

18 [2016] EWHC 876 (Ch) at [39] - [40].

sector into disrepute.

The commission will consider investigatory and/or other regulatory action for example where:

[1] the income or assets of a charity is put at significant or undue risk

[2] [a] trustees or related parties are using a charity to obtain significant private benefit or

[b] are obtaining remuneration in cash or kind by acting either directly as an intermediary or a tax advisor to assist individuals or corporations to avoid tax or indirectly by 'common purse' or receipt of consideration in gifts, cash or kind

[3] trustees or related parties are using the charity as a vehicle for their own private benefit to minimise tax

[4] [a] the charity is a sham or

[b] is not operating for the public benefit

[5] trustees have not considered the impact on the charity's reputation and finances from the charity's involvement in a tax planning scheme that afforded third parties significant private benefit

[6] trustees are involved in tax fraud (including the making of fraudulent Gift Aid claims), tax evasion or tax avoidance

[7] [a] trustees have not taken appropriate tax advice and

[b] have incurred non-charitable expenditure giving rise to a material tax liability or charge to the charity or

[c] have incurred tax penalties through non-compliance with legal requirements

In these circumstances the details of any complaint and any information already obtained from the trustees or the charity will be assessed to decide if further action is justified. The commission will share all relevant details or facts with HMRC where appropriate and may report publicly on the outcome.[19]

Likewise CC20 provides:

11.13 Fundraising issues that may be serious enough to trigger commission intervention

These include ... arrangements which ... seek to exploit tax legislation

19 Charity Commission, "Charity tax reliefs: guidance on Charity Commission policy" (January 2015) *https://www.gov.uk/government/publications/charity-tax-reliefs-guidance-on-charity-commission-policy/charity-tax-reliefs-guidance-on-charity-commission-policy*

artificially, including tax avoidance schemes[20]

In practice, instances of abusive (egregious) tax avoidance schemes are not likely after the GAAR, so the issue of Charity Commission intervention is unlikely to arise.

2.5 Successful avoidance

The NAO say:

> 1.27 HMRC has identified tax at risk totalling £240 million through marketed avoidance schemes that use reliefs on donations. This is the total tax revenue HMRC assesses might be lost should it not be successful in challenging what it considers to be avoidance activity related to marketed schemes. This figure has fallen as users, in part prompted by HMRC's investigations, have withdrawn 200 claims with a total value of £23 million. The tax at risk relates to ongoing investigations dating back to 2004.[21]

Tax is only "at risk" in any meaningful sense if the schemes have a chance of success. That seems unlikely, as HMRC agree:

> 2.40 There are 1,800 open cases of people using marketed avoidance schemes which seek to exploit reliefs on donations. This is around 5 per cent of all marketed avoidance cases that HMRC has under investigation, and accounts for around 2 per cent of the value of all open cases. It will take HMRC many years to resolve its investigations of the eight marketed schemes that use reliefs on donations. HMRC identified the earliest scheme under investigation in 2004 and the latest in 2011. HMRC do not expect any of the schemes to succeed when heard at tribunal.

The NAO say:[22]

> 2.7 HMRC estimates that £110 million was lost in 2012-13 through avoidance using reliefs on donations.

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20 Charity Commission CC20 "Charity fundraising: a guide to trustee duties" (2016) *https://www.gov.uk/government/publications/charities-and-fundraising-cc20/charities-and-fundraising*

21 National Audit Office "Gift Aid and reliefs on donations" (November 2013) *http://www.nao.org.uk/wp-content/uploads/2013/11/10302-001-Gift-Aid-Book1.pdf*

22 National Audit Office "Gift Aid and reliefs on donations" (November 2013) *http://www.nao.org.uk/wp-content/uploads/2013/11/10302-001-Gift-Aid-Book1.pdf*

The reader wondering what the successful schemes were, or how they succeeded, is left unsatisfied. But we can give some examples of unsuccessful schemes.

2.6 Avoidance by QIDR

2.6.1 *"Avoidance": Overstating donation*

The NAO give an example involving a gift of shares to charity:[23]

> 1 The scheme user buys £10,000 worth of shares in a company that are valued at 10p each.
> 2 The promoter floats the company on a stock exchange, manipulating trading activity to inflate the value of each share to £1.
> 3 The scheme user gifts their shares to a charity, stating a value of £100,000. In practice, the real value of the shares is much lower.
> 4 The scheme user then claims relief from HMRC on the £100,000 donation to charity [ie on the gift of shares whose value was claimed to be £100k].

HMRC described this as a complex scheme[24] but the essence is simple. As the market value of the shares is lower than that stated on the tax return, the taxpayer is claiming relief to which they are not entitled. If those involved know that the figure stated on the tax return is wrong, they are guilty of (criminal) tax evasion. Two accountants were convicted for arranging a scheme on these lines, and received sentences of 4 years imprisonment and 18 months imprisonment.

