

Draft Income Tax Bill

CONTENTS

PART 1

SPECIAL RULES ABOUT CHARITABLE TRUSTS ETC

Introduction

- 1 Overview of Part [j7029]
- 2 Meaning of “charitable trust” [j7029a]

Gifts and other payments

- 3 Gifts entitling donor to gift aid relief: income tax treated as paid [j7011A]
- 4 Gifts entitling donor to gift aid relief: income tax liability and exemption [j7011B]
- 5 Gifts of money from companies: income tax liability and exemption [j7031A]
- 6 Payments from other charities: income tax liability and exemption [j7013A]

Other exemptions

- 7 Exemption for profits etc of charitable trades [j7006]
- 8 Meaning of “charitable trade” [j7035]
- 9 Exemption for profits etc of small-scale trades [j7009A]
- 10 Exemption from charges under provisions to which section [907 of the Draft Bill {j4926}] applies [j7009B]
- 11 Condition as to trading and miscellaneous incoming resources [j7009C]
- 12 Exemption for profits from fund-raising events [j7034]
- 13 Exemption for profits from lotteries [j7008]
- 14 Exemption for property income etc [j7003B]
- 15 Exemption for savings and investment income [j7004A]
- 16 Exemption for public revenue dividends [j7005]
- 17 Exemption for transactions in deposits [j7010]
- 18 Exemption for offshore income gains [j7012]
- 19 Exemption for certain miscellaneous income [j7004B]
- 20 Exemption for income from estates in administration [j7014]

Claims

- 21 Requirement to make claim [j7002]

Restrictions on exemptions

- 22 Restrictions on exemptions [j7015A]
- 23 The non-exempt amount [j7015]
- 24 Attributing income to the non-exempt amount [j7016]
- 25 How income is attributed to the non-exempt amount [j7016a]

Non-charitable expenditure

- 26 Meaning of “non-charitable expenditure” [j7017]
- 27 Section 26: supplementary [j7021A]
- 28 Section 26(1)(f): meaning of expenditure [j7018C]
- 29 Section 26(1)(f): tax year in which certain expenditure treated as incurred [j7018]
- 30 Section 26(1)(f): payment to body outside the UK [j7018B]
- 31 Section 26(1)(i) and (j): investments and loans [j7018A]

Substantial donor transactions

- 32 Transactions with substantial donors [j7017a]
- 33 Meaning of “relievable gift” [j7017g]
- 34 Non-charitable expenditure in substantial donor transactions [j7017d]
- 35 Adjustment if section 34(1) and (2) applied to single transaction [j7017f]
- 36 Section 34: certain payments and benefits to be ignored [j7017b]
- 37 Transactions: exceptions [j7017i]
- 38 Donors: exceptions [j7017h]
- 39 Connected charities [j7017e]
- 40 Substantial donor transactions: supplementary [j7017c]

Approved charitable investments and loans

- 41 Approved charitable investments [j7019]
- 42 Securities which are approved charitable investments [j7019A]
- 43 Conditions to be met for some securities [j7019B]
- 44 Approved charitable loans [j7020]

Carry back of excess non-charitable expenditure

- 45 Excess expenditure treated as non-charitable expenditure of earlier years [j7023]
- 46 Rules for attributing excess expenditure to earlier years [j7027]
- 47 Adjustments in consequence of section 45 [j7024]

-
- Schedule 1 – Minor and consequential amendments [js2chtrustsJR]
 - Part 1 – Income and Corporation Taxes Act 1988
 - Part 2 – Other enactments
 - Schedule 2 – Transitionals and savings [js1chtrustsJR]
 - Part 1 – Special rules about charitable trusts

A
B I L L

TO

Restate, with minor changes, certain enactments relating to income tax; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

SPECIAL RULES ABOUT CHARITABLE TRUSTS ETC

Introduction

1 Overview of Part [j7029]

- (1) This Part makes provision about some gifts and payments made to charitable trusts, including provision imposing charges to income 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 trusts and others to be exempt from charges to income tax (see sections 7 to 20).

Origin: Drafting.

- (3) In the provisions of this Part containing exemptions, references to total income are to the total income of the trustees of the charitable trust concerned.

Origin: Drafting.

- (4) See section 21 for provision about making claims for the exemptions under this Part.

Origin: Drafting.

- (5) In the case of a charitable trust which has a non-exempt amount for a tax year (see section 23), the exemptions under this Part are subject to restrictions (see section 22).

Origin: Drafting.

- (6) The non-exempt amount for a tax year depends on the charitable trust's attributable income and gains for the tax year and its non-charitable expenditure for the tax year (see sections 23 and 26 to 47).

Origin: Drafting.

2 Meaning of “charitable trust” [j7029a]

In this Part “charitable trust” means a trust established for charitable purposes only.

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

Gifts and other payments

3 Gifts entitling donor to gift aid relief: income tax treated as paid [j7011A]

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

Origin: FA 1990 s.25(10) (part).

- (2) The charitable trust 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) (part), (12) (part).

- (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) (part).

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

Origin: FA 1990 s.25(10) (part).

4 Gifts entitling donor to gift aid relief: income tax liability and exemption [j7011B]

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

Origin: FA 1990 s.25(10) (part).

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

Origin: FA 1990 s.25(10) (part), (12) (part); drafting.

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

Origin: FA 1990 s.25(10) (part).

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

Origin: ICTA s.505(1) (part); FA 1990 s.25(10) (part); ITTOIA 2005 Sch.1 para.198.

- (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) (part).

- (6) The trustees of the charitable trust are liable for any tax charged under this section.

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

5 Gifts of money from companies: income tax liability and exemption [j7031A]

- (1) This section applies if gifts of sums of money are made to charitable trusts by companies.

Origin: ICTA s.339(4) (part); FA 2000 s.40(6).

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

Origin: ICTA s.339(4) (part); FA 2000 s.40(6); drafting.

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

Origin: ICTA s.339(4) (part); FA 2000 s.40(6).

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

Origin: ICTA s.339(4) (part), s.505(1) (part); FA 2000 s.40(6); ITTOIA 2005 Sch.1 para.198.

- (6) The trustees of the charitable trust are liable for any tax charged under this section.

Origin: ICTA s.339(4) (part); FA 2000 s.40(6).

6 Payments from other charities: income tax liability and exemption [j7013A]

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

Origin: ICTA s.505(2) (part).

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

Origin: ICTA s.505(2) (part); ITTOIA 2005 Sch.1 para.198.

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

Origin: ICTA s.505(2) (part); ITTOIA 2005 Sch.1 para.198.

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

Origin: ICTA s.505(2) (part); ITTOIA 2005 Sch.1 para.198.

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

Origin: ICTA s.505(1) (part), (2) (part); ITTOIA 2005 Sch.1 para.198.

- (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 [476 of the Draft Bill {j4687II}] (grossing up of discretionary payments from trusts).

Origin: ICTA s.505(2) (part); ITTOIA 2005 Sch.1 para.198.

