

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Special rules about charitable trusts etc

Overview

1550. This Part contains rules specific to charitable trusts. It is based mainly on sections 505 to 506C of, and Schedule 20 to, ICTA, section 25 of FA 1990 and section 46 of FA 2000.

Section 518: Overview of Part

1551. This section sets out the scope of the Part and provides signposts to rules about the tax treatment of gifts made to charitable trusts, exemptions from charges to tax under ICTA or ITTOIA, and the restrictions on when exemptions can apply. It is new.
1552. The exemptions for various types of income received by charitable trusts are set out following (so far as relevant) the order in which the types of income concerned are set out in ITTOIA. This order is also followed in Part 4 of this Act (loss relief).
1553. The exemptions are effected by saying that the “income is not taken into account in calculating total income”. The expression “no liability to income tax arises” (used in Part 6 of ITTOIA, where it is supported by section 783(1) of that Act) would go too far in relation to the exemptions provided in this Part as it may be necessary to have regard to the income for certain income tax purposes.

Section 519: Meaning of “charitable trust”

1554. This section defines “charitable trust” for the purposes of this Part. It is based on section 506(1) of ICTA.
1555. The effect of splitting the source legislation between income tax and corporation tax is that the income tax rules apply only to charities constituted in the form of trusts. Schedule 1 to this Act accordingly makes appropriate consequential amendments to the rules (eg in ICTA) relating to charitable companies.
1556. The definition of charitable trust does not include anything coming within the definition of “company” in section 832(1) of ICTA, so charities constituted as unincorporated associations and charities incorporated by Royal Charter are excluded from the definition of “charitable trust”.

Section 520: Gifts entitling donor to gift aid relief: income tax treated as paid

1557. This section specifies that charitable trusts receiving gift aid donations from individuals are treated as receiving a grossed up amount, and that the tax treated as deducted from the gift is treated as paid by the charitable trust. It is based on section 25(10) and (12) of FA 1990.

1558. This paves the way for section 521. In particular, it is what enables charitable trusts to recover income tax treated as deducted by individual donors in cases where the gift is chargeable but exempt (which is normally the case). It also means that, in a case where the gift is chargeable and not exempt, that this income tax is available to be set against any liability.

Section 521: Gifts entitling donor to gift aid relief: income tax liability and exemption

1559. This section sets out the charge to tax that can arise on gift aid payments received by a charitable trust. It is based on section 505(1) of ICTA and section 25(10) and (12) of FA 1990.
1560. This section imposes a freestanding charge to income tax on gift aid payments, unlike the source legislation which operates by treating the gifts as annual payments. It also sets out the exemption which will normally apply if the charitable trust uses the gifts for charitable purposes.

Section 522: Gifts of money from companies: income tax liability and exemption

1561. This section sets out the charge to tax that can arise on gifts made by companies to a charitable trust. It is based on section 339(4) of ICTA.
1562. This section imposes a freestanding charge to income tax on gifts, unlike the source legislation which operates by treating the gifts as annual payments. It also sets out the exemption which will normally apply if the charitable trust uses the gifts for charitable purposes.
1563. Companies have no obligation to deduct income tax from qualifying donations (as defined in section 339 of ICTA), which are treated as charges on income. This section, like the source legislation, is silent about the consequences of the payment of a gift which is not a qualifying donation by a company to a charitable trust.

Section 523: Payments from other charities: income tax liability and exemption

1564. This section imposes a charge to tax on certain payments made by a charity to a charitable trust, to prevent charities avoiding the operation of the restrictions on exemptions by routing non-charitable expenditure through other charities. It is based on section 505(1) to (2) of ICTA.
1565. This section imposes a freestanding charge to income tax on payments, unlike the source legislation which operates by treating the payments as annual payments. It also sets out the exemption which will normally apply if the charitable trust uses the payments for charitable purposes.
1566. *Subsection (6)* makes it clear that section 494, which is based on section 687 of ICTA and deals with the grossing up of discretionary payments from trusts, takes precedence over this section where applicable.

Section 524: Exemption for profits etc of charitable trades

1567. This section sets out the exemption for trading profits of charitable trusts. It is based on section 505(1) of ICTA.
1568. The exemption applies only if the trade is a charitable trade. This is defined in section 525.
1569. This section makes it clear that adjustment income (arising from a charitable trade) is exempt, in line with practice. Adjustment income is defined by reference to ITTOIA. See *Change 92* in Annex 1.

