

Part 1: Charitable donations relief

Overview

1. This Part deals with qualifying charitable donations, referred to as “charges on income” in the source legislation.
2. Chapter 1 gives relief for qualifying charitable donations and defines the term as qualifying payments and amounts treated as qualifying charitable donations. Chapter 2 deals with qualifying payments and Chapter 3 is about amounts treated as qualifying charitable donations.
3. Drafts of the clauses in this Part were first published in Committee Paper CC(08) 14 in April 2008 and subsequently as Part 6 of draft Bill 6 published in March 2009. See also the Response document published in October 2008. These earlier drafts used the term “charges on income”.
4. For corporation tax purposes charges on income are now confined to charitable donations only (see section 338A(2) of ICTA). A more accurate description has therefore been substituted for “charges on income”. The term “charges on income” was dispensed with for income tax purposes by ITA 2007 and Bill 6 will now follow that path.
5. The concept of a “charge on income” goes back to the income tax act of 1803. The idea is that where a person was legally obliged to make certain annual payments and these were made out of income brought into charge, the payer deducted tax and paid the net to the recipient. There was no accounting for the tax deducted. The idea was that income from which the payments were made was in effect to be treated as the income of the recipient. The recipient’s liability on that receipt was met by the payer and the payer effectively obtained relief on the income he received and out of which he paid the charge by retaining the tax deducted.
6. When corporation tax was introduced in 1965 the income tax approach of making payments net and retaining the tax deducted was not adopted. Companies were still obliged to deduct tax on making certain payments classified as charges but that tax was to be accounted for in quarterly returns and paid to the Inland Revenue. Relief was then given for the gross amount against total profits.
7. Over the years the number of payments within “charges on income” has dwindled away, and the term has become a depository for donations to charity. The donations included do not even fall into any meaningful definition of a charge on income since they are entirely at the discretion of the payer and do not even have an element of repetition.
8. It is not considered that by re-labelling “charges on income” as “qualifying charitable donations” there is any danger of either depriving a company of a relief which is due or allowing relief for a payment that is not due.

9. “Charges on income”, despite having, arguably, a general meaning of a legally binding obligation to pay certain sums, was not generally used in tax statutes before corporation tax was introduced in FA 1965. Earlier Tax Acts referred only to “annuities or other annual payments”.

Chapter 1 Nature of relief

Overview

10. This Chapter allows a deduction from a company’s total profits for qualifying charitable donations and explains what constitutes qualifying charitable donations. It is based on sections 338, 338A, and 339(1) of ICTA.

Clause 1: Relief for qualifying charitable donations

11. This clause allows qualifying charitable donations as deductions from a company’s total profits. It is based on section 338 of ICTA.

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

Clause 2: Qualifying charitable donations: meaning

13. This clause gives the meaning of qualifying charitable donations. It is based on sections 338A(1) to (3) and 339(1) of ICTA.

14. *Subsection (2)* rewrites both section 338A(3) and 339(1)(b). These two subsections cover the same ground.

15. A similar rule is found in section 337A(1)(b) which provides that a company’s income from any source is to be computed without any deduction in respect of charges on income. The present intention is to rewrite this, but expressed as a qualifying charitable donation rather than a charge on income, and insert it into Chapter 1 of Part 20 of CTA 2009 (restriction of deductions).

Chapter 2: Certain payments to charity

Overview

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

Clause 3: Qualifying payments

17. This clause sets out the conditions which have to be met if a sum paid to a charity is to be a qualifying payment and hence a qualifying charitable donation. It is based on section 339(1), (3B), (3E), and (3G) of ICTA.

Clause 4: Associated acquisition etc

18. This clause specifies circumstances in which a payment to a charity is prevented from being a qualifying payment 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.

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Clause 5: Distributions

19. This clause prevents a distribution from being a qualifying payment 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

20. This clause prevents one or more payments which give rise to benefits from being qualifying payments, unless the benefits are within the limits set out in clause 8 (restrictions on associated benefits). It is based on section 339(3B) of ICTA.

Clause 7: Associated benefits: meaning

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

Clause 8: Restrictions on associated benefits

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

23. The two conditions are:

- a stepped scale, depending on the amount of each payment (Condition A) - the “benefit per payment” test; and
- an overall monetary limit on benefits associated with the total of any payments 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 payment.

24. Both these restrictions apply to any benefit “associated with” a payment.

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

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

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

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

27. 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.

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28. *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 payment(s) and associated benefits concerned. This subsection removes doubt about which might take priority by providing a priority rule where payments are made at intervals of less than 12 months. See *Change 26* in Annex 1 to draft Bill 6 published in March 2009.

Clause 10: Payment attributed to earlier accounting period

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

30. *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 5* in Annex 1 to draft Bill 6 published in March 2009.

Clause 11: Company wholly owned by a charity

31. 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

32. This clause defines an associated person as a person who is connected with the company or who is connected with such a person. It is based on section 339(7A) of ICTA.

Clause 13: Charity

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

34. Section 339(9) of ICTA defines charity, in part, by reference to the bodies mentioned in section 507 of ICTA. That section includes the Trustees of the British Museum and the Trustees of the Natural History Museum. The British Museum and Natural History Museum are established for charitable purposes and so there is no need to refer to them separately in this definition.

Chapter 3: Certain disposals to charity

Overview

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

Clause 14: Certain disposals of investments

36. This clause sets out the requirements for relief. It is based on section 587B (1) and (2) of ICTA.

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37. *Subsection (2)* sets out the concept of the relievable amount. This is the amount allowed by way of a deduction from a company's total profits as a qualifying charitable donation. The method of calculating the relievable amount is set out in clause 17.

38. *Subsection (3)* prevents relief under section 105(2) of CTA 2009 where relief is given under this clause. Section 105 of CTA 2009 deals with gifts of "articles" manufactured, or of a class or description sold by, the donor in the course of the trade. It is considered that this may include certain shares or securities which fall within this clause.

Clause 15: Meaning of qualifying investment

39. 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

40. 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.

41. *Subsections (2) and (3)* clarify the position where a company with a beneficial interest in a freehold or leasehold interest in land in the United Kingdom 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.

42. 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".

43. 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

44. 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 secondly where there is some, but not full, consideration for the transfer (*subsection (2)*). It is based on section 587B (4) to (7) of ICTA.

45. 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)*.

46. 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

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time of disposal. If there is a difference between V at these two times, the lesser amount is taken.

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

48. 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.

49. 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

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

51. The clause reproduces the relevant material in section 38(2) of TCGA to which section 587B(9) of ICTA 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

52. 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) of ICTA.

53. 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

54. 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.

55. 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.

56. 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 must also be considered both at, and immediately after, the disposal.

Clause 21: Market value of qualifying investments

57. 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.

58. 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”

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

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

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

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

62. 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

63. 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

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

Clause 26: Calculation of relievable amount etc where joint disposal of interest in land

65. 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) of ICTA.

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

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Clause 27: Disqualifying events

67. 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.

68. 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: Charity

69. This clause defines “charity” for the purposes of the Chapter. It is based on section 587B(9) of ICTA.