- (7) The trustees of the charitable trust are liable for any tax charged under this section.

Origin: ICTA s.505(2) (part); ITTOIA 2005 Sch.1 para.198.

Other exemptions

7 Exemption for profits etc of charitable trades [j7006]

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

Origin: ICTA s.505(1) (part); ITTOIA 2005 Sch.1 para.198; Annex 1, Change 86 [jc464].

- (2) The income referred to in subsection (1) is—
- (a) the profits of a trade carried on by a charitable trust,
 - (b) amounts treated as adjustment income of a charitable trust under section 228 of ITTOIA 2005 in respect of a trade carried on by the trust, and
 - (c) post-cessation receipts arising from a trade carried on by a charitable trust which are received by the trustees of the trust or to which they are entitled.

Origin: ICTA s.505(1) (part); ITTOIA 2005 Sch.1 para.198; Annex 1, Change 86 [jc464].

- (3) Condition A is—
- (a) in the case of the profits of a trade, that the profits are profits of a tax year in relation to which the trade is a charitable trade,
 - (b) in the case of an amount treated as adjustment income, that the amount arises in a tax year in relation to which the trade is a charitable trade, and
 - (c) in the case of a post-cessation receipt, that the trade was a charitable trade in relation to the tax year in which the cessation occurred.

See section 8 as to when a trade is a charitable trade in relation to a tax year.

Origin: ICTA s.505(1) (part); Annex 1, Change 86 [jc464].

- (4) Condition B is that the profits are, or the amount or post-cessation receipt is, (as the case may be) applied to the purposes of the charitable trust only.

Origin: ICTA s.505(1) (part); Annex 1, Change 86 [jc464].

- (5) Sections 232(1) and (2), 235 and 236 of ITTOIA 2005 (when adjustment income is treated as arising) apply for the purposes of subsection (3) as they apply for the purposes of Chapter 17 of Part 2 of that Act.

Origin: Annex 1, Change 86 [jc464].

- (6) In this section “post-cessation receipt” means an amount that is a post-cessation receipt for the purposes of Chapter 18 of Part 2 of ITTOIA 2005 (post-cessation receipts) (see sections 246 to 253 of that Act).

Origin: Annex 1, Change 86 [jc464].

8 Meaning of “charitable trade” [j7035]

- (1) For the purposes of this Part a trade carried on by a charitable trust is a charitable trade in relation to a tax year if throughout the basis period for the tax year –
- the trade is exercised in the course of carrying out a primary purpose of the charitable trust, or
 - the work in connection with the trade is mainly carried out by beneficiaries of the charitable trust.

Origin: ICTA s.505(1) (part).

- (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 trust and partly otherwise, each part is to be treated as a separate trade.

Origin: ICTA s.505(1B); FA 2006 [s.56].

- (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); FA 2006 [s.56].

- (4) If different parts of a trade are treated as separate trades under subsection (2) or (3), a reasonable apportionment is to be made for that purpose of –
- expenses and receipts of the trade, and
 - any amounts which are treated as adjustment income under section 228 of ITTOIA 2005 in respect of the trade, or which are post-cessation receipts arising from the trade for the purposes of Chapter 18 of Part 2 of that Act.

Origin: ICTA s.505(1B); FA 2006 [s.56]; Annex 1, Change 86 [jc464].

- (5) For the rules about basis periods, see Chapter 15 of Part 2 of ITTOIA 2005.

Origin: Drafting.

9 Exemption for profits etc of small-scale trades [j7009A]

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

Origin: FA 2000 s.46(1) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Changes 86 [jc464], 90 [jc465].

- (2) The income referred to in subsection (1) is –
- (a) the profits of a trade carried on by a charitable trust,
 - (b) amounts treated as adjustment income of a charitable trust under section 228 of ITTOIA 2005 in respect of a trade carried on by the trust, and
 - (c) post-cessation receipts arising from a trade carried on by a charitable trust which are received by the trustees of the trust or to which they are entitled.

Origin: FA 2000 s.46(1) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Changes 86 [jc464], 90 [jc465].

- (3) Subsection (1) does not apply in respect of –
- (a) profits of a trade that are, apart from this section, exempt from income tax chargeable under Part 2 of ITTOIA 2005,
 - (b) amounts treated as adjustment income that are, apart from this section, exempt from income tax chargeable under Chapter 17 of Part 2 of that Act, or
 - (c) post-cessation receipts that are, apart from this section, exempt from income tax chargeable under Chapter 18 of Part 2 of that Act.

Origin: FA 2000 s.46(6) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Change 86 [jc464].

- (4) Condition A is –
- (a) in the case of the profits of a trade, that the profits are profits of a tax year in relation to which the condition specified in section 11 (condition as to trading and miscellaneous incoming resources) is met,
 - (b) in the case of an amount treated as adjustment income, that the amount arises in such a tax year, and
 - (c) in the case of a post-cessation receipt, that it is received in such a tax year.

Origin: FA 2000 s.46(1) (part), (3) (part); Annex 1, Change 86 [jc464].

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

Origin: FA 2000 s.46(3) (part); Annex 1, Change 86 [jc464].

- (6) Sections 232(1) and (2), 235 and 236 of ITTOIA 2005 (when adjustment income is treated as arising) apply for the purposes of subsection (4) as they apply for the purposes of Chapter 17 of Part 2 of that Act.

Origin: Annex 1, Change 86 [jc464].

- (7) In this section “post-cessation receipt” means an amount that is a post-cessation receipt for the purposes of Chapter 18 of Part 2 of that Act (post-cessation receipts) (see sections 246 to 253 of that Act).

Origin: FA 2000 s.46(1) (part); ITTOIA 2005 Sch.1 para.514; drafting.

10 Exemption from charges under provisions to which section [907 of the Draft Bill {j4926}] applies {j7009B}

- (1) Any income or gains of a charitable trust that is or are chargeable to income tax under or by virtue of any provision to which section [907 of the Draft Bill {j4926}] applies is not or are not taken into account in calculating total income if conditions A and B are met.

Origin: FA 2000 s.46(1) (part); ITTOIA 2005 Sch.1 para.514.

- (2) Subsection (1) does not apply in respect of any income or gains chargeable to income tax by virtue of any of –
- (a) section 214 of ICTA (chargeable payments connected with exempt distributions),
 - (b) section 804 of that Act (double taxation relief),
 - (c) Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc),
 - (d) Chapter 5 of Part 5 of that Act (settlements: amounts treated as income of settlor),
 - (e) section [650 of the Draft Bill {j6176b}] (transactions in land), and
 - (f) any other enactment specified in an order made by the Treasury.

Origin: FA 2000 s.46(2) (part), (2A) (part); ITTOIA 2005 Sch.1 para.514; drafting.

- (3) Subsection (1) does not apply in respect of any income that is, or gains that are, apart from this section, exempt from income tax chargeable under or by virtue of any provision to which section [907 of the Draft Bill {j4926}] applies.