1570. This section also makes it clear that post-cessation receipts (arising from what was a charitable trade) are exempt, in line with practice. Post-cessation receipt is defined by reference to ITTOIA. See *Change 92* in Annex 1.
1571. *Change 92* also affects sections 525, 526, 531 and 539.
1572. Exemptions for small-scale trades are dealt with separately in section 526.

Section 525: Meaning of “charitable trade”

1573. This section defines the meaning of “charitable trade” for the purposes of the previous section. It is based on section 505(1) and (1B) of ICTA.
1574. The main rule, in *subsection (1)*, is that the trade must be exercised in the course of carrying out a primary purpose trade of the charitable trust, ie that it must form part of the primary purposes of the trust, as set out in the trust deed or other governing document. Or that the work in connection with the trade must be mainly carried on by beneficiaries of the charitable trust.
1575. The source legislation in section 505(1)(e) of ICTA refers to the trade being carried on “in the United Kingdom or elsewhere”, and section 505(1)(e)(i) refers to it being exercised in the “actual” carrying out of a primary purpose. The words in inverted commas have been omitted as they add nothing.
1576. *Subsection (4)*, about making apportionments where different parts of a trade are treated as separate trades, makes specific mention of adjustment income and post-cessation receipts. See *Change 92* in Annex 1 and the commentary on section 524.
1577. Any apportionments must be “just” as well as “reasonable”, as in the source legislation. See *Change 93* in Annex 1.

Section 526: Exemption for profits etc of small-scale trades

1578. This section provides an exemption for trading income, adjustment income and post-cessation receipts in circumstances where the amount of income which can be exempted under this section and the next is small, and provided the income is applied to the purposes of the charitable trust. It is based on section 46 of FA 2000.
1579. The exemption provided by this section applies only if the income is not otherwise exempt. So profits from primary purpose trading (including related adjustment income and post-cessation receipts) are exempt under section 524, whereas profits from a non-primary purpose trading activity (including related adjustment income and post-cessation receipts) may be exempt under this section.
1580. The section provides a statutory exemption for adjustment income. See *Change 92* in Annex 1 and the commentary on section 524.
1581. The source legislation restricts the exemption to income from trades carried on wholly or partly in the United Kingdom. This restriction has been dropped. See *Change 94* in Annex 1.
1582. The condition about the level of the income is in section 528.

Section 527: Exemption from charges under provisions to which section 1016 applies

1583. This section provides an exemption for certain miscellaneous income and gains arising to a charitable trust and applied to the purposes of the charitable trust. It is based on section 46 of FA 2000.

1584. The types of miscellaneous income and gains which can come within the terms of this exemption are defined by reference to section 1016. They are broadly those items which were Schedule D Case VI income before the enactment of ITTOIA.
1585. *Subsection (2)* specifies particular types of income and gains which cannot benefit from the exemption.
1586. The exemption provided by this section only applies if the income or gains are not otherwise exempt. So, for example, post-cessation primary purpose trading receipts and interest are exempt under sections 524 and 532 respectively and post-cessation trading receipts from a non-primary purpose trading activity are exempt under section 526. But profits from the disposal of know-how or the sale of patent rights may be exempt under this section.
1587. The condition about the level of the income and gains is in section 528.

Section 528: Condition as to trading and miscellaneous incoming resources

1588. This section sets out the condition about the level of trading and miscellaneous incoming resources that has to be met if the exemptions in sections 526 or 527 are to be available. It is based on section 46 of FA 2000.
1589. The condition operates by reference to the incoming resources associated with the trading activity and miscellaneous transactions whose profits are not exempt under sections 524, 529, 530, 531 or 536. The expression “incoming resources” is used instead of “gross income” because this accounting term is a more direct and accessible way of capturing the meaning of the income labelled “gross income” in the source legislation. There are also related points of clarification. See *Change 94* in Annex 1.
1590. Trading incoming resources and miscellaneous incoming resources are defined in *subsections (2)* and *(4)* respectively. Incoming resources relating to trading activities are determined for a basis period for a tax year, since the profits (or losses) of the trade are taxable by reference to basis periods. Incoming resources relating to miscellaneous transactions, and to other non-trading items or activities, are determined by reference to tax years.
1591. The requisite limit is given in *subsection (6)*.
1592. Where basis periods or tax years do not correspond to periods of account, incoming resources are to be apportioned on a time basis, or on any other basis that is reasonable in the circumstances. For the purpose of the comparison required in *subsection (6)(a)*, the total incoming resources for a tax year comprise the incoming resources from trading activities for the relevant basis period for the tax year and the incoming resources from all other sources for the tax year.

