



# Finance Act 2006

## 2006 CHAPTER 25

### PART 3

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

VALID FROM 19/07/2006

### CHAPTER 4

#### CHARITIES

#### **54 Transactions with substantial donors**

(1) After section 506 of ICTA insert—

#### **“506A Transactions with substantial donors**

(1) This section applies to the following transactions—

- (a) the sale or letting of property by a charity to a substantial donor,
- (b) the sale or letting of property to a charity by a substantial donor,
- (c) the provision of services by a charity to a substantial donor,
- (d) the provision of services to a charity by a substantial donor,
- (e) an exchange of property between a charity and a substantial donor,
- (f) the provision of financial assistance by a charity to a substantial donor,
- (g) the provision of financial assistance to a charity by a substantial donor, and
- (h) investment by a charity in the business of a substantial donor.

(2) For the purposes of this section a person is a substantial donor to a charity in respect of a chargeable period if—

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- (a) the charity receives relievably gifts of at least £25,000 from him in a period of 12 months in which the chargeable period wholly or partly falls, or
- (b) the charity receives relievably gifts of at least £100,000 from him in a period of six years in which the chargeable period wholly or partly falls;

and if a person is a substantial donor to a charity in respect of a chargeable period by virtue of paragraph (a) or (b), he is a substantial donor to the charity in respect of the following five chargeable periods.

- (3) A payment made by a charity to a substantial donor in the course of or for the purposes of a transaction to which this section applies shall be treated for the purposes of section 505 as non-charitable expenditure.
- (4) If the terms of a transaction to which this section applies are less beneficial to the charity than terms which might be expected in a transaction at arm's length, the charity shall be treated for the purposes of section 505 as incurring non-charitable expenditure equal to that amount which the Commissioners for Her Majesty's Revenue and Customs determine as the cost to the charity of the difference in terms.
- (5) A payment by a charity of remuneration to a substantial donor shall be treated for the purposes of section 505 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.

#### **506B Section 506A: exceptions**

- (1) Section 506A shall not apply to a transaction within section 506A(1)(b) or (d) if the Commissioners for Her Majesty's Revenue and Customs determine 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 charity 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.
- (2) Section 506A shall not apply to the provision of services to a substantial donor if the Commissioners determine that the services are provided—
  - (a) in the course of the actual carrying out of a primary purpose of the charity, and
  - (b) on terms which are no more beneficial to the substantial donor than those on which services are provided to others.
- (3) Section 506A shall not apply to the provision of financial assistance to a charity by a substantial donor if the Commissioners determine that the assistance—

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- (a) is on terms which are no less beneficial to the charity 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.
- (4) Section 506A shall not apply to investment by a charity in the business of a substantial donor where the investment takes the form of the purchase of shares or securities listed on a recognised stock exchange.
- (5) A disposal at an undervalue to which section 587B applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).
- (6) A disposal at an undervalue to which section 257(2) of the 1992 Act (gifts of chargeable assets) applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).
- (7) In the application of section 506A payments by a charity, or benefits arising to a substantial donor from a transaction, shall be disregarded in so far as they—
- (a) relate to a donation by the donor, and
  - (b) do not exceed the relevant limit in relation to the donation for the purposes of section 339 or section 25 of the Finance Act 1990.
- (8) A company which is wholly owned by a charity within the meaning of section 339(7AB) shall not be treated as a substantial donor in relation to the charity which owns it (or any of the charities which own it).
- (9) A registered social landlord or housing association shall not be treated as a substantial donor in relation to a charity with which it is connected; and for that purpose—
- (a) “registered social landlord or housing association” means a body entered on a register maintained under—
    - (i) section 1 of the Housing Act 1996,
    - (ii) section 57 of the Housing (Scotland) Act 2001, or
    - (iii) Article 14 of the Housing (Northern Ireland) Order 1992, and
  - (b) a body and a charity are connected if (and only if)—
    - (i) the one is wholly owned, or subject to control, by the other, or
    - (ii) both are wholly owned, or subject to control, by the same person.

