These notes refer to the Finance Act 2010 (c.13) which received Royal Assent on 8 April 2010

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 32Schedule 8: Miscellaneous Amendments

Summary

1. Section 32 and Schedule 8 introduce miscellaneous provisions relating to charities, community amateur sports clubs (CASCs) and other organisations entitled to charitable tax reliefs.

Details of the Schedule

Payroll giving

2. Paragraph 1 amends the provisions in relation to payroll giving. A new charge to tax will be applied to income received by charitable trusts and charitable companies on donations received through the Payroll Giving scheme (Part 12 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (payroll giving)), in line with the charge on charities on donations received through other means.

3. Sub-paragraph (1) provides for the insertion into the Income Tax Act 2007 (ITA) of new section 521A (Gifts under payroll deduction schemes: income tax liability and exemption).

4. New section 521A(1) of ITA provides that new section 521A applies to charitable trusts that receive donation income through the payroll giving scheme.

5. Subsection (2) introduces a new charge to income tax on donation income received by charitable trusts through the payroll giving scheme.

6. Subsection (3) confirms that the charge to income tax applies to the total amount of donations received under subsection (1) during the tax year (from 6 April in a calendar year to 5 April of the following calendar year).

7. Subsection (4) provides that, where donation income that is brought into charge under subsection (2) is applied for charitable purposes only, it is to be excluded from the calculation of total income, for the purposes of applying the new income tax charge.

8. Subsection (5) provides that the trustees of the charitable trust are liable for any tax that arises under the new charge.

9. Sub-paragraph (2) provides for the insertion into the Corporation Tax Act 2010 (CTA) of new section 472A (Gifts under payroll deduction schemes: corporation tax liability and exemption).

10. New section 472A(1) of CTA provides that the new section applies to charitable companies that receive donations from individuals through the payroll giving scheme, and treats these donations as income subject to corporation tax.

11. Subsection (2) provides that, where donation income that is brought into charge under subsection (1) is applied for charitable purposes only, it is to be excluded from the calculation of total income, for the purposes of applying the new corporation tax charge.

12. Subsection (3) requires that a charitable company must make a claim for exemption under subsection (2).

Payments to bodies outside the UK: non-charitable expenditure

13. Paragraph 2 changes a specific condition that disqualifies a payment, made by a charity to a body outside the UK, from qualifying as charitable expenditure. If the condition applies, the expenditure is considered to be non-charitable under section 543(1)(f) of ITA for charitable trusts, or section 496(1)(d) of CTA for charitable companies, and tax relief is restricted accordingly.

14. Sub-paragraph (1) inserts the new requirement in section 547(b) of ITA that, for a payment to an overseas body to qualify as charitable expenditure, the Commissioners for HM Revenue & Customs (HMRC) must consider that the charity's trustees took reasonable steps to ensure the money would be used for charitable purposes.

15. Sub-paragraph (2) inserts the new requirement in section 500(b) of CTA that, for a payment to an overseas body to qualify as charitable expenditure, the Commissioners for HMRC must consider that the charity's directors took reasonable steps to ensure the money would be used for charitable purposes.

Gift Aid: disqualifying overseas gifts

16. Paragraph 3 amends the rules that apply to donations made by non-UK resident donors under Gift Aid where the donor has not been charged with sufficient UK tax to cover the repayment of tax to the charity.

17. Sub-paragraph (1) provides for Chapter 2 of Part 8 of ITA (gift aid) to be amended,

18. Sub-paragraph (2)(a) substitutes "F" for "G" in section 416(1)(a) of ITA, reducing by one the number of conditions that are to apply to a donation before it qualifies for Gift Aid.

19. Sub-paragraph (2)(b) repeals section 416(8) of ITA which was previously condition "G" and required that a gift was not to be a disqualified overseas gift.

20. Sub-paragraph (3) repeals section 422 of ITA (disqualified overseas gifts).

21. Sub-paragraph (4) substitutes "F" for "G" in section 429(3) of ITA (giving through self-assessment return). Section 429 allows an individual who donates a tax repayment to charity to direct that Gift Aid should apply to the donation. In order for Gift Aid to apply, the donation must be a "qualifying donation" (under section 416 of ITA) and therefore reference to the now redundant condition "G" must be removed.