Section 529: Exemption for profits from fund-raising events

1593. This section gives statutory effect to ESC C4 as it applies to charitable trusts and provided the profits are applied to the purposes of the charitable trust. It is new.
1594. The ESC deals with fund-raising events arranged by voluntary organisations or charities and applies if the profits are transferred to charities or otherwise applied for charitable purposes. In the context of charitable trusts, any such transfer or application would have to fall within the scope of the overall purposes of the trust.
1595. The fund-raising event has to fall within the exemption from VAT under Group 12 of Schedule 9 to the Value Added Tax Act 1994. That Schedule provides an exemption from VAT for the supply by a charity of goods and services in connection with an event that is organised primarily to raise money for itself or other charities. The Schedule defines “event” and places certain limits on the number of events that a charity can hold in the same location in any given year.

1596. See *Change 95* in Annex 1. This change also affects section 539.

Section 530: Exemption for profits from lotteries

1597. This section provides an exemption for lottery income provided the income is applied to the purposes of the charitable trust. It is based on section 505(1) of ICTA.

Section 531: Exemption for property income etc

1598. This section sets out the exemption from income tax for property income and certain trading income arising from land, provided the income is applied to charitable purposes. It is based on section 505(1) of ICTA.

1599. The exemption applies where income is chargeable to tax under Part 2 of ITTOIA as a result of section 261 of that Act, and provided the income is applied to charitable purposes.

1600. Income chargeable to tax under Part 2 of ITTOIA means profits of a trade, adjustment income and post-cessation receipts. This means that the section includes an exemption for adjustment income, and for post-cessation receipts, in line with practice. See *Change 92* in Annex 1 and the commentary on section 524.

1601. There is no requirement for the trade to be exercised in the course of carrying on a primary purpose of the charitable trust. But *subsection (1)* specifies that the income must be chargeable under Part 2 of ITTOIA, rather than Part 3, as a result of section 261 of that Act.

1602. This makes the effect of the source legislation in section 505(1)(a) of ICTA, as amended by ITTOIA, explicit. There is no other income arising from land and chargeable to tax under Part 2 of ITTOIA which is exempt under that provision.

1603. The exemption also refers to Part 3 of ITTOIA, rather than referring to profits or gains arising in respect of rents or other receipts from an estate, interest or right in or over land, to reflect the fact that such income is charged by ITTOIA as the profits of a property business.

1604. The reference to Part 3 of ITTOIA means that the section provides an exemption from income tax for adjustment income of UK property businesses, provided the income is applied to charitable purposes. See *Change 92* in Annex 1. See also the commentary on section 524.

1605. The reference to Part 3 of ITTOIA also makes it explicit that the section provides an exemption from income tax for post-cessation receipts of UK property businesses, provided the income is applied to charitable purposes.

1606. *Subsection (2)(b)* requires that the estate, interest or right in or over land is vested in a person in trust for a charitable trust or for charitable purposes. A charitable trust has no legal personality and cannot hold land itself, so the land belonging to a charitable trust must be vested in the names of the trustees, or of another person (eg a nominee for the trustees). Hence the reference to the estate, interest or right being vested in any person.

1607. The exemption applies where the income derives from land vested in trust for a charitable trust or for charitable purposes. But if some of the land is vested in trust for charitable purposes and some vested or held for other purposes (for example, as an investment to generate income for non-charitable purposes) it is necessary to allocate the profits of the single property business between the two parts. This reflects the approach of the exemption in the source legislation that looks to particular interests in land, rather than to one overall property business.

Section 532: Exemption for savings and investment income

1608. This section sets out the various categories of savings and investment income that qualify for exemption from income tax, provided the income is applied to charitable purposes. It is based on section 505(1) of ICTA.
1609. The precise terms of the section draw significantly on the consequential amendments made to section 505 of ICTA by ITTOIA.
1610. In *subsection (1)*, the reference to Act includes references to Acts of the Scottish Parliament and Northern Ireland legislation. See *Change 152* in Annex 1, section 1018 and the commentary on that section.