#### **506C Sections 506A and 506B: supplemental**

- (1) A gift is “relievable” for the purposes of section 506A(2) if relief is available in respect of it under—
- (a) section 83A,
  - (b) section 339,
  - (c) sections 587B and 587C,
  - (d) section 25 of the Finance Act 1990 (individual gift aid),
  - (e) section 257 of the 1992 Act (gifts of chargeable assets),

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- (f) section 63 of the Capital Allowances Act (gifts of plant and machinery),
  - (g) sections 713 to 715 of ITEPA 2003 (payroll giving),
  - (h) section 108 of ITTOIA 2005 (gifts of trading stock), or
  - (i) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts).
- (2) A charity is treated as incurring expenditure in accordance with section 506A(4) at such time (or times) as the Commissioners determine.
- (3) Section 506A applies to a transaction entered into in a chargeable period with a person who is a substantial donor in respect of that period, even if it was not until after the transaction was entered into that he first satisfied the definition of “substantial donor” in respect of that period.
- (4) Either or both of subsections (3) and (4) of section 506A may be applied to a single transaction; but any amount of non-charitable expenditure which a charity is treated as incurring under section 506A(3) in respect of a transaction shall be deducted from any amount which it would otherwise be treated as incurring under section 506A(4) in respect of the transaction.
- (5) Two or more connected charities shall be treated as a single charity for the purposes of section 506A and 506B and this section; and for this purpose “connected” means connected in a matter relating to the structure, administration or control of a charity.
- (6) Where remuneration is paid otherwise than in money, section 506A(5) shall apply as to a payment in money of the amount that would, under Part 3 of ITEPA 2003, be the cash equivalent of the remuneration as a benefit.
- (7) In sections 506A and 506B and this section—
- (a) a reference to a substantial donor or other person includes a reference to a person connected with him within the meaning of section 839,
  - (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 the Finance Act 2005, and
  - (c) a reference to a gift of a specified amount includes a reference to a non-monetary gift of that value.
- (8) On an appeal against an assessment the Special Commissioners may review a decision of the Commissioners in connection with section 506A.
- (9) The Treasury may by regulations vary a sum, or a period of time, specified in section 506A(2).”
- (2) This section shall have effect in relation to transactions occurring on or after 22nd March 2006; and for that purpose a person may satisfy the definition of “substantial donor” by reference to gifts made at any time.
- (3) But this section shall not have effect in relation to a transaction entered into in pursuance of a contract made before 22nd March 2006 (otherwise than in pursuance of a variation on or after that date).

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## 55 Non-charitable expenditure

(1) For section 505(3) to (8) of ICTA (charities: exemption: non-qualifying expenditure) substitute—

“(3) In subsections (4) to (7)—

- (a) “charitable expenditure” has the meaning given by section 506,
- (b) “relief” means relief or exemption under—
  - (i) subsection (1) above,
  - (ii) section 56(3)(c) above,
  - (iii) section 761(6) below,
  - (iv) section 256 of the 1992 Act (charities), or
  - (v) section 46 of the Finance Act 2000 (small trades),
- (c) “relievable income and gains” means income and gains which would be eligible for relief or exemption under any of those provisions (disregarding subsections (4) to (6)), and
- (d) “total income and gains” means the aggregate of—
  - (i) relievable income and gains,
  - (ii) income and gains, other than relievable income and gains, chargeable to tax, and
  - (iii) donations, legacies and other similar receipts that are not chargeable to tax.

(4) If a charity incurs (or is treated as incurring) non-charitable expenditure in a chargeable period, relief shall be disallowed in respect of such amount of relievable income and gains as equals the amount of the non-charitable expenditure.

(5) If in a chargeable period a charity's non-charitable expenditure exceeds its total income and gains the excess shall be treated as non-charitable expenditure of the previous period for the purposes of subsection (4); and any necessary adjustments shall be made, whether by making assessments or otherwise.

(6) Subsection (5) may apply to a chargeable period wholly or partly as a result of the application of that subsection in respect of a later period; but no excess of non-charitable expenditure shall be treated as non-charitable expenditure of a chargeable period which ended more than six years before the end of the period in which the expenditure was actually incurred.

