

Corporation tax: Bill 6
Charges on income
April 2008: Committee paper CC/SC (08)14

Chapter 1: Charges on income

Overview

1. This Chapter allows a deduction for charges from a company's total profits and explains what those charges are. It is based on sections 338, 338A, and 339 of ICTA.

Clause 1: Charges on income allowed

2. This clause allows charges on income as deductions from a company's total profits. It is based on section 338(1) to (5) of ICTA.

3. Allowable deductions are limited to an amount which reduces the total profits for a period to nil.

Clause 2: Charges on income: meaning

4. This clause explains what constitutes a charge on income. It is based on section 338A(1) to (3) and section 339 of ICTA.

5. The clause limits what constitutes a charge on income by reference to the provisions in Chapter 2 (qualifying donations) and Chapter 3 (other disposals).

Chapter 2: Qualifying Donations

Overview

6. This Chapter gives relief for certain gifts of money by companies to charities. It is based on section 339 of ICTA.

Clause 3: Qualifying donations

7. This clause sets out the conditions which have to be met if a gift to a charity is to be a "qualifying donation". It is based on section 339(1), (3B), (3E), and (3G) of ICTA.

Clause 4: Associated acquisition etc

8. This clause specifies circumstances in which a gift to a charity is prevented from being a qualifying donation because of association with an acquisition of property by the charity from the donor or an associated company. It is based on section 339 (3E) of ICTA.

Clause 5: Distributions

9. This clause prevents a distribution from being a qualifying donation other than in the case of a payment from a company which is wholly-owned by a charity. It is based on section 339(1), (1A) and (1B) of ICTA.

Clause 6: Associated benefits

10. This clause prevents one or more gifts which result in benefits being received by the donor as a consequence of the donation, from being a qualifying donation, unless the benefits are within the limits set out in clause 8 (restrictions on benefits). It is based on section 339(3B) of ICTA.

Corporation tax: Bill 6
Charges on income
April 2008: Committee paper CC/SC (08)14

Clause 7: Associated benefits: meaning

11. This clause explains for the purposes of the Chapter when a benefit is associated with a gift. It is based on section 339(3B) of ICTA.

Clause 8: Restrictions on associated benefits

12. This clause sets out two conditions which, if either is met, mean that the restrictions on benefits associated with a gift are breached. It is based on section 339(3B), (3C), (3D) and (3DA) of ICTA.

13. The two conditions are:

- a stepped scale, depending on the amount of each gift (Condition A) - the “benefit per gift” test; and
- an overall monetary limit on benefits associated with the total of any gifts to a single charity in the course of an accounting period – the “benefit per accounting period” test (Condition B). This is unrelated to the size of any particular gift.

14. Both these restrictions apply to any benefit “associated with” a gift.

Clause 9: Gifts and benefits linked to periods of less than 12 months

15. This clause modifies the application of clause 8 where gifts or benefits are linked to periods of less than 12 months. It is based on section 339(3DB), (3DC) and (3DD) of ICTA.

16. The clause provides, according to the case, for annualising:

- the actual amount of the gift; or
- both the amount of the gift and the value of the benefit(s) associated with the gift.

17. Only the annualised amount in each case is to be compared with the cash limits given in clause 8. This prevents periods of less than 12 months being used to exploit the cash limits.

18. *Subsection (8)* states the formula for annualising in each case. In the source legislation some of the conditions could overlap, so that more than one condition could apply to the gift(s) and associated benefits concerned. This subsection removes doubt about which might take priority by providing a priority rule where gifts are made at intervals of less than 12 months. See *Change 658* in Annex 1.

Q1. Change 658 reproduces with appropriate modifications Change 77 in ITA 2007 and so brings the income tax and corporation tax codes back into line. We welcome comments on the proposal to carry this change across to corporation tax.

Clause 10: Gift attributed to earlier accounting period

19. This clause allows an election to be made for a gift to be attributed to an earlier accounting period which falls within a period of nine months prior to the date of the gift instead of the accounting period in which the gift is made. It is based on section 339(7AA) of ICTA.