Section 533: Exemption for public revenue dividends

1611. This section provides an exemption for public revenue dividends used for the repair of certain places of worship. It is based on section 505(1) and (1A) of ICTA.

Section 534: Exemption for transactions in deposits

1612. This section provides an exemption for profits arising from transactions in certificates of deposit, and for transactions in deposit rights where there is no certificate but the person entitled to the right can call for the issue of a certificate. It is based on sections 56(3) and 56A(1), (3) and (4) of ICTA.
1613. [The Uncertificated Securities \(Amendment\) \(Eligible Debt Securities\) Regulations 2003 \(SI 2003/1633\)](#) provides for “eligible debt securities”, which are securities held in a dematerialised system. A paper certificate cannot be issued in respect of these securities. The statutory instrument assimilates these, in the Tax Acts, to certificates of deposit. This section makes explicit the treatment of these eligible debt securities.
1614. *Subsection (2)* specifies that the exemption applies to the extent that profits or gains are applied to charitable purposes.

Section 535: Exemption for offshore income gains

1615. This section provides an exemption for a gain on the disposal of a material interest in a non-qualifying offshore fund, provided the gain is applied to charitable purposes. It is based on section 761(6) of ICTA.
1616. Details of offshore funds can be found in Chapter 5 of Part 17 of ICTA. Section 761(6B) of ICTA is inserted by Schedule 1 to this Act.

Section 536: Exemption for certain miscellaneous income

1617. This section provides an exemption for certain categories of miscellaneous income from income tax, provided the income is applied to charitable purposes. It is based on section 505(1) and (1AA) of ICTA.
1618. The precise terms of the section draw significantly on the consequential amendments made by ITTOIA.
1619. In *subsection (1)(b)*, the reference to Act includes references to Acts of the Scottish Parliament and Northern Ireland legislation. See *Change 152* in Annex 1, section 1018 and the commentary on that section.
1620. *Subsection (3)(a)* and *(b)* specify that royalties and other income from intellectual property and income from relevant telecommunication rights, where such income is not taxable as profits of a trade, are eligible for exemption. This is a change from the source legislation in that such income was only exempt if it came within the definition of annual payments. See *Change 96* in Annex 1.

Section 537: Exemption for income from estates in administration

1621. This section provides an exemption for estate income received by the trustees of a charitable trust provided the income is applied to the purposes of the charitable trust. It is new.
1622. Estate income is income from property held by the personal representatives of the estate of a deceased person on behalf of the beneficiaries of the estate. The personal representatives are liable to income tax on the income. The exemption provided by this section allows the trustees of a charitable trust to recover any income tax suffered by the personal representatives. See *Change 97* in Annex 1.

Section 538: Requirement to make claim

1623. This section provides that in general a claim is necessary for an exemption. It is based on sections 56(3), 505(1) and 761(6) of ICTA, section 46(1) of FA 2000 and section 83(4) of FA 2004.
1624. Claims are made either as required during the tax year, eg to secure repayments of income tax treated as paid in relation to gift aid payments, or in a self-assessment return. The need to make a claim ensures that there is a mechanism for appeals in the event of any dispute about the availability or amount of any exemption.
1625. The self-assessment procedure means that a charitable trust only needs to complete a tax return, and make the associated claims, if the charitable trust is chargeable to tax or is required to do so by HMRC.
1626. The reference in section 505(1) of ICTA to claims being to the Board of Inland Revenue has been changed. Claims will simply be to an officer of Revenue and Customs. See *Change 5* in Annex 1, which also affects sections 542, 551, 554, 557, 558 and 561. One effect of a claim being made to the Board is that appeals are to the Special Commissioners. This is maintained by means of an amendment to section 46C of TMA.
1627. *Subsection (3)* provides that where an individual makes a direction in a self-assessment return for a tax repayment to be paid as a gift to a charitable trust, the trustees are treated as having made a claim. See section 429 and the commentary on that section.

Section 539: Restrictions on exemptions

1628. This section restricts exemptions where income of a charitable trust is attributed to non-charitable expenditure. It is based on section 505(4) of ICTA.
1629. A number of the exemptions have been extended to treat adjustment income and post-cessation receipts as exempt. As a result the restrictions apply to the extended exemptions. See *Change 92* in Annex 1 and the commentary on section 524.
1630. A statutory exemption has been introduced for profits of fund-raising events. The restrictions apply to this exemption. See *Change 95* in Annex 1 and the commentary on section 529.
1631. A statutory exemption has also been introduced for income from estates in administration. The restrictions apply to this exemption. See *Change 97* in Annex 1 and the commentary on section 537.