Origin: FA 2000 s.46(6) (part); ITTOIA 2005 Sch.1 para.514.

- (4) Condition A is that the income is, or the gains are, for a tax year in relation to which the condition specified in section 11 is met.

Origin: FA 2000 s.46(1) (part); ITTOIA 2005 Sch.1 para.514.

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

Origin: FA 2000 s.46(3) (part).

11 Condition as to trading and miscellaneous incoming resources {j7009C}

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

Origin: FA 2000 s.46(3) (part); Annex 1, Change 90 [jc465].

- (2) The charitable trust’s “trading incoming resources” for the tax year are –

- (a) the incoming resources which are required to be taken into account in calculating the profits of, or losses made in, the basis period for the tax year of any non-exempt trade carried on by the charitable trust, and
- (b) the incoming resources which are treated as adjustment income under section 228 of ITTOIA 2005 in respect of such a trade, or which are post-cessation receipts arising from such a trade.

“Post-cessation receipt” has the same meaning as in section 9.

Origin: FA 2000 s.46(6) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Change 90 [jc465].

- (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 income tax chargeable under Part 2 of ITTOIA 2005.

Origin: FA 2000 s.46(6) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Change 90 [jc465].

- (4) The charitable trust’s “miscellaneous incoming resources” for the tax year 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 tax year.

Origin: FA 2000 s.46(6) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Change 90 [jc465].

- (5) In this section –

“non-exempt miscellaneous income” means income or gains chargeable to income tax under or by virtue of any provision to which section [907 of the Draft Bill [j4926]] applies that is not, apart from section 9 or 10, exempt from income tax chargeable under or by virtue of that provision, 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) (part); ITTOIA 2005 Sch.1 para.514; Annex 1, Change 90 [jc465].

- (6) The requisite limit –

- (a) is 25% of the charitable trust’s total incoming resources for the tax year, but
- (b) must not be less than £5,000 or more than £50,000.

Origin: FA 2000 s.46(4).

12 Exemption for profits from fund-raising events [j7034]

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

Origin: Annex 1, Change 87 [jc466].

- (2) An event is a VAT-exempt event if the supply of goods and services by the charitable trust 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 87 [jc466].

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

Origin: Annex 1, Change 87 [jc466].

13 Exemption for profits from lotteries [j7008]

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

Origin: ICTA s.505(1) (part); FA 1995 s.138(1); ITTOIA 2005 Sch.1 para.198.

- (2) Condition A is that—
 - (a) the lottery is promoted and conducted in accordance with a lottery operating licence issued under section 98 of the Gambling Act 2005 (c. 19),
 - (b) the lottery is exempt under Part 1 or 4 of Schedule 11 to 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) (part); FA 1995 s.138(1).

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

Origin: ICTA s.505(1) (part); FA 1995 s.138(1).

14 Exemption for property income etc [j7003B]

- (1) Income which is chargeable to income tax under Part 2 of ITTOIA 2005 (trading income) as a result of section 261 of that Act is not taken into account in calculating total income so far as—
 - (a) it arises in respect of rents or other receipts from an estate, interest or right in or over any land, and
 - (b) the estate, interest or right is vested in any person in trust for a charitable trust or for charitable purposes.

Origin: ICTA s.505(1) (part); FA 1996 s.146(2); ITTOIA 2005 Sch.1 para.198; Annex 1, Change 86 [jc464].

- (2) Income which is chargeable to income tax under Part 3 of ITTOIA 2005 (property income) is not taken into account in calculating total income 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 in trust for a charitable trust or for charitable purposes.

Origin: ICTA s.505(1) (part); FA 1996 s.146(2); ITTOIA 2005 Sch.1 para.198; Annex 1, Change 86 [jc464].

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

Origin: ICTA s.505(1) (part); FA 1996 s.146(2); Annex 1, Change 86 [jc464].

15 Exemption for savings and investment income [j7004A]

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

Origin: ICTA s.505(1) (part); Annex 1, Change 135 [jc560].

- (2) The income referred to in subsection (1) is –
- (a) interest,
 - (b) a dividend or other distribution of a UK resident company,
 - (c) a dividend of a non-UK resident company,
 - (d) an annuity payment under a purchased life annuity,
 - (e) profits on the disposal of deeply discounted securities, or
 - (f) income treated for the purposes of Chapter 10 of Part 4 of ITTOIA 2005 (distributions from unauthorised unit trusts) as received by a unit holder from a scheme to which section 547 of that Act applies (unauthorised unit trust schemes).

Origin: ICTA s.505(1) (part); FA 1996 s.146(3); ITTOIA 2005 Sch.1 para.198.

- (3) Subsection (1) applies only so far as the income falls within, and is dealt with under, Part 4 of ITTOIA 2005 (see section 366 of that Act as to provisions given priority over Part 4).

Origin: ICTA s.505(1) (part); FA 1996 s.146(3); ITTOIA 2005 Sch.1 para.198.

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

Origin: ICTA s.505(1) (part).

- (5) In this section –
- “deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see sections 430 to 443(1) of that Act),
 - “disposal”, in relation to a deeply discounted security, has the same meaning as in Chapter 8 of Part 4 of that Act (see section 437(1) of that Act),
 - “dividend”, in relation to a UK resident company, has the same meaning as in Chapter 3 of Part 4 of that Act (dividends etc from UK resident companies etc) (see section 382(4) of that Act),
 - “interest” means anything treated as interest for the purposes of Chapter 2 of Part 4 of that Act (interest), and
 - “purchased life annuity” has the same meaning as in Chapter 7 of Part 4 of that Act (purchased life annuity payments) (see section 423 of that Act).

Origin: Drafting.

16 Exemption for public revenue dividends [j7005]

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

Origin: ICTA s.505(1) (part); FA 1996 Sch.7 para.19; ITTOIA 2005 Sch.1 para.198.

- (2) In this section “public revenue dividends” means –
 - (a) income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland, or
 - (b) 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); FA 1996 Sch.7 para.19.

17 Exemption for transactions in deposits [j7010]

- (1) Profits or gains arising to a charitable trust from the disposal of exempt deposit rights are not taken into account in calculating total income.

Origin: ICTA s.56(3) (part), s.56A(3) (part); F(No.2)A 1992 Sch.8 para.1; ITTOIA 2005 Sch.1 para.34.

- (2) For the purposes of this section, the exercise of an exempt deposit right is a disposal of it, except so far as the right is a right to receive interest.

Origin: ICTA s.56(3) (part), s.56A(3) (part); F(No.2)A 1992 Sch.8 para.1; ITTOIA 2005 Sch.1 para.34.

- (3) Subsection (1) applies so far as the profits or gains are applied to charitable purposes only.

Origin: ICTA s.56(3) (part).

- (4) In this section “exempt deposit rights” means –
 - (a) a right to receive, with or without interest, a principal amount stated in, or determined in accordance with, the current terms of issue of an eligible debt security, where in accordance with those terms the issue of uncertificated units of the eligible debt security corresponds to the issue of a certificate of deposit,
 - (b) a right to receive the principal amount stated in a certificate of deposit, with or without interest, and
 - (c) an uncertificated right to receive a principal amount, with or without interest, as a result of a deposit of money.