20. *Subsection (3)* sets out the time within which a claim must be made. The reference in the source legislation to claims being to the Board of Inland Revenue has been changed. Claims will simply be to an officer of Revenue and Customs. See *Change 601* in Annex 1.

Q2. We welcome comments on the proposal to replace the words “ the Board” with the words “an officer of Revenue and Customs”

Clause 11: Company wholly owned by a charity

21. This clause sets out what conditions are required to be met in order for a company to be wholly owned by a charity. It is based on section 339(7AB) and (7AC) of ICTA.

Clause 12: Associated persons

22. This clause defines an associated person as a person who is connected with the company or who is connected with such a person. The provisions of section 839 of ICTA concerning connected persons apply. It is based on section 339(7A).

Clause 13: Charity

23. This clause defines “charity” for the purposes of the Chapter and is based on section 339(9) of ICTA.

24. *Subsection (1)* provides that the expression has the meaning set out in section 506 of ICTA. *Subsection (2)* provides that expression also includes the bodies mentioned in section 507 of that Act and any association specified in section 508 of that Act.

Chapter 3: Other disposals

Overview

25. This Chapter gives relief to companies making gifts which are not gifts of money but are by way of certain disposals to charities including disposals at an undervalue. It is based on sections 587B to 587C of ICTA .

Corporation tax: Bill 6
Charges on income
April 2008: Committee paper CC/SC (08)14

Clause 14: Certain gifts to charities

26. This clause sets out the relief. It is based on section 587B (1) and (2) of ICTA.
27. *Subsection (1)* provides that the relief is available if a non-charitable company disposes of the whole of the beneficial interest in a qualifying investment to a charity otherwise than by way of a bargain made at arm's length and makes a claim.
28. *Subsection (2)* provides that relief for the relievable amount is given as a charge on income.
29. *Subsection (3)* provides that relief under section 83A of ICTA for gifts in kind by companies to charities is not available for a disposal to which the clause applies.

Clause 15: Meaning of qualifying investment

30. This clause lists the types of investment that can attract relief. It is based on section 587B(9) to (9ZB) of ICTA.

Clause 16: Meaning of qualifying interest in land

31. This clause defines "qualifying interest in land" (one of the qualifying investments listed in clause 15). It is based on section 587B(9A) to (9E) of ICTA.
32. *Subsections (2) and (3)* clarify the position where a company with a beneficial interest in an estate in land gives that beneficial interest to a charity along with any easement, servitude or right that benefits the land. For example, company A's land may only be accessible by way of an easement over B's land. If company A gives the charity both the land and the right over B's land, the disposal of the right will be treated as a separate disposal.
33. Under *subsection (4)*, if a company with a freehold or leasehold interest carves out of that interest a lease for the benefit of the charity, the retention of the freehold or leasehold reversion will not prevent the disposal from being "of the whole beneficial interest".
34. Under *subsection (5)*, an agreement to acquire a freehold, or an agreement for a lease, is not a qualifying interest in land. So disposing of such an agreement would not constitute a disposal of a qualifying investment.

Clause 17: The relievable amount

35. This clause sets out how to calculate the relievable amount, first in cases where the qualifying investment is transferred to the charity by way of gift (*subsection (1)*), and then where there is some, but not full, consideration for the transfer (*subsection (2)*). It is based on section 587B (4) to (7) of ICTA.
36. In each case, the computation starts with the value of the net benefit to the charity (V), either directly (as in *subsection (1)*) or in arriving at E (the excess of V over the consideration for the disposal) in *subsection (2)*.

Corporation tax: Bill 6
Charges on income
April 2008: Committee paper CC/SC (08)14

37. The detail of how V is calculated is in clauses 20 to 23. But it is emphasised in the definition of V in subsection (1) that V must be considered both at, and immediately after, the time of disposal. If there is a difference between V at these two times, the lesser amount is taken.

