

# Bill 6

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## PART 1

### SPECIAL RULES ABOUT CHARITABLE COMPANIES ETC

#### *Introduction*

#### **1 Overview of Part [j8500]**

- (1) This Part makes provision about some gifts and payments made to charitable companies, including provision imposing charges to corporation tax and conferring exemptions from those charges (see sections 3 to 6).

*Origin: Drafting.*

- (2) This Part also provides for some of the income of charitable companies and others to be exempt from charges to corporation tax (see sections 7 to 22).

*Origin: Drafting.*

- (3) In the provisions of this Part containing exemptions, references to total profits of a charitable company are to be read in accordance with section {j9009} (calculation of corporation tax liability).

*Origin: Drafting.*

- (4) See section 23 for provision about making claims for the exemptions under this Part.

*Origin: Drafting.*

- (5) In the case of a charitable company which has a non-exempt amount for an accounting period (see section 25), the exemptions under this Part are subject to restrictions (see section 24).

*Origin: Drafting.*

- (6) The non-exempt amount for an accounting period depends on the charitable company's attributable income and gains for the period and its non-charitable expenditure for the period (see sections 25 and 28 to 49).

*Origin: Drafting.*

#### **2 Meaning of “charitable company” [j8501]**

In this Part “charitable company” means a body of persons established for charitable purposes only.

*Origin: ICTA s.506(1).*

*Gifts and other payments***3 Gifts entitling donor to gift aid relief: income tax treated as paid [j8502]**

- (1) This section applies if a gift is made to a charitable company by an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

Origin: FA 1990 s.25(10).

- (2) The charitable company is treated as receiving, under deduction of income tax at the basic rate for the tax year in which the gift is made, a gift of an amount equal to the grossed up amount of the gift.

Origin: FA 1990 s.25(10).

- (3) The grossed up amount of the gift is the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.

Origin: FA 1990 s.25(12).

- (4) The income tax treated as deducted is treated as income tax paid by the charitable company.

Origin: FA 1990 s.25(10).

- (5) In this section “charitable company” includes—

- (a) the Trustees of the National Heritage Memorial Fund,
- (b) the Historic Buildings and Monuments Commission for England,
- (c) the Trustees of the British Museum,
- (d) the Trustees of the Natural History Museum, and
- (e) the National Endowment for Science, Technology and the Arts.

Origin: FA 1990 s.25(12).

**4 Gifts entitling donor to gift aid relief: corporation tax liability and exemption [j8503]**

- (1) This section applies if gifts are made to charitable companies by individuals and the gifts are qualifying donations for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

Origin: FA 1990 s.25(10).

- (2) Corporation tax is charged on the gifts under this section.

Origin: FA 1990 s.25(10); drafting.

- (3) It is charged on the grossed up amount of the gifts arising in the accounting period.

Origin: FA 1990 s.25(10).

- (4) But a gift is not taken into account in calculating total profits so far as it is applied to charitable purposes only.

Origin: ICTA s.505(1); FA 1990 s.25(10).

- (5) The grossed up amount of a gift is the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.

Origin: FA 1990 s.25(12).

- (6) In this section “charitable company” includes –
- (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England,
  - (c) the Trustees of the British Museum,
  - (d) the Trustees of the Natural History Museum, and
  - (e) the National Endowment for Science, Technology and the Arts.

Origin: FA 1990 s.25(12).

## 5 Gifts of money from companies: corporation tax liability and exemption [j8503a]

- (1) This section applies if gifts are made to charitable companies by companies.
- Origin: ICTA s.339(4).
- (2) But this section does not apply to a gift of a sum of money made by a company that is itself a charity (see section 6).

Origin: Drafting.

- (3) Corporation tax is charged on the gifts under this section.

Origin: ICTA s.339(4).

- (4) It is charged on the full amount of the gifts arising in the accounting period.

Origin: ICTA s.339(4).

- (5) But a gift is not taken into account in calculating total profits so far as it is applied to charitable purposes only.

Origin: ICTA s.339(4), s.505(1).

- (6) In this section “charitable company” includes –
- (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England,
  - (c) the Trustees of the British Museum,
  - (d) the Trustees of the Natural History Museum,
  - (e) the National Endowment for Science, Technology and the Arts, and
  - (f) a scientific research association.

Origin: ICTA s.339(4).

## 6 Payments from other charities: corporation tax liability and exemption [j8524]

- (1) This section applies to payments which –
- (a) are received by charitable companies from other charities,
  - (b) are not made for full consideration in money or money’s worth,
  - (c) are not charged to corporation tax, apart from this section, and
  - (d) are not of a description which (on a claim) would be exempt from corporation tax under any of the exemptions conferred by this Part.

Origin: ICTA s.505(2).

- (2) This section does not apply to a payment which arises from a source outside the United Kingdom.

Origin: ICTA s.505(2).

- (3) Corporation tax is charged under this section on the payments.

Origin: ICTA s.505(2).

- (4) It is charged on the full amount of the payments arising in the accounting period.

Origin: ICTA s.505(2).

- (5) But a payment is not taken into account in calculating total profits so far as it is applied to charitable purposes only.

Origin: ICTA s.505(1), (2).

- (6) The amount charged under this section in the case of certain payments made by the trustees of a charitable trust in the exercise of a discretion is subject to section 494 of ITA 2007 (grossing up of discretionary payments from trusts).

Origin: ICTA s.505(2).

- (7) “Charitable trust” has the same meaning as in Part 10 of ITA 2007 (see section 519 of that Act).

Origin: Drafting.

#### *Other exemptions*

### **7 Exemption for profits etc of charitable trades [j8504]**

- (1) The income mentioned in subsection (2) is not taken into account in calculating total profits if the condition in subsection (3) is met.

Origin: ICTA s.505(1); Annex 1, Change [jc627].

- (2) The income referred to in subsection (1) is –
- (a) profits of a charitable trade carried on by a charitable company, and
  - (b) post-cessation receipts arising from a charitable trade carried on by a charitable company which are received by the company or to which it is entitled.

Origin: ICTA s.505(1); Annex 1, Change [jc627].

- (3) The condition is that the profits are, or (as the case may be) the post-cessation receipt is, applied to the purposes of the charitable company only.

Origin: ICTA s.505(1); Annex 1, Change [jc627].

- (4) In this section “post-cessation receipt” means an amount that is a post-cessation receipt for the purposes of [Chapter [ ] of Part [ ] of Bill 5] (post-cessation receipts) (see sections [j035401 to j035405] of that Act).

Origin: Annex 1, Change [jc627].

## 8 Meaning of “charitable trade” [j8505]

- (1) For the purposes of this Part a trade carried on by a charitable company is a charitable trade if—
  - (a) the trade is exercised in the course of carrying out a primary purpose of the charitable company, or
  - (b) the work in connection with the trade is mainly carried out by beneficiaries of the charitable company.

Origin: ICTA s.505(1).

- (2) For the purposes of subsection (1)(a), if a trade is exercised partly in the course of carrying out a primary purpose of the charitable company and partly otherwise, each part is to be treated as a separate trade.

Origin: ICTA s.505(1B).

- (3) For the purposes of subsection (1)(b), if work in connection with a trade is carried out partly but not mainly by beneficiaries, the part in connection with which work is carried out by beneficiaries and the other part are to be treated as separate trades.

Origin: ICTA s.505(1B).

- (4) If different parts of a trade are treated as separate trades under subsection (2) or (3), a just and reasonable apportionment is to be made for that purpose of—
  - (a) expenses and receipts of the trade, and
  - (b) any amounts which are post-cessation receipts arising from the trade for the purposes of [Chapter [ ] of Part [ ] of Bill 5].

Origin: ICTA s.505(1B); Annex 1, Changes {jc604}, {jc627}.

## 9 Exemption for profits of small-scale trades [j8506]

- (1) The income mentioned in subsection (2) is not taken into account in calculating total profits if conditions A and B are met.

Origin: FA 2000 s.46(1); Annex 1, Change {jc628}.

- (2) The income referred to in subsection (1) is—
  - (a) the profits of a trade carried on by a charitable company, and
  - (b) post-cessation receipts arising from a trade carried on by a charitable company which are received by the company or to which it is entitled.

Origin: FA 2000 s.46(1).