Origin: ICTA s.56(3) (part), s.56A(3) (part); F(No.2)A 1992 Sch.8 para.1; US(A)(EDS)R 2003 Sch.2 para.6 (part).

- (5) In this section –
 - “certificate of deposit” has the meaning given in section [909 of the Draft Bill {j4903C}],
 - “eligible debt security” has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001 (S.I. 2001/3755),

“uncertificated”, in relation to a unit, has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001,

“uncertificated right” means a right in respect of which no certificate of deposit has been issued, although the person for the time being entitled to it is entitled to call for the issue of such a certificate, and

“unit” has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001.

Origin: ICTA s.56A(1) (part), (4); F(No.2)A 1992 Sch.8 para.1; US(A)(EDS)R 2003 reg.15(2), Sch.2 para.6 (part).

18 Exemption for offshore income gains [j7012]

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

Origin: ICTA s.761(6) (part).

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

Origin: ICTA s.761(6) (part).

- (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.

- (4) See section 761(6B) of ICTA, which—
- (a) applies where property held on charitable trusts ceases to be subject to charitable trusts, and
 - (b) provides for any gain accruing under that subsection to be treated as an offshore income gain not accruing to a charity.

Origin: Drafting.

19 Exemption for certain miscellaneous income [j7004B]

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

Origin: ICTA s.505(1) (part); Annex 1, Change 135 [jc560].

- (2) The income referred to in subsection (1) is—
- (a) royalties and other income from intellectual property that do not fall within Chapter 2 of Part 2 of ITTOIA 2005 (receipts of a trade etc),
 - (b) income derived from a relevant telecommunication right that is not income falling within Chapter 2 of Part 2 of ITTOIA 2005 (receipts of a trade etc),
 - (c) annual payments charged to tax under Chapter 7 of Part 5 of ITTOIA 2005, and
 - (d) relevant foreign distributions of a non-UK resident company.

Origin: ICTA s.505(1) (part); FA 1996 s.146(3); ITTOIA 2005 Sch.1 para.198; Annex 1, Change 88 [jc530].

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

Origin: ICTA s.505(1) (part).

- (4) In this section –
“intellectual property” has the same meaning as in section 579 of ITTOIA 2005,
“relevant foreign distribution” means a distribution of a non-UK resident company which –
(a) is not chargeable to tax under Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), but
(b) would 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, and
“relevant telecommunication right” has the same meaning as in Chapter 10 of Part 2 of that Act (trade profits: certain telecommunications rights) (see section 146 of that Act).

Origin: ICTA s.505(1AA); ITTOIA 2005 Sch.1 para.198; drafting.

20 Exemption for income from estates in administration [j7014]

- (1) If the person liable under section 659 of ITTOIA 2005 for any income tax charged under section 649 of that Act (charge to tax on estate income) is the trustee of a charitable trust, the estate income is not taken into account in calculating total income.

Origin: Annex 1, Change 89 [jc531].

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

Origin: Annex 1, Change 89 [jc531].

- (3) In this section “estate income” has the same meaning as in Chapter 6 of Part 5 of ITTOIA 2005 (beneficiaries’ income from estates in administration) (see section 649(2) of that Act).

Origin: Annex 1, Change 89 [jc531].

Claims

21 Requirement to make claim [j7002]

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

Origin: ICTA s.505(1) (part); FA 2000 s.46(1) (part); Annex 1, Change 5 [jc401].

- (2) Subsection (1) does not apply to an exemption under –
(a) section 17 (exemption for transactions in deposits), or
(b) section 18 (exemption for offshore income gains).

Origin: ICTA s.56(3) (part), s.761(6) (part).

- (3) The trustees of a charitable trust are treated as having made a claim for any exemption to which they may be entitled under section 4 (gifts entitling donor to gift aid relief) if –
- (a) the charitable trust receives a gift as a result of a direction under section [428(2) of the Draft Bill {j3312}] (giving through self-assessment return), and
 - (b) as a result of section [428(4) of the Draft Bill {j3312}], the gift is treated as a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid).

Origin: FA 2004 s.83(4) (part).

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

Origin: Drafting.

Restrictions on exemptions

22 Restrictions on exemptions {j7015A}

- (1) This section applies if a charitable trust has a non-exempt amount for a tax year (see section 23).

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 trust for the tax year as is attributed under section 24 to the non-exempt amount.

Origin: ICTA s.505(4) (part); FA 2006 [s.55]; drafting.

- (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.

23 The non-exempt amount {j7015}

- (1) A charitable trust has a non-exempt amount for a tax year if it has –
- (a) non-charitable expenditure for the tax year (amount A), and
 - (b) attributable income and gains for the tax year (amount B).

Origin: ICTA s.505(4) (part); FA 2006 [s.55].

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

Origin: ICTA s.505(4) (part); FA 2006 [s.55].

- (3) For the purposes of this Part –
- (a) a charitable trust’s “attributable income” for a tax year is the charitable trust’s income for the tax year that is exempt from income tax as a result of any of the exemptions under this Part,

- (b) a charitable trust’s “attributable gains” for a tax year are any gains accruing to the charitable trust in the tax year that would be chargeable gains, if section 256(1) of TCGA 1992 was ignored, and
- (c) a charitable trust’s “attributable income and gains” for a tax year is the sum of its attributable income for the tax year and its attributable gains for the tax year.

Origin: ICTA s.505(3); FA 2006 [s.55].

- (4) In applying subsection (3)(a) ignore any restrictions on the exemptions under this Part which result from sections 22(2) and 24.

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.

24 Attributing income to the non-exempt amount [j7016]

- (1) This section applies if a charitable trust has a non-exempt amount for a tax year.

Origin: Drafting.

- (2) Attributable income of the charitable trust for the tax year 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) (part), (7) (part); FA 2006 [s.55].

- (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 256A of TCGA 1992.

Origin: ICTA s.505(4) (part); FA 2006 [s.55]; drafting.

- (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 256A 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 256A of TCGA 1992.

Origin: ICTA s.505(4) (part); FA 2006 [s.55].

- (5) See section 25 for the way in which income is to be attributed to the non-exempt amount under this section.

Origin: Drafting.

25 How income is attributed to the non-exempt amount [j7016a]

- (1) This section is about the ways in which attributable income can be attributed to a non-exempt amount under section 24.

Origin: Drafting.

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

Origin: ICTA s.505(7) (part); FA 2006 [s.55].

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

Origin: ICTA s.505(7) (part); FA 2006 [s.55]; Annex 1, Change 5 [jc401].

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

Origin: ICTA s.505(7) (part); FA 2006 [s.55]; Annex 1, Change 5 [jc401].

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

Origin: ICTA s.505(7) (part); FA 2006 [s.55].