38. *Subsection (3)* makes it explicit that if the amount given by either formula is negative the relievable amount is nil.

39. The treatment of incidental costs of disposal depends on whether the transfer is by way of gift or at an undervalue. If it is a gift, all the incidental costs are added in arriving at the relievable amount. But if there is consideration for the disposal, there is an interplay between the capital gains tax treatment and the incidental costs.

40. Under section 257(2)(a) of TCGA a gift of a qualifying investment to a charity is treated as being for such a consideration as will result in neither a loss nor a gain to the donor. Incidental costs are added only if that deemed consideration is greater than the actual consideration. But the amount added must not be greater than that excess. C is defined in *subsection (4)* to achieve this result.

Clause 18: Incidental costs of making disposal

41. This clause defines “the incidental costs of making the disposal to the company making it”. It is based on section 587B (9) of ICTA.

42. The clause reproduces the relevant material in section 38(2) of TCGA to which section 587B (9) cross refers, with the exception of the reference to stamp duty and stamp duty land tax, which do not apply to transactions within this Chapter.

Clause 19: Consideration

43. This clause makes provision about the calculation of the relievable amount in case of disposal at an undervalue. It is based on section 587B (7)(b) of ICTA.

44. The clause applies section 48 of TCGA (consideration due after time of disposal). The main thrust of section 48 of TCGA is that full value is to be introduced into the computation of the gain. Only on a subsequent claim is the consideration to be reduced, either because the right to receive any amount is contingent or because any part of the consideration proves to be irrecoverable.

Clause 20: Value of net benefit to charity

45. This clause is the first of four clauses concerned with defining the value of the net benefit to the charity. It is based on section 587B (8A) and (8B) and (9) of ICTA.

46. In the simple case, where there are no disposal-related obligations, the value of the net benefit to the charity is the market value of the qualifying investment. As indicated in clause 17, this has to be considered both at, and immediately after, the disposal.

Corporation tax: Bill 6
Charges on income
April 2008: Committee paper CC/SC (08)14

47. If the charity is or becomes, subject to an obligation that is related to the disposal of the qualifying investment to the charity, the market value of the investment is reduced by the amount of the disposal-related liabilities (see clause 23) under the obligation. These obligations also must be considered both at, and immediately after, the disposal.

Clause 21: Market value of qualifying investments

48. This clause sets out how the market value of qualifying investments is to be determined. It is based on section 587B (9) to (11) of ICTA.

49. The methods are those laid down in sections 272 to 274 of TCGA. If an offshore fund publishes buy and sell prices, an interest in it is in effect subject to the same treatment as a unit trust scheme as laid down by section 272(5) of TCGA. The provisions of that subsection are reproduced here.

Clause 22: Meaning of “disposal-related obligation”

50. This clause defines “disposal-related obligation”. It is based on section 587B (8B) to (8D) and (9) of ICTA.

51. “Obligation” for this purpose includes any scheme, arrangement or understanding of any kind, regardless of whether it is legally enforceable. It also includes a reference to a series of obligations, whether or not between the same persons. It may also be contingent (see clause 23).

Clause 23: Meaning and amount of “disposal-related liability”

52. This clause defines “disposal-related liability”. It is based on section 587B (8E) to (8G) and (9) of ICTA.

53. *Subsection (2)* deals with contingent disposal-related obligations.

54. It is in the nature of a contingency that it may occur after the time of disposal; hence the words “at any time”. If a contingency occurs later than immediately after the disposal, but existed as a possibility at the time of disposal, the value of the net benefit to the charity at the time of, or immediately after, the disposal must be reduced. All necessary adjustments must be made to give effect to this. Conversely, if the contingency does not occur, to that extent there will be no obligation and no liability.

Clause 24: Certificate required from charity

55. This clause, which is the first of four that deal specifically with qualifying interests in land, requires any claim for relief in relation to a qualifying interest in land to be supported by a certificate from the charity. It is based on section 587C (1), (4) and (5) of ICTA.