- (3) Subsection (1) does not apply in respect of—
  - (a) profits that are, apart from this section, exempt from corporation tax chargeable under [Part [ ] of Bill 5], or
  - (b) post-cessation receipts that are, apart from this section, exempt from corporation tax chargeable under [Chapter [ ] of Part [ ] of Bill 5].

Origin: FA 2000 s.46(6).

- (4) Condition A is—
  - (a) in the case of the profits of a trade, that the profits are profits of an accounting period in relation to which the condition specified in section

11 (condition as to trading and miscellaneous incoming resources) is met, and

- (b) in the case of a post-cessation receipt, that it is received in such an accounting period.

Origin: FA 2000 s.46(3); Annex 1, Change {jc628}.

- (5) Condition B is that the profits are, or (as the case may be) the receipt is, applied to the purposes of the charitable company only.

Origin: FA 2000 s.46(3).

- (6) In this section “post-cessation receipt” means an amount that is a post-cessation receipt for the purposes of [Chapter [ ] of Part [ ] of Bill 5] (post-cessation receipts) (see sections [j035401 to j035405] of that Act).

Origin: FA 2000 s.46(1).

## 10 Exemption from charges under [Case VI of Schedule D] [j8507]

- (1) Any income or gains of a charitable company that is or are chargeable to corporation tax under [Case VI of Schedule D] is not or are not taken into account in calculating total profits if conditions A and B are met.

Origin: FA 2000 s.46(1); Annex 1, Change {jc628}.

- (2) Subsection (1) does not apply in respect of any income or gains that is or are chargeable to corporation tax by virtue of any of –

- (a) section 214 of ICTA (chargeable payments connected with exempt distributions),
- (b) section 547(1)(b) of ICTA (gains treated as arising from certain policies and contracts),
- (c) section 703 of ICTA (cancellation of tax advantage),
- (d) section 776 of ICTA (transactions in land: taxation of capital gains),
- (e) section 788 of ICTA (double taxation relief),
- (f) section 790 of ICTA (unilateral relief for foreign tax),
- (g) paragraph 52(4) of Schedule 18 to FA 1998 (recovery of excessive repayments), and
- (h) any other enactment specified in an order made by the Treasury.

Origin: FA 2000 s.46(2), (2A).

- (3) Subsection (1) does not apply in respect of any income that is, or gains that are, apart from this section, exempt from corporation tax chargeable under [Case VI of Schedule D].

Origin: FA 2000 s.46(6).

- (4) Condition A is that the income is, or the gains are, for an accounting period in relation to which the condition specified in section 11 (condition as to trading and miscellaneous incoming resources) is met.

Origin: FA 2000 s.46(3); Annex 1, Change {jc628}.

- (5) Condition B is that the income is, or the gains are, applied to the purposes of the charitable company only.

Origin: FA 2000 s.46(3).

## 11 Condition as to trading and miscellaneous incoming resources [j8508]

- (1) The condition in this section is met in relation to an accounting period if—
  - (a) the sum of the charitable company’s trading incoming resources and miscellaneous incoming resources for the accounting period does not exceed the requisite limit for the period, or
  - (b) the charitable company had, at the beginning of the period, a reasonable expectation that it would not do so.

Origin: FA 2000 s.46(6); Annex 1, Change {jc628}.

- (2) The charitable company’s “trading incoming resources” for the accounting period are—
  - (a) the incoming resources which are required to be taken into account in calculating the profits of, or losses made in, the period for any non-exempt trade carried on by the company, and
  - (b) the incoming resources which are post-cessation receipts arising from such a trade.

“Post-cessation receipt” has the meaning given by section 9(6).

Origin: FA 2000 s.46(6); Annex 1, Change {jc628}.

- (3) For the purposes of subsection (2) a trade is a “non-exempt trade” if any profits of the trade would not, apart from section 9, be exempt from corporation tax chargeable under [Part [ ] of Bill 5].

Origin: FA 2000 s.46(6); Annex 1, Change {jc628}.

- (4) The charitable company’s “miscellaneous incoming resources” for the accounting period are the incoming resources which are required to be taken into account in calculating non-exempt miscellaneous income or non-exempt miscellaneous losses for the period.

Origin: FA 2000 s.46(6); Annex 1, Change {jc628}.

- (5) In subsection (4)—

“non-exempt miscellaneous income” means income or gains chargeable to corporation tax under [Case VI of Schedule D] that is not, or are not, apart from section 9 or 10, exempt from corporation tax chargeable under [that Case], and

“non-exempt miscellaneous losses” means losses arising from a transaction which is of such a nature that if income or gains had arisen from it the income would have been non-exempt miscellaneous income.

Origin: FA 2000 s.46(6); Annex 1, Change {jc628}.

- (6) The requisite limit—
  - (a) is 25% of the charitable company’s total incoming resources for the accounting period, but
  - (b) must not be less than £5000 or more than £50,000.

Origin: FA 2000 s.46(4).

- (7) If the accounting period is a period of less than 12 months, the amounts of £5000 and £50,000 mentioned in subsection (6)(b) are to be read as if reduced by applying the formula –

$$A \times \frac{X}{365}$$

where –

A is the amount, and

X is the number of days in the accounting period.

Origin: FA 2000 s.46(5); Annex 1, Change {jc652}.

## 12 Exemption for profits from fund-raising events [j8509]

- (1) The profits of a trade carried on by a charitable company are not taken into account in calculating total profits so far as they arise from a VAT-exempt event.

Origin: Annex 1, Change {jc629}.

- (2) Subsection (1) applies so far as the profits are applied to the purposes of the charitable company only.

Origin: Annex 1, Change {jc629}.

- (3) An event is a VAT-exempt event if the supply of goods and services by the charitable company in connection with the event would be exempt from value added tax under Group 12 of Schedule 9 to the Value Added Tax Act 1994 (c. 23) (fund-raising events by charities and other qualifying bodies).

Origin: Annex 1, Change {jc629}.

## 13 Exemption for profits from lotteries [j8510]

- (1) The profits accruing to a charitable company from a lottery are not taken into account in calculating total profits if conditions A and B are met.

Origin: ICTA s.505(1).

- (2) Condition A is that –

- (a) the lottery is an exempt lottery within the meaning of the Gambling Act 2005 (c. 19) by virtue of Part 1 or 4 of Schedule 11 to that Act,
- (b) the lottery is promoted in accordance with a lottery operating licence within the meaning of Part 5 of that Act, or
- (c) the lottery is promoted and conducted in accordance with Article 133 or 135 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)).

Origin: ICTA s.505(1).

- (3) Condition B is that the profits are applied to the purposes of the charitable company only.

Origin: ICTA s.505(1).

#### 14 Exemption for property income etc [\[j8511\]](#)

- (1) Income which is chargeable to corporation tax under [Part [ ] of Bill 5] (trading income) as a result of [section j030101ndjc] of that Act is not taken into account in calculating total profits so far as –
  - (a) it arises in respect of rents or other receipts from an estate, interest or right in or over land, and
  - (b) the estate, interest or right is vested in any person for charitable purposes.

Origin: ICTA s.505(1); Annex 1, Change [{jc627}](#).

- (2) Income which is chargeable to corporation tax under [Part [ ] of Bill 5] (property income) is not taken into account in calculating total profits so far as –
  - (a) it arises in respect of an estate, interest or right in or over land, and
  - (b) the estate, interest or right is vested in any person for charitable purposes.

Origin: ICTA s.505(1); Annex 1, Change [{jc627}](#).

- (3) Distributions to which section 121 of FA 2006 (Real Estate Investment Trusts: distributions) applies and which are chargeable to corporation tax under [Part [ ] or [ ] of Bill 5] are not taken into account in calculating total profits so far as they arise in respect of shares vested in any person for charitable purposes.

Origin: ICTA s.505(1); Annex 1, Change [{jc627}](#).

- (4) Subsections (1) to (3) apply so far as the income is applied to charitable purposes only.

Origin: ICTA s.505(1); Annex 1, Change [{jc627}](#).

#### 15 Exemption for investment income and non-trading profits from loan relationships [\[j8512\]](#)

- (1) The income mentioned in subsection (2) is not taken into account in calculating total profits if –
  - (a) it is income of a charitable company, or
  - (b) it is required, under an Act, court judgment, charter, trust deed or will, to be applied to charitable purposes only.