- (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(6) (part); FA 2006 [s.55]; Annex 1, Change 5 [jc401].

*Non-charitable expenditure***26 Meaning of “non-charitable expenditure” [j7017]**

- (1) For the purposes of this Part a charitable trust’s non-charitable expenditure for a tax year is—
- (a) any loss made in the tax year in a trade carried on by the charitable trust if—
 - (i) the trade is not a charitable trade in relation to the tax year, or
 - (ii) profits of the trade would not be exempt from income tax as a result of one of the exemptions in clauses 9, 12 or 13,
 - (b) any payment made in the tax year by the charitable trust in connection with a trade in circumstances where relief is available under section [95 of the Draft Bill [j4040]] (post-cessation trade relief), if—
 - (i) the trade was not a charitable trade in relation to the tax year in which the cessation occurred, or
 - (ii) profits of the trade arising immediately before the cessation would not have been exempt from income tax as a result of one of the exemptions in clauses 9, 12 or 13,
 - (c) any loss made in the tax year in a trade, or in a UK property business or an overseas property business, carried on by the charitable trust, if—
 - (i) the loss relates to land, and

- (ii) profits of the trade, or income of the business, generated from the land would not be exempt from income tax as a result of the exemptions in section 14,
 - (d) any payment made in the tax year by the charitable trust in connection with a trade or UK property business in circumstances where relief is available under section [95 of the Draft Bill {j4040}] or [124 of the Draft Bill {j4045}] (post-cessation trade or property relief), if –
 - (i) the payment relates to land, and
 - (ii) profits of the trade, or income of the business, generated from the land immediately before the cessation would not have been exempt from income tax as a result of the exemptions in section 14,
 - (e) any loss made in the tax year in a miscellaneous transaction entered into by the charitable trust otherwise than in the course of carrying out a charitable purpose,
 - (f) any expenditure incurred by the charitable trust in the tax year 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 trust, or
 - (ii) the profit or loss made in any miscellaneous transaction entered into by the charitable trust,
 - (g) any payment made in the tax year, by the charitable trust to a substantial donor which is treated under section 34(1) or (5) as non-charitable expenditure,
 - (h) any non-charitable expenditure treated as incurred under section 34(2) as a result of a transaction between the charitable trust and a substantial donor,
 - (i) the amount of any of the charitable trust’s funds that is invested in the tax year in an investment which is not an approved charitable investment (see section 41), and
 - (j) any amount lent in the tax year by the charitable trust, if the loan is neither an investment nor an approved charitable loan (see section 44).
- But anything which falls within more than one of the above paragraphs is only to be counted once as non-charitable expenditure.

Origin: ICTA s.506(1) (part), (4) (part), s.506A(3), (4), (5); FA 2006 [s.54]; Annex 1, Change 91 [jc467].

- (2) An amount may also be non-charitable expenditure for a tax year as a result of section 45 (excess expenditure treated as non-charitable expenditure of earlier years).

Origin: Drafting.

- (3) This section needs to be read with –
 - section 8 (meaning of “charitable trade”),
 - sections 27 to 31 (supplementary provision in relation to this section, in particular in relation to subsection (1)(c), (f), (i) and (j)),
 - sections 32 to 40 (transactions with substantial donors),
 - section 41 (approved charitable investments), and
 - section 44 (approved charitable loans).

Origin: Drafting.

27 Section 26: supplementary [j7021A]

- (1) This section applies for the purposes of section 26.

Origin: Drafting.

- (2) For rules about the calculation of losses, see –
- (a) section 26 of ITTOIA 2005 (losses of a trade calculated on same basis as profits),
 - (b) section 272 of that Act (which applies section 26 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 872 of that Act (losses from miscellaneous transactions calculated on same basis as miscellaneous income).

Origin: Annex 1, Change 91 [jc467].

- (3) A transaction is a miscellaneous transaction if it is of such a nature that, if income or gains had arisen from it –
- (a) ignoring section 10 (exemption from charges under provisions to which section [907 of the Draft Bill [j4926]] applies), it would have been charged to income tax under or by virtue of any provision to which section [907 of the Draft Bill [j4926]] applies, and
 - (b) the trustees of the charitable trust would have been liable for any tax so chargeable.

Origin: Annex 1, Change 91 [jc467].

- (4) References to a charitable trust making a loss in a trade in a tax year are to the charitable trust making a loss in the trade in the basis period for the tax year.

Origin: Drafting.

28 Section 26(1)(f): meaning of expenditure [j7018C]

- (1) For the purposes of section 26(1)(f) “expenditure” includes expenditure of a capital nature.

Origin: Annex 1, Change 91 [jc467].

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

Origin: Annex 1, Change 91 [jc467].

29 Section 26(1)(f): tax year in which certain expenditure treated as incurred [j7018]

- (1) This section applies for the purposes of section 26(1)(f).

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

- (2) Subsection (3) applies to expenditure which is referable to commitments that the charitable trust has entered into before or during a tax year.

Origin: ICTA s.506(2) (part); Annex 1, Change 92 [jc468].

- (3) The expenditure is treated as incurred in the tax year if, had the charitable trust 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) (part); Annex 1, Change 92 [jc468].

- (4) The requirements referred to in subsection (3) are –
(a) that the accounts are drawn up for the tax year, and
(b) that UK generally accepted accounting practice applies with respect to them.

Origin: ICTA s.506(2) (part); Annex 1, Change 92 [jc468].

- (5) It does not matter whether or not the commitment mentioned in subsection (2) is of a contractual nature.

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

30 Section 26(1)(f): payment to body outside the UK [j7018B]

A payment made, or to be made, to a body situated outside the United Kingdom is non-charitable expenditure under section 26(1)(f) if –

- (a) it is incurred for charitable purposes only, but
(b) the trustees of the charitable trust have 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) (part).

31 Section 26(1)(i) and (j): investments and loans [j7018A]

- (1) Subsection (2) applies if in a tax year a charitable trust –
(a) realises the whole or part of an investment which was made in the tax year and is not an approved charitable investment, or
(b) is repaid the whole or part of a loan which was made in the tax year and is neither an investment nor an approved charitable loan (see section 44).

Origin: ICTA s.506(5) (part).

- (2) Any further investment or lending in the tax year 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 26(1)(i) or (j).

Origin: ICTA s.506(5) (part).

*Substantial donor transactions***32 Transactions with substantial donors [j7017a]**

- (1) For the purposes of this section and sections 34 to 36, “substantial donor transaction” means any of the following—
- (a) the sale or letting of property by a charitable trust to a substantial donor,
 - (b) the sale or letting of property to a charitable trust by a substantial donor,
 - (c) the provision of services by a charitable trust to a substantial donor,
 - (d) the provision of services to a charitable trust by a substantial donor,
 - (e) an exchange of property between a charitable trust and a substantial donor,
 - (f) the provision of financial assistance by a charitable trust to a substantial donor,
 - (g) the provision of financial assistance to a charitable trust by a substantial donor, and
 - (h) investment by a charitable trust in the business of a substantial donor.