Gift Aid administration

22. Paragraphs 4 to 7 amend the rules for charitable trusts and charitable companies to make claims for the repayment of tax. Currently:

    - charitable trusts that have been issued with a notice to file a tax return can claim a repayment of income tax under Gift Aid only on the tax return (section 42(2) of the Taxes Management Act 1970 (TMA)); and
    - charitable companies, and CASCs that are subject to corporation tax, can claim a repayment of income tax under Gift Aid only after delivery of a company tax return for the period to which the claim relates (paragraphs 9(1) and (2) of Schedule 18 to the Finance Act (FA) 1998).

23. Paragraph 4 removes the restrictive condition on claims to Gift Aid outside a return in respect of charitable trusts.

24. Paragraph 4(2) substitutes "(3ZA)" for "(3A)" in section 42(2) of TMA.

25. Paragraph 4(3) provides for the insertion into section 42 of TMA of new subsection (3ZA). This new subsection disapplies the requirement in subsection 42(2) for charitable trustees to make claims for repayment of tax in respect of Gift Aid donations in a tax return if they have been given notice to file a tax return.

26. Paragraph 5(1) provides for ITA to be amended.

27. Paragraph 5(2) substitutes “sections 538 and 538A” for “section 538” in section 518(4) (overview of Part 10) of ITA.

28. Paragraph 5(3) provides for the insertion into ITA of new section 538A (Claims in relation to Gift Aid relief).

29. New section 538A(1) of ITA provides that the new section applies to charitable trusts that claim exemption from tax on donations received under Gift Aid.

30. Subsection (2)(a) and (b) of new section 538A of ITA provides that a claim may be made to an officer of HMRC or by inclusion on a trustee’s self assessment return.

31. Subsection (3) of new section 538A of ITA defines a “free-standing claim” as a claim made to an officer of HMRC under subsection 2(a) of the new section 538A of ITA, and defines “tax return claim” as a claim included in a tax return under subsection (2)(b) of the new section 538A of ITA.

32. Subsection (4) of new section 538A of ITA provides a regulation making power for HMRC to make provision in relation to claims that are allowed under new section 538A of ITA.

33. Subsection (4)(a) of new section 538A of ITA provides that the number of “free-standing claims” made by a charitable trust may be limited by regulations.

34. Subsection (4)(b) of new section 538A of ITA enables an amount to be specified in regulations below which a claim has to be made as a tax return claim.

35. Subsection (5) of new section 538A of ITA provides that the regulations made under subsection (4) can make different provisions for different cases or purposes.

36. Paragraph 6 removes the restrictive condition on claims to Gift Aid outside a return, as explained in paragraph 22 above, in respect of charitable companies.

37. Sub-paragraph (2) inserts new sub-paragraph (2A) in paragraph 9 of Schedule 18 to FA 1998 (claims that cannot be made without a return) which disapplies the provisions contained in paragraph 9(1) and (2) of Schedule 18 to FA 1998, where a charitable company or eligible body makes a claim in respect of gifts that qualify for Gift Aid relief (under section 472 or 475 of CTA).

38. Sub-paragraph (3) inserts new sub-paragraph (1A) in paragraph 57 of Schedule 18 to FA 1998 (claims or elections affecting a single accounting period) which disapplies paragraph 57 for charitable companies enabling claims for relief in respect of Gift Aid (under section 472 or 475 of CTA) to be made outside a return.

39. Paragraph 7 provides for the insertion into CTA of new section 477A (Claims in relation to gift aid relief).

40. New section 477A(1) of CTA provides that the new section applies to charitable companies and eligible bodies that claim exemption from tax on donations received under Gift Aid.

41. Subsection (2)(a) and (b) of new section 477A of CTA provides that a claim may be made to an officer of HMRC or by inclusion on a company self assessment tax return.

42. Subsection (3) of new section 477A of CTA defines as a “free-standing claim” a claim made to an officer of HMRC under subsection 2(a) of the new section 477A of CTA,

and defines “tax return claim” as a claim included in a tax return under subsection 2(b) of the new section 477A of CTA.

43. Subsection (4) of new section 477A of CTA provides a regulation making power for HMRC to make provision in relation to claims that are allowed under new section 477A of CTA.

44. Subsection (4)(a) of new section 477A of CTA provides that the number of “free-standing claims” made by a charitable company or CASC may be limited by regulations.