2.6.2 *Gift of gilt subject to option*

The NAO give an example of gifts of gilts to charity:[25]

> 1 The promoter provides a scheme user with an interest free loan through an offshore trust.
> 2 The user buys gilts that they then donate to the charity. Gilts are not

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23 National Audit Office "Gift Aid and reliefs on donations" (November 2013) *http://www.nao.org.uk/wp-content/uploads/2013/11/10302-001-Gift-Aid-Book1.pdf*

24 HMRC "Levelling the tax playing field: Compliance progress report" (2013) p.16 *http://webarchive.nationalarchives.gov.uk/20131212020409/http://www.hmrc.gov.uk/budget2013/level-tax-playing-field.pdf*

25 National Audit Office "Gift Aid and reliefs on donations" (2013) *http://www.nao.org.uk/wp-content/uploads/2013/11/10302-001-Gift-Aid-Book1.pdf*

subject to capital gains tax.
3 The charity receives a fee for participating in the scheme. It sells the gilts at a fraction of market value to the offshore trust, which cancels the loan to the scheme user.
4 The scheme user claims relief on the value of the £100,000 donation.

This seems to be a (slightly garbled) version of the scheme in *Ferguson v HMRC*.[26] In essence:

(1) A charity enters into a contract with a (non-charitable) trust on terms that if an individual gives a gilt to the charity, the trust may purchase it for 1% of its value.
(2) The individual gives the gilt to the charity.
(3) The option is exercised.

The individual claimed QIDR for the gift, but was not successful.[27]

2.7 "Avoidance": Extracting value from charity

The NAO give some examples:[28]

Donor controlled charities
Companies or individuals may try to exploit reliefs on donations where they control a charity
How a charity controlled by a company may be used to exploit Corporate Gift Aid
[1] The management of the company and the charity overlap, or the company owners effectively control the trustees.
[2] The company donates profits to the charity and receives a reduction in its corporation tax bill through Corporate Gift Aid.
[3] The charity provides a loan to the donor company or to companies owned by the trustees. The company does not repay the loan.
[4] The charity may also distribute some money to causes fulfilling charitable obligations.
Example of a charity controlled by an individual and abuse of Higher Rate relief on Gift Aid
[1] An individual has control over the management of a charity as a

26 [2014] SFTD 934. This was known as the "Blue Box" scheme. The name seems to be arbitrary, though we should be grateful to any reader who can explain it.
27 For the reasons, see 21.2.2 (Disposal to charity).
28 National Audit Office "Gift Aid and reliefs on donations" (November 2013) *http://www.nao.org.uk/wp-content/uploads/2013/11/10302-001-Gift-Aid-Book1.pdf*

trustee or has influence over the trustees.
[2] The individual makes a donation to the charity and claims Higher Rate relief on the donation. The charity also claims Gift Aid on the donation.
[3] The individual receives benefit from their donation. This could be in the form of an interest free loan from the charity.

These two examples are basically the same. Other variants are mentioned:

> It may also be in the form of disguised non-charitable expenditure, such as entertaining,

The NAO report does not give any legal or tax analysis. But the schemes actually set out never could be successful (and as far as we know, never have been successful).

(1) They involve a breach of charity law for which there are charity law remedies:
  (a) the trustees can be required to reimburse the charity;
  (b) The Charity Commission can appoint new trustees
(2) They involve an application of funds for non-charitable purposes so tax reliefs are lost.

Lastly a variant of the above:

> The individual receives benefit from their donation. It may also be in the form of disguised non-charitable expenditure, such as paying substantial salaries to family members.

Actually there should be no tax saving here since tax (including NICs) on the substantial salaries is likely to exceed Gift Aid relief on the gift. But if (as is implied) "substantial" salaries means excessive salaries, then the donation does not qualify for Gift Aid relief.

See too 15.5 (Gift in tax avoidance context); 21.22 (QIDR "avoidance" schemes).

2.8 Fraudulent tax reclaims

A tax reclaim by a charity is fraudulent if the charity knows that it is not entitled to the money claimed. That may be for various reasons, most obviously:

(1) No gift to charity is actually made.[29]
(2) A gift is made to charity, but the donor subsequently steals the amount of the gift back from the charity (so the tax reclaim is invalid as the funds are not applied for charitable purposes).

As far as HMRC are concerned, there is no difference between (1) and (2). The NAO say:[30]

> 2.4 HMRC estimates that £15 million was lost through fraudulent claims in 2012-13.

We wonder how reliable this figure is. The amounts involved in successful fraud must generally be unknown.

> Fraudsters have targeted Gift Aid relief paid to charities. Unlike other reliefs on donations, Gift Aid claims from charities generate a cash repayment rather than reducing a claimant's tax liability.
> 2.5 HMRC have identified a number of ways in which fraudsters may operate. They may set up charities to facilitate fraud or hijack the details of a charity. They may then falsify donations in order to try and generate a repayment of Gift Aid relief. Fraudsters have also attempted to change the bank details of genuine charities held by HMRC by claiming to represent the charity. This would allow them to redirect payments of Gift Aid to a bank account they control.

In our view the best solution to this problem, and probably the only solution, is to move to a deduction system of Gift Aid relief: see 15.50.1 (Gift Aid v deduction relief).

29 Since the tax is repaid to the charity, the fraudster must then steal the tax reclaimed from the charity, if they are to obtain any personal benefit; though charitably minded fraudsters may allow the charity to keep the proceeds of the fraud.
30 National Audit Office "Gift Aid and reliefs on donations" (November 2013) *http://www.nao.org.uk/wp-content/uploads/2013/11/10302-001-Gift-Aid-Book1.pdf*