Section 540: The non-exempt amount

1632. This section specifies how the non-exempt amount is calculated. It is based on section 505(3) and (4) of ICTA.
1633. The term “attributable income and gains” is defined in *subsection (3)*. This label replaces “relievable income and gains” as defined in section 505(3) of ICTA.

1634. *Subsection (5)* specifies that section 256(4) of TCGA is to be ignored in applying subsection (3)(b). Section 256 of TCGA provides the exemption from capital gains tax for certain gains accruing to a charity. Schedule 1 to this Act amends section 256, adding subsections (3) to (5). Schedule 1 also inserts sections 256A and 256B, to deal with the interaction between income tax and capital gains tax as regards attributing income and gains to the non-exempt amount.

Section 541: Attributing income to the non-exempt amount

1635. This section specifies how income is attributed to the non-exempt amount. It is based on section 505(4) and (7) of ICTA.
1636. It specifies that the non-exempt amount is to have attributed to it amounts of attributable income or amounts of attributable gains or a combination of both, until it is used up.

Section 542: How income is attributed to the non-exempt amount

1637. This section specifies that the charitable trust can decide the attribution of attributable (exempt) income or chargeable gains to the non-exempt amount, to determine which items of otherwise exempt income or chargeable gains should be treated as taxable. It is based on section 505(7) of ICTA.
1638. Where the restrictions apply, an amount of income (or chargeable gains) equal to the non-exempt amount (of expenditure) must be identified (as calculated in accordance with the previous section) in order to enable the charitable trust to complete its tax return and self-assess its tax liability. This section provides the mechanism for the charitable trust to specify the items or elements of income (such as trading income or investment income) which lose the benefit of exemption.
1639. But if the charitable trust has not provided the attribution within a period of 30 days from the day of a request for a specification of the attribution, an officer of Revenue and Customs can decide the attribution. References to “the Board” have been replaced with “an officer of Revenue and Customs”. See *Change 5* in Annex 1 and the commentary on section 538.

Section 543: Meaning of “non-charitable expenditure”

1640. This section defines “non-charitable expenditure”. It is based on sections 506 and 506A of ICTA.
1641. Section 506(1) of ICTA contains a definition of “charitable expenditure”. But neither expenditure itself nor “non-charitable expenditure” are defined explicitly. This section sets out the definition in some detail, to reflect practice and HMRC guidance. See *Change 98* in Annex 1, which also affects sections 544 and 545.

Section 544: Section 543: supplementary

1642. This section applies relevant material located elsewhere (eg rules for computing trading losses and about basis periods) and provides interpretative material. It is new. See *Change 98* in Annex 1.

Section 545: Section 543(1)(f): meaning of expenditure

1643. This section provides interpretative material about the meaning of “expenditure”. It is new. See *Change 98* in Annex 1.
1644. *Subsection (1)* makes it clear that “expenditure” includes expenditure on the acquisition of capital assets. But expenditure on assets qualifying for capital allowances is taken account of in determining, for example, a trading loss and so is not included in expenditure within section 543(1)(f).

Section 546: Section 543(1)(f): tax year in which certain expenditure treated as incurred

1645. This section specifies the tax year to which expenditure relating to commitments (whether or not contractual in nature) that have been entered into is to be allocated for the purpose of operating the restrictions. It is based on section 506(2) of ICTA.
1646. This rule has been rewritten in terms which make explicit reference to United Kingdom generally accepted accounting practice. See *Change 99* in Annex 1.

Section 547: Section 543(1)(f): payment to body outside the UK

1647. This section provides interpretative material about payments to a body situated outside the United Kingdom. It is based on section 506(3) of ICTA.
1648. The section makes it clear that the onus is on the trustees of the charitable trust to ensure that any payments to a body outside the United Kingdom are applied for charitable purposes. Otherwise the charitable trust must classify the payments as “non-charitable expenditure”.

Section 548: Section 543(1)(i) and (j): investments and loans

1649. This section provides interpretative material about the making of investments or loans. It is based on section 506(5) of ICTA.
1650. The section makes it clear that it is only the expenditure in the tax year on making new investments and loans, or expenditure to fund net increases in such investments or loans, that is included in the calculation of non-charitable expenditure.