45. Subsection (4)(b) of new section 477A of CTA enables an amount to be specified in regulations below which a claim has to be made as a tax return claim.

46. Subsection (5) of new section 477A of CTA provides that the regulations made under subsection (4) can make different provisions for different cases or purposes.

Commencement

47. Paragraph 8 sets out the commencement provisions for this Schedule.

48. Sub-paragraph (1) provides that the changes made by paragraph 1 to the rules on gifts made through payroll giving apply to donations made on or after 24 March 2010.

49. Sub-paragraph (2) provides that an amendment corresponding to an amendment made to CTA by paragraph 1(2) of this schedule is treated as applying also to the predecessor legislation in the Income and Corporation Taxes Act 1988 (ICTA). This only applies to an amendment affecting a gift made on or after 24 March 2010.

50. Sub-paragraph (3) provides that the changes in paragraph 2 to the rules on payments to bodies outside the UK apply to expenditure incurred on or after 24 March 2010.

51. Sub-paragraph (4) provides that an amendment corresponding to an amendment made to CTA by paragraph 2(2) of this Schedule is treated as applying also to the predecessor legislation in ICTA. This only applies to an amendment affecting payments representing expenditure incurred on or after 24 March 2010.

52. Sub-paragraph (5) provides that the amendments in paragraph 3 to the rules on Gift Aid donations by non-UK resident donors apply in relation to gifts made on or after 6 April 2010.

53. Sub-paragraph (6) provides that the amendments made by paragraphs 4 and 6 apply to claims outside a return as if they had always applied.

Background Note

54. Payroll Giving is a scheme through which an employee may authorise their employer to make a payment out of the employee’s salary to a payroll giving agent. For a small fee, the agent makes the payment to the charity or charities specified by the employee. The amount of the donation by the employee is exempt from tax.

55. Paragraph 1 aligns the treatment of donation income under payroll giving in the hands of a charitable trust or charitable company with the treatment of other donation income. Gifts made under payroll giving on or after 24 March 2010 will be exempt from tax in the hands of the charity only to the extent the income is spent on charitable purposes.

56. A charity may claim relief from tax on overseas expenditure provided the money is spent on charitable purposes. In order to show that the overseas expenditure is for charitable purposes, section 547(b) of ITA (for charitable trusts) and section 500(b) of CTA (for charitable companies) require the trustees to take “such steps as are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes”.

57. Paragraph 2 amends section 547(b) of ITA (for charitable trusts) and section 500(b) of CTA (for charitable companies) to make clear that any claim that a payment overseas qualifies for relief as charitable expenditure must be supported by evidence sufficient to

satisfy the Commissioners for HMRC that the charity's trustees took reasonable steps to ensure the money would be spent charitably.

58. In practice that means charities will be required to maintain records of how charitable funds are spent overseas and be able to produce evidence of charitable works undertaken. The level of record-keeping required will depend upon the circumstances relating to the expenditure. For example, it may not be possible for a charity providing aid during an emergency to maintain the same level of record-keeping as for routine overseas expenditure.

59. Paragraph 3 amends the Gift Aid rules that apply to donations made by non-UK resident donors under Gift Aid where the donor has not paid enough tax to cover the repayment of tax to the charity. Under the old rules, where a non-UK resident donor has not paid enough UK tax to cover the tax repayment due to a charity on a Gift Aid donation, the whole of the donation is disqualified from Gift Aid under section 422 of ITA. The donation is not a qualifying donation and the charity is required to repay any repayment of tax claimed under Gift Aid. This is different from the approach applied to a UK resident donor who, in the same situation, is entitled to apply Gift Aid to the whole donation, but is liable themselves to make good the shortfall in tax.

60. The repeal of section 422 of ITA aligns the position for both UK and non-UK resident donors: where an individual donor has not paid enough UK tax to cover a donation under Gift Aid, then Gift Aid may apply to the whole donation and the donor is liable to make up any shortfall in tax.

61. HMRC have allowed charitable trusts and charitable companies to submit tax repayment claims in advance of filing a tax return under their powers of care and management, although in law some trusts and all companies are allowed to make a claim only in a return. Paragraphs 4 to 7 of this Schedule put on a statutory footing HMRC's procedure of making Gift Aid tax repayments on claims outside a return. They also give HMRC the power to prescribe the Gift Aid claim process.