Origin: ICTA s.505(1).

- (2) The income referred to in subsection (1) is –
  - (a) profits which are charged to tax under [section j061080 of Bill 5] (non-trading profits from loan relationships),
  - (b) a dividend of a non-UK resident company,
  - (c) an annuity payment under a purchased life annuity, and
  - (d) income treated for the purposes of [Chapter [ ] of Part [ ] of Bill 5] (distributions from unauthorised unit trusts) as received by a unit holder from a scheme to which [section j8313] of that Act applies (unauthorised unit trust schemes).

Origin: ICTA s.505(1).

- (3) Subsection (1) applies, in relation to the income mentioned in subsection (2)(b) to (d), only so far as the income falls within, and is dealt with under, [Part [ ] of Bill 5] (see section [j030101odjc] of that Act as to provisions given priority over Part [ ]).

Origin: ICTA s.505(1).

- (4) Subsection (1) applies so far as the income is applied to charitable purposes only.

Origin: ICTA s.505(1).

- (5) In this section “purchased life annuity” has the same meaning as in [Chapter [ ] of Part [ ] of Bill 5] (purchased life annuity payments) (see [section j062504] of that Act).

Origin: ICTA s.505(1).

## 16 Exemption for public revenue dividends [j8513]

- (1) Public revenue dividends on securities which are in the name of trustees are not taken into account in calculating total profits so far as the dividends are applicable and applied only for the repair of –
- a cathedral, college, church or chapel, or
  - a building used only for the purposes of divine worship.

Origin: ICTA s.505(1).

- (2) In this section “public revenue dividends” means –
- income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland, or
  - income from securities issued by or on behalf of a government or a public or local authority in a country outside the United Kingdom.

Origin: ICTA s.505(1A).

## 17 Exemption for offshore income gains [j8515]

- (1) Offshore income gains accruing to a charitable company are not taken into account in calculating total profits.

Origin: ICTA s.761(6).

- (2) Subsection (1) applies if the gain is applicable and applied for charitable purposes.

Origin: ICTA s.761(6).

- (3) In this section “offshore income gain” has the same meaning as in Chapter 5 of Part 17 of ICTA (offshore funds) (see section 758 of, and Schedule 28 to, that Act).

Origin: Drafting.

## 18 Exemption for certain miscellaneous income [j8516]

- (1) The income mentioned in subsection (3) is not taken into account in calculating total profits if –

- (a) it is income of a charitable company, or
- (b) it is required, under an Act, court judgment, charter, trust deed or will, to be applied to charitable purposes only.

Origin: ICTA s.505(1); Annex 1, Change {jc619}.

- (2) Subsection (1) applies so far as the income is applied to charitable purposes only.

Origin: ICTA s.505(1).

- (3) The income referred to in subsection (1) is –
- (a) non-trading gains on intangible fixed assets,
  - (b) annual payments charged to tax under [Chapter [ ] of Part [ ] of Bill 5],
  - (c) qualifying income from intangible fixed assets, and
  - (d) relevant foreign distributions.

Origin: ICTA s.505(1); Annex 1, Change {jc651}.

- (4) In this section –
- “intangible fixed asset” has the same meaning as in Part [ ] of [Bill 5] (see [section j062903] of that Act),
  - “non-trading credit” has the meaning given by [section j062930 of Bill 5],
  - “non-trading gain” has the meaning given by [section j062934 of Bill 5],
  - “pre-FA 2002 asset” has the meaning given by [section j0629117 of Bill 5],
  - “qualifying income from intangible fixed assets” means income which –
    - (a) is in respect of intangible fixed assets which are pre-FA 2002 assets,
    - (b) is of a kind which, if the intangible fixed assets were not pre-FA 2002 assets, would fall to be brought into account under Chapter [ ] of Part [ ] of Bill 5 as non-trading credits, and
    - (c) does not fall within subsection (3)(a) or (b), and
  - “relevant foreign distribution” means a distribution of a non-UK resident company which –
    - (a) would not (in the case of income tax) be chargeable to tax under Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), but
    - (b) would (in the case of income tax) be chargeable to tax under Chapter 3 of that Part of that Act (dividends etc from UK resident companies etc) if the company were a UK resident company.

Origin: ICTA s.505(1AA); Annex 1, Change {jc651}.

## 19 Exemption for income from estates in administration [j8517]

- (1) If a charitable company is liable for any corporation tax charged under [section j102401 of Bill 5] (charge to tax on estate income), the estate income is not taken into account in calculating total profits.

Origin: Annex 1, Change {jc630}.

- (2) Subsection (1) applies so far as the estate income is applied to the purposes of the charitable company only.

Origin: Annex 1, Change {jc630}.

- (3) In this section “estate income” has the same meaning as in [Chapter [ ] of Part [ ] of Bill 5] (beneficiaries’ income from estates in administration) (see [section j102401] of that Act).

Origin: Annex 1, Change {jc630}.

*Exemptions available to particular bodies*

**20 National Heritage Memorial Fund, Historic Buildings and Monuments Commission for England etc [j8518]**

- (1) An exemption under a provision mentioned in subsection (3) applies in the case of a qualifying body as it applies in the case of a charitable company the whole income of which is applied to charitable purposes.

Origin: ICTA s.507(1).

- (2) Each of the following is a “qualifying body” –
- (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England,
  - (c) the Trustees of the British Museum,
  - (d) the Trustees of the Natural History Museum, and
  - (e) the National Endowment for Science, Technology and the Arts.

Origin: ICTA s.507(1).

- (3) The provisions referred to in subsection (1) are –
- (a) section 7 (profits of charitable trades),
  - (b) section 12 (profits from fund-raising events),
  - (c) section 13 (profits from lotteries),
  - (d) section 14 (property income etc),
  - (e) section 15 (investment income etc),
  - (f) section 18 (certain miscellaneous income), and
  - (g) section 19 (income from estates in administration).

Origin: ICTA s.507(1); FA 1990 s.25(12); Annex 1, Changes {jc627}, {jc629}, {jc630}, {jc651}.

**21 Scientific research associations [j8522a]**

- (1) An exemption under a provision mentioned in subsection (2) applies in the case of a scientific research association, in relation to an accounting period of the association, as it applies in the case of a charitable company the whole income of which is applied to charitable purposes.

Origin: ICTA s.508(1).

- (2) The provisions referred to in subsection (1) are –
- (a) section 7 (profits of charitable trades),
  - (b) section 12 (profits from fund-raising events),
  - (c) section 13 (profits from lotteries),
  - (d) section 14 (property income etc),
  - (e) section 15 (investment income etc),
  - (f) section 18 (certain miscellaneous income), and

(g) section 19 (income from estates in administration).

Origin: ICTA s.507(1); Annex 1, Changes {jc627}, {jc629}, {jc630}, {jc651}.

## 22 Meaning of “scientific research association” [j8522]

(1) In this Part “scientific research association” means an association in relation to which conditions A and B are met.

Origin: ICTA s.508(1).

(2) Condition A is that the association has as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade.

Origin: ICTA s.508(1), (3).

(3) Condition B is that the memorandum of association or other similar instrument regulating the association’s functions precludes the direct or indirect payment or transfer to any of its members of any of its income or property by way of dividend, gift, division, bonus or otherwise by way of profit.

Origin: ICTA s.508(1).

(4) The Treasury may by regulations prescribe circumstances in which conditions A and B are to be treated as not met.

Origin: ICTA s.508(1A).

(5) The Treasury may by regulations make provision specifying for the purposes of condition A—

- (a) what is to be treated as being, or as not being, an association,
- (b) circumstances in which an association is to be treated as having, or as not having, the undertaking of research and development as its object,
- (c) circumstances in which the undertaking of research and development is to be treated as being, or as not being, capable of leading to or facilitating an extension of a class of trade, or
- (d) what is to be treated as being, or as not being, a class of trade.

Origin: ICTA s.508(1B).

(6) Section 837A of ICTA (meaning of “research and development”) applies for the purposes of condition A.

Origin: ICTA s.508(3).

(7) Regulations under section 837A(3) of ICTA (power to prescribe activities which are, or are not, research and development) may make provision for the purposes of section 837A of ICTA as it applies by virtue of subsection (6) of this section which is additional to, or different from, the provision made otherwise for the purposes of section 837A of ICTA.