Section 549: Transactions with substantial donors

1651. This section defines “substantial donor transaction” and explains when a person is a substantial donor to a charitable trust. It is based on sections 506A(1) and (2) and 506C(3) of ICTA.
1652. Under *subsection (2)(a)* a person giving £25,000 or more in a period of 12 months will be a substantial donor for up to three consecutive tax years.
1653. Under *subsection (2)(b)* a person giving £100,000 or more in a period of six years will be a substantial donor for up to 13 consecutive tax years.
1654. In either case, *subsection (3)* means that the person is also a substantial donor for the five tax years following the last of those consecutive tax years.
1655. It should be noted that references to a charitable trust include connected charities (see section 556) and that references to a substantial donor include persons connected with the donor (see section 557(1)(a)).

Section 550: Meaning of “relievable gift”

1656. This section includes details of the sources of gifts that are “relievable gifts” for the purposes of the preceding section. It is based on section 506C(1) of ICTA.

Section 551: Non-charitable expenditure in substantial donor transactions

1657. This section specifies that certain amounts relating to substantial donor transactions are to be treated as non-charitable expenditure. It is based on sections 506A(3) to (5) and 506C(2) and (6) of ICTA.
1658. The source legislation specifies that certain matters are to be determined by the Commissioners for Her Majesty’s Revenue and Customs. References to “the Commissioners for Her Majesty’s Revenue and Customs” have been replaced with

references to “an officer of Revenue and Customs”. See *Change 5* in Annex 1, which also affects sections 554 and 557. The source legislation specifies that, on an appeal against an assessment, the Special Commissioners may review a decision of the Commissioners, so section 557 specifies that the Special Commissioners may affirm or replace a decision of an officer.

Section 552: Adjustment if section 551(1) and (2) applied to single transaction

1659. This section makes it clear that there can be no double counting. It is based on section 506C(4) of ICTA.

Section 553: Section 551: certain payments and benefits to be ignored

1660. This section provides that payments or benefits arising from transactions, relating to gift aid donations made by individuals or qualifying donations by companies, are to be ignored if they do not disqualify the donations concerned from relief. It is based on section 506B(7) of ICTA.

Section 554: Transactions: exceptions

1661. This section specifies exceptions to the transactions caught by section 549. It is based on section 505B of ICTA.
1662. In particular, the section carves out of the substantial donor provisions transactions of an ordinary commercial nature.
1663. References to “the Commissioners for Her Majesty’s Revenue and Customs” and “the Commissioners” have been replaced with references to “an officer of Revenue and Customs”. See *Change 5* in Annex 1 and the commentary on section 551.

Section 555: Donors: exceptions

1664. This section specifies exceptions to the donors caught by section 549. It is based on section 506B(8) and (9) of ICTA.
1665. *Subsection (1)* concerns companies set up by charitable trusts, for example to carry on trading activities as a means of generating funds.
1666. *Subsection (2)* concerns registered social landlords and housing associations, which often share services and accommodation with charities as a means of meeting charitable and non-charitable objectives, through complex group structures.

Section 556: Connected charities

1667. This section extends, for the purposes of sections 549 to 555, the meaning of “charitable trust” to include charities connected with the charitable trust. It is based on section 506C(5) of ICTA.

Section 557: Substantial donor transactions: supplementary

1668. This section provides interpretative material for sections 549 to 555. It is based on section 506C(7) to (9) of ICTA.
1669. References to “the Commissioners” have been replaced with references to “an officer of Revenue and Customs”. See *Change 5* in Annex 1 and the commentary on section 551.

Section 558: Approved charitable investments

1670. This section sets out which investments, including loans made by way of investment, count as approved charitable investments for the purposes of the rules restricting exemptions. It is based on Schedule 20 to ICTA.