Clause 25: Qualifying interests in land held jointly

56. This clause deals with a disposal of land by all joint holders where one of the owners is a company. It is based on section 587BA (1) to (5) and (13) of ICTA.

Clause 26: Amount of relief where joint disposal of interest in land

57. This clause provides details for calculating the “relievable amount” in cases where there is a joint disposal of an interest in land. It is based on section 587BA (6), to (11).

58. If the joint owners include an individual *subsection (3)* directs the reader to Chapter 3 of Part 8 of ITA 2007 for the purposes of the relievable amount where that situation is catered for.

Clause 27: Disqualifying events

59. This clause provides for the recovery of relief if a “disqualifying event” occurs within the “provisional period”. It is based on section 587C (1) and (6) to (10) of ICTA.

60. In the simplest case, such an event occurs if any of the persons who made the disposal are entitled to buy the land back from the charity at an undervalue.

Clause 28: Meaning of connected person.

61. This clause defines “connected person” by applying the general definition in section 839 of ICTA. It is based on sections 587B (5), (10A) and 587C (11) of ICTA.

Clause 29: Charity

62. *Subsection (1)* applies the definition of “charity” in section 506 of ICTA for the purposes of the Chapter.

63. *Subsection (2)* extends the relief given by the Chapter to certain bodies even though they are not charities. It is based on section 587B (9) of ICTA.

ANNEX 1

Change 658: Qualifying donations: gifts and benefits linked to periods of less than 12 months; priority between methods of calculating annualised amounts of gifts and benefits: clause 9

This change clarifies the operation of the rules about annualising the amounts of gifts and benefits in the various different sets of circumstances which can arise, by providing a priority rule to cater for certain cases where more than one of the statutory rules could apply in relation to a given set of circumstances.

If a company makes a donation of money to a charity, and receives a benefit in consequence of doing so, that benefit may affect whether the donation is “qualifying” (clause 3). And that in turn will affect whether the company obtains tax relief for the donation under clause 2 as a charge on income.

Corporation tax: Bill 6
Charges on income
April 2008: Committee paper CC/SC (08)14

The source legislation (section 339(3DB) to (3DD) of ICTA) contains rules to counter tax advantages from fragmentation of the time periods attaching to donations or to consequent benefits. In particular, section 339(3DD) (rewritten in clause 9) lays down the method of annualising either the gift, or both the gift and the benefit, in different circumstances. Those circumstances are set out in section 339(3DB) and (3DC), rewritten in clause 9 of Bill 6 as conditions A to D.

But the source legislation does not set out what is to happen if the circumstances fall within one of Conditions C and D and within one of Conditions A and B, which in theory can occur.

This change provides a priority rule to cater for such cases, which is located in step 2 of clause 9. It provides that, in such a case, the rule relating to Conditions C and D takes priority.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

Change 601: References to “officer of Revenue and Customs”: clause 10

This change replaces references to “the Board” in the source legislation with references to “an officer of Revenue and Customs”.

It brings the income and corporation tax codes back into line.

References in the source legislation to the “Board of Inland Revenue” are treated by section 50(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) as references to “the Commissioners for Her Majesty’s Revenue and Customs”. The rest of this note accordingly refers to the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) rather than to the Board of Inland Revenue.

The provisions affected by this change will in future authorise or require things to be done by or in relation to an officer of Revenue and Customs rather than by or in relation to the Commissioners. This reflects the way in which Her Majesty’s Revenue and Customs is organised and operates in practice. Section 13 of CRCA allows nearly all functions conferred on the Commissioners to be exercised by any officer. All of the functions affected by this change, which are in the main concerned with administrative processes, are in fact exercised by officers of the Commissioners, and the Commissioners themselves are not personally involved in their exercise.

Each provision affected by the conversion of references to the Commissioners will be identified in the Table of Origins by a cross-reference to this change.

This change has no implications for the amount of tax paid, who pays it or when. It affects (in principle but not in practice) only administrative matters.