

**2005 No. 2790**

**INCOME TAX**

**CAPITAL GAINS TAX**

**The Donations to Charity by Individuals (Appropriate  
Declarations) (Amendment) Regulations 2005**

<i>Made</i> - - - -	<i>10th October 2005</i>
<i>Laid before the House of Commons</i>	<i>11th October 2005</i>
<i>Coming into force</i> - -	<i>1st November 2005</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 25(3) and (3A) of the Finance Act 1990(a) and sections 132 and 133(1) and (2) of the Finance Act 1999(b), and now vested in them(c), make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Donations to Charity by Individuals (Appropriate Declarations) (Amendment) Regulations 2005 and shall come into force on 1st November 2005.

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

2. The Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000(d) are amended as follows.

3. In regulation 2, for the definition of "the Board" substitute—

““the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;”.

4. In regulation 3, for the words after sub-paragraph (a) substitute—

“or

(b) orally;

including the use of written or oral methods of electronic communications, as the case may be.”

5. For regulations 4 to 7 substitute—

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(a) 1990 c. 29; sub-sections (3) and (3A) were substituted by section 39 of the Finance Act 2000 (c. 17).

(b) 1999 c. 16.

(c) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11).

(d) S.I. 2000/2074; there are no relevant amendments.

## **“Giving appropriate declarations**

4.—(1) An appropriate declaration 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 declaration relates, and
- (d) confirm that the identified gift or gifts are to be qualifying donations for the purposes of section 25 of the Finance Act 1990 (Donations to charity by individuals).

(2) The explanation of section 25(8) of the Finance Act 1990 referred to in regulation 5(2)(b) or (4)(b), as the case may be, must be given to the donor in order for an appropriate declaration to have effect (subject to regulation 6).

## **Recording and audit of appropriate declarations**

5.—(1) A charity must either—

- (a) maintain an auditable record of appropriate declarations given to it, or
- (b) comply with paragraphs (4) to (6) in relation to each declaration.

This is subject to paragraph (3).

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

- (a) of appropriate declarations and the making of them, and
- (b) that (whether or not separate from the declaration) statements explaining the effect of section 25(8) of the Finance Act 1990 were given to donors at the time the declarations were made,

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

(3) If the Commissioners notify the charity that the record, or the records relating to particular declarations or classes of declarations, do not meet with their satisfaction, the charity must comply with paragraphs (4) to (6) in relation to the declarations in question.

(4) Where paragraph (1)(b) or (3) applies, the charity shall in each case send the donor a statement in writing (“written statement”) containing—

- (a) the information required by regulation 4(1)(a) to (d),
- (b) an explanation of the effect of section 25(8) of the Finance Act 1990,
- (c) the date on which the charity sends the statement to the donor, and
- (d) a statement that the donor is entitled to cancel his declaration by giving notice in writing to the charity not later than 30 days following the date in sub-paragraph (c).

(5) Where paragraph (4) applies, the donor is entitled to cancel the declaration by giving notice of cancellation to the charity in accordance with paragraph (4)(d).

(6) The charity shall maintain an auditable record of—

- (a) written statements, and
- (b) any cancellation notices,

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

(7) Where a donor who has given an appropriate declaration to a charity notifies the charity of any change to his name or home address, the charity must keep a record of those changes with the declaration.

**Prescribed circumstances in which appropriate declarations are deemed never to have had effect**

6. An appropriate declaration shall be treated for the purposes of the Taxes Acts as never having had effect where—

- (a) the charity has not sent the written statement to the donor in a case where it is required to do so by regulation 5(4);
- (b) the donor cancels the declaration by giving notice in accordance with regulation 5(5); or
- (c) the Commissioners notify the charity that the records relating to that declaration under regulation 5(6) do not meet with their satisfaction.

**Prescribed circumstances in which appropriate declarations cease to have effect**

7. An appropriate declaration shall cease to have effect for the purposes of the Taxes Acts where—

- (a) the donor notifies the charity of the cancellation of his declaration (other than in accordance with regulation 5(5)), and
- (b) the cancellation takes effect from (or after) the date of its receipt by the charity.”.

*David Varney*  
*Helen Ghosh*

10th October 2005

Two of the Commissioners for Her Majesty’s Revenue and Customs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Regulations relating to Gift Aid declarations (the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000: S.I. 2000/2074). The principal effect of the amendments is to remove the requirement for charities to send donors a written record of their declaration where it has been made orally, provided that the charity keeps sufficient records of declarations which can be audited by H.M. Revenue and Customs.

Regulation 1 provides for citation and commencement and regulation 2 for amendment of the 2000 Regulations. Regulation 3 up-dates a previous reference to the Commissioners of Inland Revenue. Regulation 4 clarifies the drafting relating to declarations given electronically.

Regulation 5 effects the substantive amendments to the 2000 Regulations. The substituted regulation 4 sets out the constituent elements of a declaration. The substituted regulation 5 sets out the requirements for charities to keep records relating to declarations. A charity can either keep an auditable record (paragraphs (1)(a) and (2)) or send written statements for all declarations to the donor (paragraphs (1)(b) and (4) to (6)). If the auditable record is not adequate, the written statement has to be sent to the donor for all the declarations affected (paragraphs (3) to (6)).

The substituted regulation 6 sets out the circumstances in which a declaration is deemed never to have had effect (including where the records are not maintained (sub-paragraphs (a) and (c))). The substituted regulation 7 provides for the ordinary cancellation of declarations as regards the future.

A Regulatory Impact Assessment for these Regulations is published on the HMRC website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

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