Origin: ICTA s.508(4).

(8) Condition B is not to be treated as not met in the case of an association merely because the memorandum of association or other similar instrument regulating the association’s functions does not prevent the payment to its members of—

- (a) reasonable remuneration for goods, labour or power supplied, or for services provided,
- (b) reasonable interest for money lent, or
- (c) reasonable rent for premises.

Origin: ICTA s.508(2).

### *Claims*

## **23 Requirement to make claim [j8523]**

- (1) The exemptions under this Part require a claim.

Origin: ICTA s.505(1); FA 2000 s.46(1); Annex 1, Change {jc601}.

- (2) Subsection (1) does not apply to an exemption under section 17 (exemption for offshore income gains).

Origin: ICTA s.761(6).

- (3) A charitable company is treated as having made a claim for any exemption to which it may be entitled under section 4 (gifts entitling donor to gift aid relief) if –

- (a) it receives a gift as a result of a direction under section 429(2) of ITA 2007 (giving through self-assessment return), and
- (b) as a result of section 429(4) of that Act, the gift is treated as a qualifying donation for the purposes of Chapter 2 of Part 8 of that Act (gift aid).

Origin: FA 2004 s.83(4).

- (4) See section 46C of TMA 1970 and paragraph 10 of Schedule 1A to that Act for provision about the jurisdiction of the Special Commissioners over appeals concerning claims for exemption under this Part.

Origin: Drafting.

### *Restrictions on exemptions*

## **24 Restrictions on exemptions [j8518a]**

- (1) This section applies if a charitable company has a non-exempt amount for an accounting period (see section 25).

Origin: Drafting.

- (2) The exemptions under this Part do not apply, and are treated as never having applied, to so much of any income of the charitable company for the accounting period as is attributed under section 26 to the non-exempt amount.

Origin: ICTA s.505(4); Annex 1, Changes {jc627}, {jc629}, {jc630}.

- (3) Section 256(4) of TCGA 1992 contains corresponding restrictions which apply in relation to section 256(1) of that Act (gains accruing to charities not to be chargeable gains).

Origin: Drafting.

## 25 The non-exempt amount [j8519]

- (1) A charitable company has a non-exempt amount for an accounting period if it has –
  - (a) non-charitable expenditure for the period (amount A), and
  - (b) attributable income and gains for the period (amount B).

Origin: ICTA s.505(4).

- (2) The non-exempt amount for the accounting period is –
  - (a) amount A, or
  - (b) if less, amount B.

Origin: ICTA s.505(4).

- (3) For the purposes of this Part –
  - (a) a charitable company’s “attributable income” for an accounting period is the charitable company’s income for the period that is exempt from corporation tax as a result of any of the exemptions under this Part,
  - (b) a charitable company’s “attributable gains” for an accounting period are any gains accruing to the charitable company in the period that as a result of section 256(1) of TCGA 1992 are not chargeable gains, and
  - (c) a charitable company’s “attributable income and gains” for an accounting period is the sum of its attributable income for the period and its attributable gains for the period.

Origin: ICTA s.505(3).

- (4) In applying subsection (3)(a) ignore any restrictions on the exemptions under this Part which result from section 24(2).

Origin: Drafting.

- (5) In applying subsection (3)(b) ignore any restriction on the exemption under section 256(1) of TCGA 1992 which results from section 256(4) of that Act.

Origin: Drafting.

## 26 Attributing income to the non-exempt amount [j8520]

- (1) This section applies if a charitable company has a non-exempt amount for an accounting period.

Origin: Drafting.

- (2) Attributable income of the charitable company for the accounting period may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.

Origin: ICTA s.505(4).

- (3) The non-exempt amount can be used up (in whole or in part) by –
  - (a) attributable income being attributed to it under this section, or
  - (b) attributable gains being attributed to it under section 256C of TCGA 1992.

Origin: ICTA s.505(4).

- (4) The whole of the non-exempt amount must be used up by –

- (a) attributable income being attributed to the whole of it under this section,
- (b) attributable gains being attributed to the whole of it under section 256C of TCGA 1992, or
- (c) a combination of attributable income being attributed to some of it under this section and attributable gains being attributed to the rest of it under section 256C of TCGA 1992.

Origin: ICTA s.505(4).

## 27 How income is attributed to the non-exempt amount [j8520a]

- (1) This section is about the ways in which attributable income can be attributed to a non-exempt amount under section 26.

Origin: Drafting.

- (2) The charitable company may specify the attributable income that is to be attributed to the non-exempt amount.

Origin: ICTA s.505(7).

- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.

Origin: ICTA s.505(7); Annex 1, Change [jc601].

- (4) Subsection (6) applies if—
  - (a) an officer of Revenue and Customs requires a charitable company to make a specification under this section, and
  - (b) the charitable company has not given notice under subsection (3) of the specification before the end of the required period.

Origin: ICTA s.505(7); Annex 1, Change [jc601].

- (5) The required period is 30 days beginning with the day on which the officer made the requirement.

Origin: ICTA s.505(7).

- (6) An officer of Revenue and Customs may determine the attributable income that is to be attributed to the non-exempt amount.

Origin: ICTA s.505(7); Annex 1, Change [jc601].

### *Non-charitable expenditure*

## 28 Meaning of “non-charitable expenditure” [j8546]

- (1) For the purposes of this Part a charitable company’s non-charitable expenditure for an accounting period is—
  - (a) any loss made in the accounting period in a trade carried on by the charitable company unless—
    - (i) the trade is a charitable trade, or
    - (ii) the trade is not a charitable trade but profits of the trade arising in the period would be exempt from corporation tax as a result of one of the exemptions in section 9, 12 or 13,

- (b) any loss made in the accounting period in a trade, or in a UK property business or an overseas property business, carried on by the charitable company, if –
  - (i) the loss relates to land, and
  - (ii) profits of the trade, or income of the business, generated from the land in the period would not be exempt from corporation tax as a result of the exemptions in section 14,
- (c) any loss made in the accounting period in a miscellaneous transaction entered into by the charitable company otherwise than in the course of carrying out a charitable purpose,
- (d) any expenditure incurred by the charitable company in the accounting period which is not incurred for charitable purposes only and is not required to be taken into account in calculating –
  - (i) the profits of, or losses made in, any trade, UK property business or overseas property business carried on by the charitable company, or
  - (ii) the profit or loss made in any miscellaneous transaction entered into by the charitable company,
- (e) any payment made in the accounting period by the charitable company to a substantial donor which is treated under section 36(1) or (5) as non-charitable expenditure,
- (f) any non-charitable expenditure treated as incurred under section 36(2) as a result of a transaction between the charitable company and a substantial donor,
- (g) the amount of any of the charitable company’s funds that is invested in the accounting period in an investment which is not an approved charitable investment (see section 43), and
- (h) any amount lent in the accounting period by the charitable company, if the loan is neither an investment nor an approved charitable loan (see section 46).

But anything which falls within more than one of the above paragraphs counts as non-charitable expenditure only once.

*Origin: ICTA s.506(1), (4), s.506A(3), (4), (5); Annex 1, Change {jc631}.*

- (2) An amount may also be non-charitable expenditure for an accounting period as a result of section 47 (excess expenditure treated as non-charitable expenditure of earlier periods).

*Origin: Drafting.*

- (3) This section needs to be read with –
  - section 8 (meaning of “charitable trade”),
  - sections 29 to 33 (supplementary provision in relation to this section, in particular in relation to subsection (1)(d), (g) and (h)),
  - sections 34 to 42 (transactions with substantial donors),
  - section 43 (approved charitable investments), and
  - section 46 (approved charitable loans).

*Origin: Drafting.*

## 29 Section 28: supplementary [j8547]

- (1) This section applies for the purposes of section 28.

**Origin: Drafting.**

- (2) For rules about the calculation of losses, see –
- (a) section [j030302 of Bill 5] (losses of a trade calculated on same basis as profits),
  - (b) section [j050202] of that Act (which applies section [j030302] of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits), and
  - (c) section [j030302g] of that Act (losses from miscellaneous transactions calculated on same basis as miscellaneous income).

**Origin: Annex 1, Change {jc631}.**

- (3) A transaction is a miscellaneous transaction if it is of such a nature that, if income or gains had arisen from it (ignoring section 10 (exemption from charges under [Case VI of Schedule D])), it would have been charged to corporation tax under [Case VI of Schedule D].