Origin: ICTA s.506A(1); FA 2005 [s.54].

- (2) For the purposes of this section and sections 34 to 36, a person is a substantial donor to a charitable trust for a tax year if—
- (a) the charitable trust receives relievably gifts of at least £25,000 from the person in a period of 12 months in which the tax year wholly or partly falls,
 - (b) the charitable trust receives relievably gifts of at least £100,000 from the person in a period of six years in which the tax year wholly or partly falls.

Origin: ICTA s.506A(2); FA 2006 [s.54].

- (3) If a person is a substantial donor to a charitable trust for a tax year as a result of subsection (2)(a) or (b), the person is a substantial donor to the charitable trust for each of the following five tax years.

Origin: ICTA s.506A(2); FA 2006 [s.54].

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

Origin: ICTA s.506C(3); FA 2006 [s.54].

33 Meaning of “relievable gift” [j7017g]

A gift is “relievable” for the purposes of section 32(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 the 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),
- (i) Chapters 2 or 3 of Part 8 of this Act (gift aid and gifts of shares, securities and real property).

Origin: ICTA s.506C(1); FA 2006 [s.54].

34 Non-charitable expenditure in substantial donor transactions [j7017d]

- (1) A payment made by a charitable trust to a substantial donor in the course of, or for the purposes of, a substantial donor transaction is treated for the purposes of section 26 as non-charitable expenditure.

Origin: ICTA s.506A(3); FA 2006 [s.54].

- (2) If the terms of a substantial donor transaction are less beneficial to the charitable trust than terms which might be expected in a transaction at arm's length, the charitable trust is treated for the purposes of section 26 as incurring non-charitable expenditure.

Origin: ICTA s.506A(4); FA 2006 [s.54].

- (3) The amount of the non-charitable expenditure that the charitable trust 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 trust of the difference in terms.

Origin: ICTA s.506A(4); FA 2006 [s.54]; Annex 1, Change 5 [jc401].

- (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); FA 2006 [s.54]; Annex 1, Change 5 [jc401].

- (5) A payment by a charitable trust of remuneration to a substantial donor is treated for the purposes of section 26 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); FA 2006 [s.54].

- (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); FA 2006 [s.54].

35 Adjustment if section 34(1) and (2) applied to single transaction [j7017f]

- (1) Either or both of subsections (1) and (2) of section 34 may be applied to a single transaction between a charitable trust and a substantial donor.

Origin: ICTA s.506C(4); FA 2006 [s.54].

- (2) But if they are both applied, the amount of non-charitable expenditure that the charitable trust would, apart from this subsection, be treated as incurring under section 34(2) in respect of the transaction, is reduced by the section 34(1) amount (but is not to be reduced below nil).

Origin: ICTA s.506C(4); FA 2006 [s.54].

- (3) The “section 34(1) amount” means the amount of any payment made by the charitable trust, in the course of, or for the purposes of, the transaction, that is treated as non-charitable expenditure under section 34(1).

Origin: ICTA s.506C(4); FA 2006 [s.54].

36 Section 34: certain payments and benefits to be ignored [j7017b]

- (1) In the application of section 34, payments by a charitable trust, or benefits arising to a substantial donor from a transaction, are to be ignored so far as –
- they relate to a donation by the donor, and
 - either condition A or condition B is met.

Origin: ICTA s.506B(7); FA 2006 [s.54].

- (2) Condition A is that –
- the donation is made by an individual, and
 - the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section [415 of the Draft Bill {j3301}] because of subsection (7)(b) of that section (restrictions on associated benefits).

Origin: ICTA s.506B(7); FA 2006 [s.54].

- (3) Condition B is that –
- the donation is made by a company, and
 - 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); FA 2006 [s.54].

37 Transactions: exceptions [j7017i]

- (1) A transaction within section 32(1)(b) or (d) is not a substantial donor transaction if an officer of Revenue and Customs determines that the transaction –
- takes place in the course of a business carried on by the substantial donor,
 - is on terms which are no less beneficial to the charitable trust than those which might be expected in a transaction at arm’s length, and
 - is not part of an arrangement for the avoidance of any tax.

Origin: ICTA s.505B(1); FA 2006 [s.54]; Annex 1, Change 5 [jc401].

- (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 trust,
 - (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); FA 2006 [s.54]; Annex 1, Change 5 [jc401].

- (3) The provision of financial assistance to a charitable trust 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 trust 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); FA 2006 [s.54]; Annex 1, Change 5 [jc401].

- (4) Investment by a charitable trust 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); FA 2006 [s.54].

- (5) The following are not substantial donor transactions –
- (a) a disposal at an undervalue in respect of which relief is available under section [430 of the Draft Bill {j7200}] or section 587B of ICTA (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 32(2).

Origin: ICTA s.506B(5), (6); FA 2006 [s.54].

38 Donors: exceptions [j7017h]

- (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 trust which owns it (or which owns any part of it).

Origin: ICTA s.506B(8); FA 2006 [s.54].

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

Origin: ICTA s.506B(9); FA 2006 [s.54].

- (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); FA 2006 [s.54].

- (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); FA 2006 [s.54].

39 Connected charities [j7017e]

- (1) A charitable trust and any other charities with which it is connected are to be treated as a single charitable trust for the purposes of section 32 to 38.

Origin: ICTA s.506C(5); FA 2006 [s.54].

- (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); FA 2006 [s.54].

40 Substantial donor transactions: supplementary [j7017c]

- (1) In sections 32 to 38 –
- (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); FA 2006 [s.54].

- (2) On an appeal against an assessment the Special Commissioners may review a decision of an officer of Revenue and Customs under section 34 or 37.

Origin: ICTA s.506C(8); FA 2006 [s.54]; Annex 1, Change 5 [jc401].

- (3) The Treasury may by regulations vary a sum, or a period of time, specified in section 32(2).

Origin: ICTA s.506C(9); FA 2006 [s.54].

Approved charitable investments and loans

41 Approved charitable investments [j7019]

An investment is an approved charitable investment for the purposes of section 26 (meaning of “non-charitable expenditure”) if it is an investment of any of the following types.

Type 1

An investment to which section 42 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 [883 of the Draft Bill {j4924}]) –

- (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 within the meaning of section 552 of ITTOIA 2005).

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 trust and not for the avoidance of tax (whether by the trust or any other person).

Origin: TIA 1961 Sch.1 (part); ICTA Sch.20 para.1, 2 (part), 3, 3A, 4, 6, 7, 7A, 8, 9; CA 1992 Sch.6 para.17; CA 1993 Sch.6 para.25; FA 1996 Sch.37 para.2(3), 5; ITTOIA 2005 Sch.1 para.347(2), (3); FISMA(CA)(T)O 2001 art.13; Annex 1, Changes 5 [jc401], 93 [jc532], 135 [jc560].