(7) Where an amount of a charity's relievable income and gains is disallowed for relief by subsection (4) (whether or not as a result of the application of subsection (5))—

- (a) the charity may by notice to the Board specify which items of income or gains are to be disallowed, but
- (b) if the Board requires the charity to give a notice under paragraph (a) and the charity fails to comply within the period of 30 days beginning with the date on which the requirement is imposed, the Board shall determine which items to disallow.”

(2) In section 506 of ICTA (section 505: supplemental)—

- (a) in subsection (1) for the definitions of “qualifying expenditure” and “non-qualifying expenditure” substitute—

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- ““charitable expenditure” means (subject to subsections (3) to (5) below) expenditure which is exclusively for charitable purposes.”,
- (b) in subsection (2) omit “and subsection (1) above,”
  - (c) in subsection (3) for “qualifying expenditure” substitute “ charitable expenditure ”,
  - (d) in subsection (4) for “non-qualifying expenditure” substitute “ non-charitable expenditure ”,
  - (e) in subsection (5) for “non-qualifying expenditure” substitute “ non-charitable expenditure ”,
  - (f) omit subsection (6), and
  - (g) for the heading, substitute “ Charitable and non-charitable expenditure ”.
- (3) Part III of Schedule 20 to ICTA (apportionment of non-qualifying expenditure to earlier chargeable periods) shall cease to have effect.
- (4) In section 256(1) of TCGA 1992 (charities) for “section 505(3)” substitute “ section 505(4) ”.
- (5) This section shall have effect in relation to chargeable periods beginning on or after 22nd March 2006; and—
- (a) section 505(5) and (6) of ICTA as substituted by subsection (1) above may cause an amount to be treated as non-charitable expenditure of a chargeable period beginning before that date, but
  - (b) the amount of relief or exemption to be disallowed in respect of a chargeable period beginning before that date shall not exceed the amount which would have been disallowed in respect of that period if sections 505 and 506 of ICTA (and Part III of Schedule 20) had not been amended by this section.

## 56 Trade profits

- (1) In section 505 of ICTA (charities: exemptions) after subsection (1A) insert—
- “(1B) For the purpose of subsection (1)(e)—
- (a) where a trade is exercised partly in the course of the actual carrying out of a primary purpose of the charity and partly otherwise, each part shall be treated as a separate trade (for which purpose reasonable apportionment of expenses and receipts shall be made), and
  - (b) where the work in connection with the trade is carried out partly but not mainly by beneficiaries, the part in connection with which work is carried on by beneficiaries and the other part shall be treated as separate trades (for which purpose reasonable apportionment of expenses and receipts shall be made).”
- (2) Subsection (1) shall have effect in respect of chargeable periods beginning on or after 22nd March 2006.

## 57 Gift aid relief for companies wholly owned by one or more charities

- (1) Section 339 of ICTA (charges on income: donations to charity) is amended as follows.

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- (2) In subsection (1)(a) (distributions, other than those within section 209(4), not qualifying donations) after “distribution” insert “ (but see subsections (1A) and (1B) below) ”.
- (3) After subsection (1) insert—
  - “(1A) In determining whether a payment is to be regarded as a distribution for the purposes of subsection (1)(a) above, the words in section 209(5) from “; and any amount” to the end are to be disregarded.
  - (1B) A payment (other than a dividend) made by a company which is wholly owned by a charity is not to be regarded as a distribution for the purposes of subsection (1)(a) above.”.
- (4) The amendments made by this section have effect in relation to payments made on or after 1st April 2006.

## **58 Extension of restrictions on gift aid payments by close companies**

- (1) Section 339 of ICTA (charges on income: donations to charity) is amended as follows.
- (2) In subsection (3B) (payment made by a close company not qualifying donation if subject to repayment etc) for “close company” substitute “ company ”.
- (3) In subsection (3E) (payment made by a close company not qualifying donation if it involves acquisition of property by charity, otherwise than by way of gift, from the company or a connected person) for “close company” substitute “ company ”.
- (4) The amendments made by this section have effect in relation to payments made on or after 1st April 2006.

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