**Origin: Annex 1, Change {jc631}.****30 Section 28(1)(d): meaning of expenditure [j8526]**

- (1) For the purposes of section 28(1)(d) “expenditure” includes expenditure of a capital nature.

**Origin: Annex 1, Change {jc631}.**

- (2) None of the following is “expenditure” for those purposes –
- (a) the investment of any of the charitable company’s funds,
  - (b) the making of a loan by the charitable company, or
  - (c) the repayment by the charitable company of the whole or a part of a loan made to it.

**Origin: Annex 1, Change {jc631}.****31 Section 28(1)(d): accounting period in which certain expenditure treated as incurred [j8527]**

- (1) This section applies for the purposes of section 28(1)(d).

**Origin: ICTA s.506(2).**

- (2) Subsection (3) applies to expenditure which is referable to commitments (whether or not of a contractual nature) that the charitable company has entered into before or during an accounting period.

**Origin: ICTA s.506(2); Annex 1, Change {jc632}.**

- (3) The expenditure is treated as incurred in the accounting period if, had the charitable company been required to draw up accounts that met the requirements mentioned in subsection (4), the expenditure would have been required to be taken into account in preparing those accounts.

**Origin: ICTA s.506(2); Annex 1, Change {jc632}.**

- (4) The requirements referred to in subsection (3) are –
- (a) that the accounts are drawn up for the accounting period, and

- (b) that UK generally accepted accounting practice applies with respect to them.

Origin: ICTA s.506(2); Annex 1, Change {jc632}.

**32 Section 28(1)(d): payment to body outside the UK [j8528]**

A payment made, or to be made, to a body situated outside the United Kingdom is non-charitable expenditure under section 28(1)(d) if –

- (a) it is incurred for charitable purposes only, but
- (b) a charitable company has not taken such steps as are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

Origin: ICTA s.506(3).

**33 Section 28(1)(g) and (h): investments and loans [j8529]**

- (1) Subsection (2) applies if in an accounting period a charitable company –
  - (a) realises the whole or part of an investment which was made in the period and is not an approved charitable investment (see section 43), or
  - (b) is repaid the whole or part of a loan which was made in the period and is neither an investment nor an approved charitable loan (see section 46).

Origin: ICTA s.506(5).

- (2) Any further investment or lending in the accounting period of the sum realised or repaid, so far as it does not exceed the sum originally invested or lent, is not non-charitable expenditure as a result of section 28(1)(g) or (h).

Origin: ICTA s.506(5).

*Substantial donor transactions*

**34 Transactions with substantial donors [j8530]**

- (1) For the purposes of this section and sections 36 to 38, “substantial donor transaction” means any of the following –
  - (a) the sale or letting of property by a charitable company to a substantial donor,
  - (b) the sale or letting of property to a charitable company by a substantial donor,
  - (c) the provision of services by a charitable company to a substantial donor,
  - (d) the provision of services to a charitable company by a substantial donor,
  - (e) an exchange of property between a charitable company and a substantial donor,
  - (f) the provision of financial assistance by a charitable company to a substantial donor,
  - (g) the provision of financial assistance to a charitable company by a substantial donor, and

- (h) investment by a charitable company in the business of a substantial donor.

Origin: ICTA s.506A(1).

- (2) For the purposes of this section and sections 36 to 38, a person is a substantial donor to a charitable company for an accounting period if –
- (a) the charitable company receives relievably gifts of at least £25,000 from the person in a period of 12 months in which the period wholly or partly falls, or
  - (b) the charitable company receives relievably gifts of at least £100,000 from the person in a period of six years in which the period wholly or partly falls.

Origin: ICTA s.506A(2).

- (3) If a person is a substantial donor to a charitable company for an accounting period as a result of subsection (2)(a) or (b), the person is a substantial donor to the charitable company for each of the following five accounting periods.

Origin: ICTA s.506A(2).

- (4) A transaction entered into in an accounting period with a person who is a substantial donor for that period may be a substantial donor transaction, even if it was not until after the transaction was entered into that the person first met the definition of “substantial donor” for the period.

Origin: ICTA s.506C(3).

### 35 Meaning of “relievable gift” [j8536]

A gift is a “relievable gift” for the purposes of section 34(2) if relief is available in respect of it under –

- (a) section 83A of ICTA (gifts in kind),
- (b) section 339 of ICTA (donations by companies),
- (c) sections 587B and 587C of ICTA (gifts of shares, securities and real property),
- (d) section 257 of TCGA 1992 (gifts of chargeable assets),
- (e) section 63 of CAA 2001 (gifts of plant and machinery),
- (f) sections 713 to 715 of ITEPA 2003 (payroll giving),
- (g) section 108 of ITTOIA 2005 (gifts of trading stock),
- (h) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts), or
- (i) Chapters 2 or 3 of Part 8 of ITA 2007 (gift aid and gifts of shares, securities and real property).

Origin: ICTA s.506C(1).

### 36 Non-charitable expenditure in substantial donor transactions [j8531]

- (1) A payment made by a charitable company to a substantial donor in the course of, or for the purposes of, a substantial donor transaction is treated for the purposes of section 28 as non-charitable expenditure.

Origin: ICTA s.506A(3).

- (2) If the terms of a substantial donor transaction are less beneficial to the charitable company than terms which might be expected in a transaction at arm's length, the charitable company is treated for the purposes of section 28 as incurring non-charitable expenditure.

Origin: ICTA s.506A(4).

- (3) The amount of the non-charitable expenditure that the charitable company is treated as incurring under subsection (2) is equal to the amount which an officer of Revenue and Customs determines as the cost to the charitable company of the difference in terms.

Origin: ICTA s.506A(4); Annex 1, Change {jc601}.

- (4) A charity is treated as incurring non-charitable expenditure under subsection (2) at such time (or times) as an officer of Revenue and Customs may determine.

Origin: ICTA s.506C(2); Annex 1, Change {jc601}.

- (5) A payment by a charitable company of remuneration to a substantial donor is treated for the purposes of section 28 as non-charitable expenditure unless it is remuneration, for services as a trustee, which is approved by –

- (a) the Charity Commission,
- (b) another body with responsibility for regulating charities by virtue of legislation having effect in respect of any part of the United Kingdom, or
- (c) a court.

Origin: ICTA s.506A(5).

- (6) If remuneration is paid otherwise than in money, subsection (5) applies as if it had been paid in money of an amount that would, under Part 3 of ITEPA 2003, be the cash equivalent of the remuneration as a benefit.

Origin: ICTA s.506C(6).

### **37 Adjustment if section 36(1) and (2) applied to single transaction [j8532]**

- (1) Either or both of subsections (1) and (2) of section 36 may be applied to a single transaction between a charitable company and a substantial donor.

Origin: ICTA s.506C(4).

- (2) But if they are both applied, the amount of non-charitable expenditure that the charitable company would, apart from this subsection, be treated as incurring under section 36(2) in respect of the transaction, is reduced by the section 36(1) amount (but is not to be reduced below nil).

Origin: ICTA s.506C(4).

- (3) The “section 36(1) amount” means the amount of any payment made by the charitable company, in the course of, or for the purposes of, the transaction, that is treated as non-charitable expenditure under section 36(1).

Origin: ICTA s.506C(4).

**38 Section 36: certain payments and benefits to be ignored [j8534]**

- (1) In the application of section 36, payments by a charitable company, or benefits arising to a substantial donor from a transaction, are to be ignored so far as –
  - (a) they relate to a donation by the donor, and
  - (b) either condition A or condition B is met.

Origin: ICTA s.506B(7).

- (2) Condition A is that –
  - (a) the donation is made by an individual, and
  - (b) the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 416 of ITA 2007 because of subsection (7)(b) of that section (restrictions on associated benefits).

Origin: ICTA s.506B(7).

- (3) Condition B is that –
  - (a) the donation is made by a company, and
  - (b) the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 339 of ICTA because of subsection (3B)(b) of that section (restrictions on associated benefits).

Origin: ICTA s.506B(7).