42 Securities which are approved charitable investments [j7019A]

- (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 (part); ICTA Sch.20 para.5, 6A; FA 1996 Sch.38 para.6(2); OIC(T)R 1997 reg.16; Annex 1, Change 93 [jc532].

- (2) Subsection (1) is subject to section 43.

Origin: Drafting.

- (3) In this section and in section 43 –
- “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” is to be read in accordance with section 468A(2) to (4) of ICTA,
- “securities” includes shares and debentures, and
- “shares” includes stocks.

Origin: TIA 1961 Sch.1 (part); OIC(T)R 1997 reg.14; Annex 1, Change93 [jc532].

43 Conditions to be met for some securities [j7019B]

- (1) Section 42 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 (part); Annex 1, Change 93 [jc532].

- (2) In the case of an investment in securities issued by a company which is incorporated, section 42 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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

- (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 preceding 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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

- (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 (part); Annex 1, Change 93 [jc532].

44 Approved charitable loans [j7020]

- (1) A loan is an approved charitable loan for the purposes of section 26 (meaning of “non-charitable expenditure”) if it meets conditions A and B.

Origin: ICTA Sch.20 para.10(1) (part); FA 1996 Sch.37 paras.2(4), 5.

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

Origin: ICTA Sch.20 para.10(1) (part); FA 1996 Sch.37 para.2(4).

- (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 trust in the course of carrying out the purposes of the charitable trust,
 - (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 trust and not for the avoidance of tax (whether by the charitable trust or by some other person).

Origin: ICTA Sch.20 para.10(1) (part); FA 1996 Sch.37 paras.2(4), 5; Annex 1, Change 5 [jc401].

- (4) In this section “bank” has the meaning given by section [883 of the Draft Bill [j4924]].

Origin: ICTA Sch.20 para.10(2); FA 1996 Sch.37 para.2(4).

Carry back of excess non-charitable expenditure

45 Excess expenditure treated as non-charitable expenditure of earlier years [j7023]

- (1) This section applies if a charitable trust’s non-charitable expenditure for a tax year exceeds its available income and gains for the tax year.

Origin: ICTA s.506(5) (part); FA 2006 [s.55].

- (2) The excess is the charitable trust’s “excess expenditure” for the tax year.

Origin: ICTA s.506(5) (part); FA 2006 [s.55]; drafting.

- (3) The charitable trust’s excess expenditure for the tax year is treated for the purposes of this Part as non-charitable expenditure for earlier tax years so far as it can be attributed to earlier tax years under section 46.

Origin: ICTA s.505(5) (part); FA 2006 [s.55].

- (4) For the purposes of this Part a charitable trust’s “available income and gains” for a tax year is the sum of –

- (a) the charitable trust’s total income for the tax year (ignoring any restrictions on the exemptions under this Part which result from sections 22(2) and 24),
- (b) any chargeable gains accruing to the charitable trust in the tax year (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 trust’s attributable income and gains for the tax year (see section 23), and
- (d) any non-taxable sums received by the charitable trust in the tax year.

Origin: ICTA s.505(3); FA 2006 [s.55].

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

Origin: ICTA s.505(3); FA 2006 [s.55].

46 Rules for attributing excess expenditure to earlier years [j7027]

- (1) The rules in this section apply for attributing a charitable trust’s excess expenditure for a tax year to earlier tax years under section 45.

Origin: Drafting.

- (2) The excess expenditure for a tax year may be attributed to an earlier tax year if –

- (a) the earlier tax year ends not more than 6 years before the end of the tax year in question, and

- (b) the charitable trust's available income and gains for the earlier tax year exceed its non-charitable expenditure for the earlier tax year.

Origin: ICTA s.505(5) (part), (6) (part); FA 2006 [s.55].

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

Origin: ICTA s.505(5) (part), (6) (part); FA 2006 [s.55].

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

Origin: ICTA s.505(5) (part); FA 2006 [s.55]; drafting.

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

Origin: ICTA s.505(5) (part), (6) (part); FA 2006 [s.55]; drafting.

47 Adjustments in consequence of section 45 [j7024]

Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of section 45.

Origin: ICTA s.505(5) (part); FA 2006 [s.55].

SCHEDULES

SCHEDULE 1

Section [jref]

MINOR AND CONSEQUENTIAL AMENDMENTS [js2CHTRUSTS]R]

PART 1

INCOME AND CORPORATION TAXES ACT 1988

- 1 [AMENDMENTS TO REPLACE PARAS.90 AND 91 OF SCH.1 OF DRAFT BILL]
- 2 (1) Amend section 505 (charities: general) as follows.
 - (2) In subsection (1) –
 - (a) in paragraph (a) omit “, or under Parts 2 and 3 of ITTOIA 2005,”,
 - (b) in paragraph (c) –
 - (i) in sub-paragraph (ii) omit the words from “or under Chapter 2, 7, 8 or 10” to the end of the sub-paragraph,
 - (ii) omit sub-paragraphs (iaa) and (iii), and
 - (iii) for “charity” substitute “charitable company”,
 - (c) in paragraph (d) omit “or Chapter 2 of Part 4 of ITTOIA 2005 (interest)”,
 - (d) in paragraph (e) –
 - (i) omit “or Part 2 of ITTOIA 2005 (trading income)”, and
 - (ii) for “charity”, in each place where it occurs, substitute “charitable company”, and
 - (e) in paragraph (f) –
 - (i) omit “or Part 2 or 5 of ITTOIA 2005 (trading and miscellaneous income)”,
 - (ii) for “charity” substitute “charitable company”, and
 - (iii) in sub-paragraph (ii) for “charity’s” substitute “charitable company’s”.
 - (3) In subsection (1AA) for “(1)(c)(iaa) and (iib)” substitute “(1)(c)(iib)”.
 - (4) In subsection (1B) for “charity” substitute “charitable company”.
 - (5) In subsection (2) –
 - (a) in paragraph (a), for “a charity” substitute “a charitable company”,
 - (b) in paragraph (c) for “tax” substitute “corporation tax”, and
 - (c) omit the words from “chargeable to income tax” to “and shall be”.
 - (6) In subsection (4) –
 - (a) for “charity” substitute “charitable company”, and