- 1671. The label “approved charitable investments” replaces the label “qualifying investments” in section 506(4) of ICTA.
- 1672. Paragraph 2 of Schedule 20 to ICTA specifies investments falling within Schedule 1 to the Trustee Investment Act 1961 (TIA 1961) as approved, with a small exception. For trust law purposes TIA 1961 has been largely superseded by the Trustee Act 2000 (TA 2000). So the detail of investments covered by Schedule 1 to TIA 1961 has been incorporated into the sections in a more succinct and updated form, removing the need to refer to a Schedule to an Act (TIA 1961) that trustees no longer need to refer to for investment purposes. See *Change 100* in Annex 1. This affects this section, section 559 and section 560.
- 1673. The reference to securities traded on the Unlisted Securities Market has been deleted as obsolete, because the Unlisted Securities Market ceased trading in December 1996.
- 1674. Investments can qualify as approved charitable investments if, despite not falling into any of the specified types not requiring a claim, a claim is made and it is accepted by HMRC. In order to be accepted, the claimant must show that the investment has been made for the benefit of the charitable trust and has not been made for the avoidance of tax.
- 1675. Investments include loans made by way of investment. And although not explicitly stated, such a loan would include a loan secured by a mortgage over land.
- 1676. The source legislation includes a reference in paragraph 7(2) of Schedule 20 to ICTA to an “authorised institution” – which in the context of that paragraph clearly means a “bank”. In fact “authorised institution” was amended to read “bank” in paragraph 7(1) by Schedule 37 to FA 1996, but was not amended in paragraph 7(2). This was an oversight and is corrected here.
- 1677. In *Type 4*, the reference to Act includes references to Acts of the Scottish Parliament and Northern Ireland legislation. See *Change 152* in Annex 1, section 1018 and the commentary on that section.
- 1678. References to “the Board” have been replaced with “an officer of Revenue and Customs”. See *Change 5* in Annex 1.

Section 559: Securities which are approved charitable investments

- 1679. This section sets out details of which investments in securities count as approved charitable investments for the purposes of the rules restricting exemptions. It is based on Schedule 20 to ICTA and Schedule 1 to TIA 1961.
- 1680. The detail of investments covered by Schedule 1 to TIA 1961 have been incorporated into these sections in a more succinct and updated form. See *Change 100* in Annex 1 and the commentary on section 558.

Section 560: Conditions to be met for some securities

- 1681. This section sets out details of certain conditions which some of the securities specified in the previous section have to meet to count as approved charitable investments for the purposes of the rules restricting exemptions. It is based on Schedule 1 to TIA 1961.
- 1682. The detail of the investments covered by Schedule 1 to TIA 1961 is incorporated into these sections in a more succinct and updated form. See *Change 100* in Annex 1 and the commentary on section 558.
- 1683. *Subsection (8)* specifies (among other things) that a company acquiring control of another company or other companies is treated as having paid a dividend or dividends paid by the other company or companies. The effect of including this provision (rather than cross-referring to a provision in TIA 1961) is that “control” needs to be defined.

Consequently the definition of “control” in section 995 applies for the purposes of this subsection. See *Change 100* in Annex 1.

Section 561: Approved charitable loans

- 1684. This section sets out which loans (not being made by way of investment) count as approved charitable loans for the purposes of the rules restricting exemptions. It is based on Schedule 20 to ICTA.
- 1685. The label “approved charitable loans” replaces the label “qualifying loans” in section 506(4) of ICTA.
- 1686. References to “the Board” have been replaced with references to “an officer of Revenue and Customs”. See *Change 5* in Annex 1.

Section 562: Excess expenditure treated as non-charitable expenditure of earlier years

- 1687. This section treats “excess expenditure” in a tax year as non-charitable expenditure for earlier tax years. It is based on section 505(3) and (5) of ICTA.
- 1688. The “excess expenditure” is the amount of the non-charitable expenditure of the year in excess of the available income and gains of the tax year.
- 1689. The term “available income and gains” is defined in *subsection (4)*. This label replaces “total income and gains” as defined in section 505(3) of ICTA.

Section 563: Rules for attributing excess expenditure to earlier years

- 1690. This section specifies the earlier tax years to which the excess expenditure is to be attributed, later years taking priority to earlier ones. It is based on section 505(5) and (6) of ICTA.
- 1691. The amount of excess expenditure that can be attributed to the year 2005-06 or earlier years cannot exceed the amount that would have been attributed if the change in the method of calculating excess expenditure resulting from section 55 of FA 2006 had not been introduced. See the transitional provision in Part 11 of Schedule 2.

Section 564: Adjustments in consequence of section 562

- 1692. This section then specifies that any necessary adjustments (eg to tax, interest etc) for earlier years may be made. It is based on section 505(5) of ICTA.