**39 Transactions: exceptions [j8537]**

- (1) A transaction within section 34(1)(b) or (d) is not a substantial donor transaction if an officer of Revenue and Customs determines that the transaction –
  - (a) takes place in the course of a business carried on by the substantial donor,
  - (b) is on terms which are no less beneficial to the charitable company than those which might be expected in a transaction at arm's length, and
  - (c) is not part of an arrangement for the avoidance of any tax.

Origin: ICTA s.506B(1); Annex 1, Change {jc601}.

- (2) The provision of services to a substantial donor is not a substantial donor transaction if an officer of Revenue and Customs determines that those services are provided –
  - (a) in the course of carrying out a primary purpose of the charitable company, and
  - (b) on terms which are no more beneficial to the substantial donor than those on which services are provided to others.

Origin: ICTA s.506B(2); Annex 1, Change {jc601}.

- (3) The provision of financial assistance to a charitable company by a substantial donor is not a substantial donor transaction if an officer of Revenue and Customs determines that the assistance –
  - (a) is on terms which are no less beneficial to the charitable company than those which might be expected in a transaction at arm's length, and
  - (b) is not part of an arrangement for the avoidance of any tax.

Origin: ICTA s.506B(3); Annex 1, Change {jc601}.

- (4) Investment by a charitable company in the business of a substantial donor is not a substantial donor transaction if the investment takes the form of the purchase of shares or securities listed on a recognised stock exchange.

Origin: ICTA s.506B(4).

- (5) The following are not substantial donor transactions –
- (a) a disposal at an undervalue in respect of which relief is available under section 587B of ICTA or section 431 of ITA 2007 (gifts of shares, securities and real property), or
  - (b) a disposal at an undervalue to which section 257(2) of TCGA 1992 (gifts of chargeable assets) applies,
- but such disposals may be taken into account in the application of section 34(2).

Origin: ICTA s.506B(5), (6).

#### 40 Donors: exceptions [j8533]

- (1) A company which is wholly owned by a charity within the meaning of section 339(7AB) of ICTA is not a substantial donor in relation to a charitable company which owns it (or which owns any part of it).

Origin: ICTA s.506B(8).

- (2) A registered social landlord or housing association is not a substantial donor in relation to a charitable company with which it is connected.

Origin: ICTA s.506B(9).

- (3) “Registered social landlord or housing association” means a body entered on a register maintained under –
- (a) section 1 of the Housing Act 1996 (c. 52),
  - (b) section 57 of the Housing (Scotland) Act 2001 (asp. 10), or
  - (c) Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1725 (N.I. 15)).

Origin: ICTA s.506B(9).

- (4) For the purposes of subsection (2), a body and a charity are connected if (and only if) –
- (a) one is wholly owned, or subject to control, by the other, or
  - (b) both are wholly owned, or subject to control, by the same person.

Origin: ICTA s.506B(9).

#### 41 Connected charities [j8543]

- (1) A charitable company and any other charities with which it is connected are to be treated as a single charitable company for the purposes of section 34 to 40.

Origin: ICTA s.506C(5).

- (2) For this purpose “connected” means connected in a matter relating to the structure, administration or control of a charity.

Origin: ICTA s.506C(5).

**42 Substantial donor transactions: supplementary [j8535]**

- (1) In sections 34 to 40 –
- (a) a reference to a substantial donor or other person includes a reference to a person connected with the donor or other person,
  - (b) “financial assistance” includes, in particular –
    - (i) the provision of a loan, guarantee or indemnity, and
    - (ii) entering into alternative finance arrangements within the meaning of section 46 of FA 2005, and
  - (c) a reference to a gift of a specified amount includes a reference to a non-monetary gift of that value.

Origin: ICTA s.506C(7).

- (2) On an appeal against an assessment the Special Commissioners may affirm or replace a decision of an officer of Revenue and Customs under section 36 or 39.

Origin: ICTA s.506C(8); Annex 1, Change {jc601}.

- (3) The Treasury may by regulations vary a sum, or a period of time, specified in section 34(2).

Origin: ICTA s.506C(9).

*Approved charitable investments and loans*

**43 Approved charitable investments [j8541]**

An investment is an approved charitable investment for the purposes of section 28 (meaning of “non-charitable expenditure”) if it is an investment of any of the following types.

*Type 1*

An investment to which section 44 applies.

*Type 2*

An investment in a common investment fund established under –

- (a) section 22 of the Charities Act 1960 (c. 58),
- (b) section 24 of the Charities Act 1993 (c. 10), or
- (c) section 25 of the Charities Act (Northern Ireland) 1964.

*Type 3*

An investment in a common deposit fund established under –

- (a) section 22A of the Charities Act 1960, or
- (b) section 25 of the Charities Act 1993.

*Type 4*

An investment in a fund which –

- (a) is similar to a fund mentioned in relation to Type 2 or 3, and
- (b) is established for the exclusive benefit of charities by or under a provision relating to any particular charities or class of charities contained in an Act.

*Type 5*

An interest in land, other than an interest held as security for a debt.

*Type 6*

Any of the following issued by Her Majesty's Government in the United Kingdom –

- (a) bills,
- (b) Certificates of Tax Deposit,
- (c) Savings Certificates, and
- (d) Tax Reserve Certificates.

*Type 7*

Northern Ireland Treasury Bills.

*Type 8*

Units in a unit trust scheme (as defined in section 237(1) of FISMA 2000) or in a recognised scheme (as defined in section 237(3) of FISMA 2000).

“Units” is defined in section 237(2) of FISMA 2000.

*Type 9*

A deposit with a bank (as defined in section 840A of ICTA) –

- (a) in respect of which interest is payable at a commercial rate, and
- (b) which is not made as part of an arrangement under which a loan is made by the bank to some other person.

*Type 10*

A deposit with –

- (a) the National Savings Bank,
- (b) a building society, or
- (c) a credit institution which operates on mutual principles and which is authorised by an appropriate governmental body in the territory in which the deposit is taken.

*Type 11*

Certificates of deposit (including uncertificated eligible debt security units as defined in section 986(3) of ITA 2007).

*Type 12*

A loan or other investment as to which an officer of Revenue and Customs is satisfied, on a claim, that it is made for the benefit of the charitable company and not for the avoidance of tax (whether by the company or any other person).

[Origin: TIA 1961 Sch.1; ICTA Sch.20 paras.1, 2, 3, 3A, 4, 6, 7, 7A, 8, 9; Annex 1, Changes {jc601}, {jc633}.](#)

#### **44 Securities which are approved charitable investments [\[j8538\]](#)**

- (1) The investments to which this section applies are investments in securities –
  - (a) issued or guaranteed by the government of a member State of the European Union,
  - (b) issued or guaranteed by the government or a governmental body of any territory or part of a territory,

- (c) issued by an international entity listed in the Annex to Council Directive 2003/48/EC (directive on taxation of interest payments),
- (d) issued by an entity meeting the four criteria set out at the end of that Annex,
- (e) issued by a building society,
- (f) issued by a credit institution which operates on mutual principles and which is authorised by an appropriate governmental body in the territory in which the securities are issued,
- (g) issued by an open-ended investment company,
- (h) issued by a company and listed on a recognised stock exchange, or
- (i) issued by a company but not listed on a recognised stock exchange.

Origin: TIA 1961 Sch.1; ICTA Sch.20 paras.5, 6A; AIF(T)R 2006 reg.94(7); Annex 1, Change {jc633}.

- (2) Subsection (1) is subject to section 45.

Origin: Drafting.

- (3) In this section and in section 45 –
- “debentures” includes –
    - (a) debenture stock and bonds (whether constituting a charge on assets or not), and
    - (b) loan stock or notes,
  - “open-ended investment company” has the same meaning as in Chapter [ ] of Part [ ] (see section {j8303}),
  - “securities” includes shares and debentures, and
  - “shares” includes stocks.

Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}; drafting.

#### 45 Conditions to be met for some securities {j8539}

- (1) Section 44 does not apply to an investment by virtue of subsection (1)(b), (c) or (d) of that section unless –
- (a) condition A is met in relation to the securities, and
  - (b) if the securities are shares or debenture stock, condition B is met in relation to the securities.

But see subsection (3) of this section.

Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}.

- (2) In the case of an investment in securities issued by a company which is incorporated, section 44 does not apply to the investment by virtue of subsection (1)(i) of that section unless –
- (a) condition A is met in relation to the securities,
  - (b) if the securities are shares or debenture stock, condition B is met in relation to the securities, and
  - (c) condition C is met in relation to the company.