- (b) for “a chargeable” substitute “an accounting”.
 - (7) In subsection (5) –
 - (a) for “a chargeable” substitute “an accounting”, and
 - (b) for “charity’s” substitute “charitable company’s”.
 - (8) In subsection (6) for “a chargeable” in both places where it occurs substitute “an accounting”.
 - (9) In subsection (7) –
 - (a) for “charity’s” substitute “charitable company’s”, and
 - (b) for “charity” in each place where it occurs substitute “charitable company”.
 - (10) In the sidenote for “Charities” substitute “Charitable companies”.
- 3 (1) Amend section 506 (charitable and non-charitable expenditure) as follows.
- (2) In subsection (1) in the appropriate place insert –
 ““charitable company” means any body of persons established for charitable purposes only;”.
- (3) In subsection (2) –
 - (a) for “chargeable”, in both places where it occurs, substitute “accounting”, and
 - (b) for “charity” substitute “charitable company”.
- (4) In subsection (3) for “charity” substitute “charitable company”.
- (5) In subsection (4) –
 - (a) for “chargeable” substitute “accounting”, and
 - (b) for “charity”, in both places where it occurs, substitute “charitable company”.
- (6) In subsection (5) –
 - (a) for “chargeable” substitute “accounting”, and
 - (b) for “charity” substitute “charitable company”.
- 4 [NEW AMENDMENTS TO ADD TO SCH.1 OF DRAFT BILL]
- 5 (1) Amend section 506A (transactions with substantial donors) as follows.
- (2) For “charity” in each place where it occurs substitute “charitable company”.
- (3) In subsection (2) –
 - (a) for “a chargeable” in both places where it occurs substitute “an accounting”,
 - (b) for “the chargeable” in both places where it occurs substitute “the accounting”, and
 - (c) for “five chargeable” substitute “five accounting”.
- 6 (1) Amend section 506B (section 506A: exceptions) as follows.
- (2) In subsections (1) to (4), (7) and (9), for “charity” in each place where it occurs substitute “charitable company”.

- (3) In subsection (5) for “to which section 587B applies” substitute “in respect of which relief is available under section 587B or section [430 of the Draft Bill {j7200}] (gifts of shares, securities and real property to charities etc)”.
 - (4) In subsection (7) for the words after “so far as” substitute “they relate to a donation by the donor, and –
 - (a) if the donation is made by a company, the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 339 because of subsection (3B)(b) of that section (restrictions on associated benefits), or
 - (b) if the donation is made by an individual, the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section [415 of the Draft Bill {j3301}] because of subsection (7)(b) of that section (restrictions on associated benefits).”
 - (5) In subsection (8) for the words from “the charity” to the end substitute “a charitable company which owns it (or any part of it)”.
- 7 (1) Amend section 506C (sections 506A and 506B: supplemental) as follows.
- (2) In subsection (1) –
 - (a) omit paragraph (d),
 - (b) omit the “or” at the end of paragraph (h),
 - (c) insert “or” at the end of paragraph (i), and
 - (d) after that paragraph insert –
 - “(j) Chapters 2 and 3 of Part 8 of ITA 2007 (gift aid and gifts of shares, securities and real property).”
 - (3) In subsections (2) and (4) for “charity” substitute “charitable company”.
 - (4) In subsection (3) for “a chargeable” substitute “an accounting”.
 - (5) In subsection (5) for the words from the beginning to “single charity” substitute “A charitable company and any other charities with which it is connected are to be treated as a single charitable company”.

PART 2

OTHER ENACTMENTS

Taxes Management Act 1970 (c. 9)

- 8 [NEW AMENDMENTS TO ADD TO SCH.1 OF DRAFT BILL]
- 9 The Taxes Management Act 1970 is amended as follows.
- 10 (1) Amend section 46C as follows.
- (2) In subsection (1)(b) omit “of the principal Act”.
 - (3) In subsection (3) –
 - (a) omit “of the principal Act”,
 - (b) in paragraph (b) after “460” insert “of the principal Act”,
 - (c) in paragraph (c) after “467” insert “of the principal Act”,

- (d) in paragraph (d) for “sections 527 and 536 (reliefs in respect of royalties)” substitute “527 of the principal Act (spreading of patent royalty receipts)”, and
- (e) in paragraph (e) after “Part XVIII” insert “of the principal Act”, and
- (f) after that paragraph insert –
 - “(f) Part 10 of ITA 2007 (charitable trusts: claims for exemption),
 - (g) sections [459 {§8641}] and 803 {§0121} of the Draft Bill (reliefs in respect of royalties).”

Taxation of Chargeable Gains Act 1992 (c. 12)

11 AMENDMENTS TO REPLACE PARAS.305 AND 306 OF SCH.1 OF DRAFT BILL.

12 (1) Amend section 256 (charities) as follows.

(2) In subsection (1) for the words “subsection (2) below” substitute “the following provisions of this section”.

(3) After subsection (2) insert –

“(3) Subsection (4) below applies if a charitable trust has a non-exempt amount under section 23 of ITA 2007 for a year of assessment.

(4) Gains accruing to the charitable trust in the year of assessment are treated as being, and always having been, chargeable gains so far as they are attributed under section 256A to the non-exempt amount.

(5) For restrictions on exemptions under Part 10 of ITA 2007 (special rules about charitable trusts etc) see section 22 of that Act.”

[Origin: ICTA s.505\(4\) \(part\); FA 2006 \[s.55\].](#)

13 After section 256 insert –

“256A Attributing gains to the non-exempt amount

(1) This section applies if a charitable trust has a non-exempt amount under section 23 of ITA 2007 for a year of assessment.

(2) Attributable gains of the charitable trust for the year of assessment may be attributed to the non-exempt amount.

(3) Gains may be attributed to the non-exempt amount only so far as the non-exempt amount has not been used up.

(4) 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 24 of ITA 2007.

(5) 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 24 of ITA 2007, or

- (c) a combination of attributable gains being attributed to it under this section and attributable income being attributed to the rest of it under section 24 of ITA 2007.
- (6) See section 256B for the way in which gains are to be attributed to the non-exempt amount under this section.
- (7) In this section and section 256B a charitable trust’s “attributable income”, and “attributable gains”, for a tax year have the same meaning as in Part 10 of ITA 2007 (see section 23 of that Act).

256B How gains are attributed to the non-exempt amount

- (1) This section is about the ways in which attributable gains can be attributed to a non-exempt amount under section 256A.
- (2) The trustees of the charitable trust 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 the trustees of a charitable trust to make a specification under this section, and
 - (b) the trustees have 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.”

Origin: ICTA s.505(4) (part), (6) (part); FA 2006 [s.55]; Annex 1, Change 5 [jc401].

SCHEDULE 2

Section [jref]

TRANSITIONALS AND SAVINGS [js1CHTRUSTS]R]

PART 1

SPECIAL RULES ABOUT CHARITABLE TRUSTS

1 NEW PARAGRAPHS TO ADD TO SCH.2 OF DRAFT BILL

Transactions with substantial donors

- 2 Section 26(1)(g) and (h) and sections 33 to 41 (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 33 a person may satisfy 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 46 to 48, an amount of expenditure for the tax year 2007-2008 or any subsequent tax year (“the carry back tax year”) is treated as non-charitable expenditure for the tax year 2005-2006 or any earlier tax year.
- (2) The amount of relief or exemption to be disallowed in respect of the tax year 2005-2006 or any earlier tax year is not to exceed the amount which would have been disallowed in respect of that tax year if—
- (a) sections 46 to 48 had not applied in relation to the carry back tax year, and
 - (b) the amount of expenditure for the carry back tax year to be treated as non-charitable expenditure for an earlier tax year had instead been calculated in accordance with the provisions mentioned in subparagraph (3).
- (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 tax year 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)].