But see subsection (3) of this section.

Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}.

- (3) Conditions A and B need not be met if the securities are traded or quoted on a money market supervised by the government or a governmental body of any territory or part of a territory.

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (4) Condition A is that the securities are traded or quoted on—
- (a) a recognised investment exchange (as defined in section 285(1) of FISMA 2000), or
  - (b) an investment exchange which constitutes the principal or only market established in a territory on which securities admitted to official listing are dealt in or traded.

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (5) Condition B is that—
- (a) the securities are fully paid up,
  - (b) the terms of the issue of the securities require them to be fully paid up within the period of 9 months beginning with the day after the day on which they are issued, or
  - (c) the securities are shares issued with no nominal value.

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (6) Condition C is that—
- (a) throughout the last business day before the investment day, the company has total issued and paid up share capital of at least £1,000,000 (or the equivalent of £1,000,000 in some other currency), and
  - (b) in each of the five years immediately before the calendar year in which the investment day falls, the company paid a dividend on all the shares issued by the company (excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for dividend for that year).

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (7) For the purposes of the words in brackets in subsection (6)(a) use the exchange rate prevailing in the United Kingdom at the close of business on the last business day before the investment day.

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (8) For the purposes of subsection (6)(b) a company formed—
- (a) to take over the business of another company or other companies, or
  - (b) to acquire the securities of, or control of, another company or other companies,

is treated as having paid a dividend in any year in which a dividend has been paid by the other company or all of the other companies (as the case may be).

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (9) It is irrelevant that the company is formed for other purposes in addition to those mentioned in paragraph (a) or (b) of subsection (8).

[Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}](#).

- (10) In this section—

“business day” means, in relation to an investment, a business day in the place where the investment is made, and

“the investment day” means, in relation to an investment, the day on which the investment is made.

Origin: TIA 1961 Sch.1; Annex 1, Change {jc633}.

#### 46 Approved charitable loans [j8540]

- (1) A loan is an approved charitable loan for the purposes of section 28 (meaning of “non-charitable expenditure”) if it meets conditions A and B.

Origin: ICTA Sch.20 para.10(1).

- (2) Condition A is that the loan is not made by way of investment.

Origin: ICTA Sch.20 para.10(1).

- (3) Condition B is that either –

- (a) the loan is made to another charity for charitable purposes only,
- (b) it is made to a beneficiary of the charitable company in the course of carrying out the purposes of the charitable company,
- (c) it consists of money placed on current account with a bank otherwise than as part of an arrangement under which a loan is made by a bank to some other person, or
- (d) an officer of Revenue and Customs is satisfied, on a claim, that the loan is made for the benefit of the charitable company and not for the avoidance of tax (whether by the charitable company or by some other person).

Origin: ICTA Sch.20 para.10(1); Annex 1, Change {jc601}.

- (4) In this section “bank” has the meaning given by section 840A of ICTA.

Origin: ICTA Sch.20 para.10(2).

*Carry back of excess non-charitable expenditure*

#### 47 Excess expenditure treated as non-charitable expenditure of earlier periods [j8542]

- (1) This section applies if a charitable company’s non-charitable expenditure for an accounting period exceeds its available income and gains for the period.

Origin: ICTA s.505(5).

- (2) The excess is the charitable company’s “excess expenditure” for the accounting period.

Origin: ICTA s.505(5); drafting.

- (3) The charitable company’s excess expenditure for the accounting period is treated for the purposes of this Part as non-charitable expenditure for earlier accounting periods so far as it can be attributed to earlier accounting periods under section 48.

Origin: ICTA s.505(5).

- (4) For the purposes of this Part a charitable company’s “available income and gains” for an accounting period is the sum of –
- (a) the charitable company’s total profits for the period (ignoring any restrictions on the exemptions under this Part which result from sections 24(2) and 26),
  - (b) any chargeable gains accruing to the charitable company in the period (ignoring any restriction on the exemption under section 256(1) of TCGA 1992 which results from section 256(4) of that Act),
  - (c) the charitable company’s attributable income and gains for the period (see section 25), and
  - (d) any non-taxable sums received by the charitable company in the period.

Origin: ICTA s.505(3).

- (5) In subsection (4) “non-taxable sums” means donations, legacies and other sums of a similar nature which, ignoring exemptions from corporation tax under this Part and under section 256 of TCGA 1992, are not liable to corporation tax.

Origin: ICTA s.505(3).

#### 48 Rules for attributing excess expenditure to earlier periods [j8545]

- (1) The rules in this section apply for attributing a charitable company’s excess expenditure for an accounting period to earlier accounting periods under section 47.

Origin: Drafting.

- (2) The excess expenditure for an accounting period may be attributed to an earlier accounting period if –
- (a) the earlier period ends not more than 6 years before the end of the period in question, and
  - (b) the charitable company’s available income and gains for the earlier period exceed its non-charitable expenditure for the earlier period.

Origin: ICTA s.505(5), (6).

- (3) If the conditions in subsection (2) are met in the case of more than one earlier accounting period, the excess expenditure is to be attributed to a later accounting period in priority to an earlier accounting period.

Origin: ICTA s.505(5), (6).

- (4) The amount of excess expenditure that is to be attributed to an earlier accounting period must not be greater than the amount by which the charitable company’s available income and gains for the earlier period exceed its non-charitable expenditure for the earlier period.

Origin: ICTA s.505(5); drafting.

- (5) For the purposes of subsections (2)(b) and (4) the charitable company’s non-charitable expenditure for the earlier accounting period includes any excess expenditure attributed to the earlier period as a result of a previous operation of this section, but ignores the attribution in question.

Origin: ICTA s.505(5), (6); drafting.

**49 Adjustments in consequence of section 47 [\[j8544\]](#)**

Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of section 47.

[Origin: ICTA s.505\(5\).](#)

## SCHEDULES

### SCHEDULE 1

Section {j999996}

#### MINOR AND CONSEQUENTIAL AMENDMENTS [j2 (CHARITIES)]

##### PART 1

##### INCOME AND CORPORATION TAXES ACT 1988 (CHARITABLE COMPANIES)

- 1 The Income and Corporation Taxes Act 1988 (c. 1) is amended as follows.
- 2 Omit section 56(3)(c) (exemption for transactions in deposits).
- 3 Omit section 339(4) and (10) (donations to charitable companies by companies).
- 4 Omit section 505 (charitable companies: general).
- 5 Omit section 506 (charitable and non-charitable expenditure).
- 6 Omit section 506A (transactions with substantial donors).
- 7 Omit section 506B (section 506A: exceptions).
- 8 Omit section 506C (sections 506A and 506B: supplemental).
- 9 Omit section 507 (the National Heritage Memorial Fund, the Historic Buildings and Monuments Commission etc).
- 10 Omit section 508 (scientific research organisations).
- 11 (1) Amend section 761 (offshore income gain) as follows.
  - (2) After subsection (5) insert—

“(5A) See section 17 of [Bill 6] for an exemption for corporation tax purposes for offshore income gains accruing to a charitable company.”
  - (3) Omit subsection (6).
  - (4) In subsection (6C) for the words from the first “and” to “section 506” substitute “means a body of persons or trust established for charitable purposes only”.
- 12 Omit Schedule 20 (charitable companies: qualifying investments and loans).

## PART 2

## OTHER ENACTMENTS (CHARITABLE COMPANIES)

*Taxes Management Act 1970 (c. 9)*

- 13 In section 46C(3) of the Taxes Management Act 1970 (jurisdiction of Special Commissioners over certain claims included in returns), after paragraph (g) insert –
- “(h) Part [ ] of [Bill 6] (charitable companies: claims for exemption).”

*Finance Act 1990 (c. 29)*

- 14 (1) The Finance Act 1990 is amended as follows.
- (2) Omit section 25(10) and (12) (donations to charitable companies by individuals).

*Taxation of Chargeable Gains Act 1992 (c. 12)*

- 15 The Taxation of Chargeable Gains Act 1992 is amended as follows.
- 16 (1) Amend section 256 (charities) as follows.
- (2) In subsection (1) omit “section 505(4) of the Taxes Act and”.
- (3) After subsection (3) insert –
- “(3A) Subsection (4) below also applies if a charitable company has a non-exempt amount under section 25 of [Bill 6] for an accounting period.”
- (4) For subsection (4) substitute –
- “(4) Gains accruing –
- (a) to the charitable trust in the year of assessment, or
- (b) to the charitable company in the accounting period,
- are treated as being, and always having been, chargeable gains so far as they are attributed to the non-exempt amount under section 256A (in the case of a charitable trust) or section 256C (in the case of a charitable company).”
- (5) After subsection (5) insert –
- “(6) For restrictions on exemptions under Part [ ] of [Bill 6] (special rules about charitable companies etc) see section 24 of that Act.
- (7) In this section “charitable company” has the same meaning as in Part [ ] of [Bill 6] (see section 2 of that Act).”
- 17 In the heading to section 256A (attributing gains to the non-exempt amount), after “amount” insert “: charitable trusts”.
- 18 In the heading to section 256B (how gains are attributed to the non-exempt amount), after “amount” insert “: charitable trusts”.

19 After section 256B insert –

**“256C Attributing gains to the non-exempt amount: charitable companies**

- (1) This section applies if a charitable company has a non-exempt amount under section 25 of [Bill 6] for an accounting period.
- (2) Attributable gains of the charitable company for the period may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.
- (3) The non-exempt amount can be used up (in whole or in part) by –
  - (a) attributable gains being attributed to it under this section, or
  - (b) attributable income being attributed to it under section 26 of [Bill 6].
- (4) The whole of the non-exempt amount must be used up by –
  - (a) attributable gains being attributed to the whole of it under this section,
  - (b) attributable income being attributed to the whole of it under section 26 of [Bill 6], or
  - (c) a combination of attributable gains being attributed to some of it under this section and attributable income being attributed to the rest of it under section 26 of [Bill 6].
- (5) In this section and section 256D a charitable company’s “attributable income” and “attributable gains” for an accounting period have the same meaning as in [Part [ ] of Bill 6] (see section 25 of that Act).
- (6) In this section “charitable company” has the same meaning as in [Part [ ] of Bill 6] (see section 2 of that Act).

**256D How gains are attributed to the non-exempt amount: charitable companies**

- (1) This section is about the ways in which attributable gains can be attributed to a non-exempt amount under section 256C.
- (2) The charitable company may specify the attributable gains that are to be attributed to the non-exempt amount.
- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.
- (4) Subsection (6) applies if –
  - (a) an officer of Revenue and Customs requires a charitable company to make a specification under this section, and
  - (b) the charitable company has not given notice under subsection (3) of the specification before the end of the required period.
- (5) The required period is 30 days beginning with the day on which the officer made the requirement.
- (6) An officer of Revenue and Customs may determine the attributable gains that are to be attributed to the non-exempt amount.
- (7) In this section “charitable company” has the same meaning as in [Part [ ] of Bill 6] (see section 2 of that Act).”

*Finance Act 2000 (c. 17)*

- 20 (1) The Finance Act 2000 is amended as follows.  
 (2) Omit section 46 (exemption for small trades etc).

*Finance Act 2004 (c. 12)*

- 21 (1) The Finance Act 2004 is amended as follows.  
 (2) Omit section 83 (giving through the self-assessment return).

*Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)*

- 22 (1) The Companies (Audit, Investigations and Community Enterprise) Act 2004 is amended as follows.  
 (2) In section 54(8A) (becoming a charity: requirements) for the words from “section 505(1)” to the end substitute “any of the provisions of [Bill 6] mentioned in subsection (8B).”
- (8B) Those provisions of [Bill 6] are –
- (a) section 7 (profits etc of charitable trades);
  - (b) section 12 (profits from fund-raising events);
  - (c) section 13 (profits from lotteries);
  - (d) section 14 (property income etc);
  - (e) section 15 (investment income etc);
  - (f) section 16 (public revenue dividends);
  - (g) section 18 (certain miscellaneous income);
  - (h) section 19 (income from estates in administration).”

Origin: Annex 1, Changes {jc627}, {jc629}, {jc630}, {jc651}.

SCHEDULE 2

Section {j999997B6}

TRANSITIONALS AND SAVINGS ETC [j3 (CHARITIES)]

PART 1

SPECIAL RULES ABOUT CHARITABLE COMPANIES ETC

*Transactions in deposits*

- 1 The repeal by this Act of section 56(3)(c) of ICTA (exemption from corporation tax for profits and gains arising to charitable company from transactions in deposits) does not affect the application of that provision in relation to the disposal or exercise of –
- (a) a right to receive an amount stated in a certificate of deposit (as defined by section 56(5) of ICTA), or interest on such an amount, or
  - (b) a right under an arrangement of a kind mentioned in section 56A(1) of ICTA,
- if the right was in existence before 1 April 1996.

[Origin: ICTA s.56\(4A\).](#)

*Transactions with substantial donors*

- 2 Section 28(1)(e) and (f) and sections 34 to 42 (non-charitable expenditure: transactions with substantial donors) do not have effect in relation to –
- (a) a transaction occurring before 22 March 2006, or
  - (b) a transaction entered into in pursuance of a contract made before 22 March 2006 (otherwise than in pursuance of a variation on or after that date).

[Origin: FA 2006 s.54\(2\), \(3\).](#)

- 3 For the purposes of section 34 a person may meet the definition of “substantial donor” by reference to gifts made at a time before this Act comes into force.

[Origin: FA 2006 s.54\(2\).](#)

*Non-charitable expenditure*

- 4 (1) This paragraph applies if, as a result of sections 47 to 49, an amount of expenditure for an accounting period ending after 31 March 2010 or any subsequent accounting period (“the carry back accounting period”) is treated as non-charitable expenditure for an accounting period beginning before 22 March 2006 or any earlier accounting period.

[Origin: FA 2006 s.55\(5\).](#)

- (2) The amount of relief or exemption to be disallowed in respect of the accounting period beginning before 22 March 2006 or any earlier accounting period is not to exceed the amount which would have been disallowed in respect of that period if –
- (a) sections 47 to 49 had not applied in relation to the carry back accounting period, and
  - (b) the amount of expenditure for the carry back accounting period to be treated as non-charitable expenditure for an earlier accounting period had instead been calculated in accordance with the provisions mentioned in sub-paragraph (3).

[Origin: FA 2006 s.55\(5\).](#)

- (3) Those provisions are –
- (a) sections 505 and 506 of ICTA, and
  - (b) Part 3 of Schedule 20 to that Act,
- as those provisions would have had effect in relation to the carry back accounting period if the amendments made to them by section 55 of FA 2006 had not been made and the amendments made to them by this Act had not been made.

[Origin: FA 2006 s.55\(5\).](#)

SCHEDULE 3

Section {j999998}

REPEALS AND REVOCATIONS [j4 (CHARITIES)]

PART 1

REPEALS (CHARITIES)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Income and Corporation Taxes Act 1988 (c. 1)	Sections 56(3)(c). Section 339(4) and (10). Sections 505 to 508. Section 761(6). Schedule 20.
Finance Act 1989 (c. 26)	Section 60(1).
Finance Act 1990 (c. 29)	Section 25(10) and (12).
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 256(1), the words “section 505(4) of the Taxes Act and”.
Charities Act 1992 (c. 41)	In Schedule 6, paragraph 17.
Museums and Galleries Act 1992 (c. 44)	In Schedule 8, paragraph 1(8).
Charities Act 1993 (c. 10)	In Schedule 6, paragraph 25.
Finance Act 1995 (c. 4)	Section 138.
Finance Act 1996 (c. 8)	Section 146. In Schedule 7, paragraph 19. In Schedule 37, paragraphs 2(3) and (4) and 5. In Schedule 38, paragraph 6(2)(1).
National Lottery Act 1998 (c. 22)	Section 24(1).
Finance Act 2000 (c. 17)	Sections 40 and 46.
Finance Act 2002 (c. 23)	In Schedule 30, paragraph 3.
Finance Act 2004 (c. 12)	Section 83.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 34(3), 198, 347 and 514.
Finance (No. 2) Act 2005 (c. 22)	Section 13.
Finance Act 2006 (c. 25)	Sections 54 to 56.
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraphs 9, 51, 94 to 100, 237, 284(3) and (4), 392 and 462(3).
Finance Act 2007 (c. 11)	In Schedule 17, paragraph 17. In Schedule 25, paragraph 1.