These notes refer to the Corporation Tax Act 2010 (c.4) which received Royal Assent on 3 March 2010

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 6: Charitable donations relief

Chapter 3: Certain disposals to charity

Overview

778. This Chapter gives relief to companies making donations to charities not by payments of money but by way of certain disposals including disposals at an undervalue. It is based on sections 587B to 587C of ICTA.

Section 203: Certain disposals of investments

779. This section sets out the requirements for relief. It is based on section 587B(1) and (2) of ICTA.

780. *Subsection (3)* prevents relief under section 105(2) of CTA 2009 where relief is given under this section. Section 105 of CTA 2009 deals with gifts of “articles” manufactured, or of a class or description sold by, the donor in the course of the trade. It is considered that this may include certain shares or securities which fall within this section.

Section 204: Meaning of qualifying investment

781. This section lists the types of investment that can attract relief. It is based on section 587B(9) to (9ZB) of ICTA.

Section 205: Meaning of qualifying interest in land

782. This section defines “qualifying interest in land” (one of the qualifying investments listed in section 204). It is based on section 587B(9A) to (9E) of ICTA.

783. *Subsections (2)* and *(3)* clarify the position where a company with a beneficial interest in a freehold or leasehold interest in land in the United Kingdom gives that beneficial interest to a charity along with any easement, servitude or right that benefits the land. For example, company A’s land may only be accessible by way of an easement over B’s land. If company A gives the charity both the land and the right over B’s land, the disposal of the right is treated as a separate disposal.

784. Under *subsection (4)*, if a company with a freehold or leasehold interest carves out of that interest a lease for the benefit of the charity, the retention of the freehold or leasehold reversion does not prevent the disposal from being “of the whole beneficial interest”.

785. Under *subsection (5)*, an agreement to acquire a freehold, or an agreement for a lease, is not a qualifying interest in land. So disposing of such an agreement would not constitute a disposal of a qualifying investment.

Section 206: The relievable amount

786. This section sets out how to calculate the relievable amount, first in cases where the qualifying investment is transferred to the charity by way of gift (*subsection (1)*), and then where there is some, but not full, consideration for the transfer (*subsection (2)*). It is based on section 587B(4) to (7) of ICTA.

787. In each case, the computation starts with the value of the net benefit to the charity (V), either directly (as in subsection (1)) or in arriving at E (the excessof V over the consideration for the disposal) in subsection (2).

788. The detail of how V is calculated is in sections 209 to 212. But it is emphasised in the definition of V in subsection (1) that V must be considered both at, and immediately after, the time of disposal. If there is a difference between V at these two times, the lesser amount is taken.

789. *Subsection (3)* makes it explicit that if the amount given by either formula is negative the relievable amount is nil.

790. The treatment of incidental costs of disposal depends on whether the transfer is by way of gift or at an undervalue. If it is a gift, all the incidental costs areadded in arriving at the relievable amount. But if there is consideration for the disposal, there is an interplay between the capital gains tax treatment and the incidental costs.

791. Under section 257(2)(a) of TCGA a gift of a qualifying investment to a charity is treated as being for such a consideration as results in neither a loss nor a gain to the donor. Incidental costs are added only if that deemed consideration is greater than the actual consideration. But the amount added must not be greater than that excess. C is defined in *subsection (4)* to achieve this result.

Section 207: Incidental costs of making disposal

792. This section defines “the incidental costs of making the disposal to the company making it”. It is based on section 587B(9) of ICTA.

793. The section reproduces the relevant material in section 38(2) of TCGA to which section 587B(9) of ICTA cross-refers, with the exception of the reference to stamp duty and stamp duty land tax, which do not apply to transactions within this Chapter.

Section 208: Consideration

794. This section makes provision about the calculation of the relievable amount in the case of disposal at an undervalue. It is based on section 587B(7) of ICTA.

795. The section applies section 48 of TCGA (consideration due after time of disposal). The main thrust of section 48 of TCGA is that full value is to be introduced into the computation of the gain. Only on a subsequent claim is the consideration to be reduced, either because the right to receive any amount is contingent or because any part of the consideration proves to be irrecoverable.

Section 209: Value of net benefit to charity

796. This section is the first of four sections concerned with defining the value of the net benefit to the charity. It is based on section 587B(8A) and (8B) and (9) of ICTA.

797. In the simple case, where there are no disposal-related obligations, the value of the net benefit to the charity is the market value of the qualifying investment. As indicated in section 206, this has to be considered both at, and immediately after, the disposal.

798. If the charity is, or becomes, subject to an obligation that is related to the disposal of the qualifying investment to the charity, the market value of the investment is reduced

by the amount of the disposal-related liabilities (see section 212) under the obligation. These obligations must also be considered both at, and immediately after, the disposal.

Section 210: Market value of qualifying investments

799. This section sets out how the market value of qualifying investments is to be determined. It is based on section 587B(9) to (11) of ICTA.

800. The methods are those laid down in sections 272 to 274 of TCGA. If an offshore fund publishes buy and sell prices, an interest in it is in effect subject to the same treatment as a unit trust scheme as laid down by section 272(5) of TCGA. The provisions of that subsection are reproduced here.

Section 211: Meaning of "disposal-related obligation"

801. This section defines "disposal-related obligation". It is based on section 587B(8B) to (8D) and (9) of ICTA.

Section 212: Meaning and amount of "disposal-related liability"

802. This section defines "disposal–related liability". It is based on section 587B(8E) to (8G) and (9) of ICTA.

803. *Subsection (2)* deals with contingent disposal-related obligations.

804. It is in the nature of a contingency that it may occur after the time of disposal; hence the words "at any time". If a contingency occurs later than immediately after the disposal, but existed as a possibility at the time of disposal, the value of the net benefit to the charity at the time of, or immediately after, the disposal must be reduced. All necessary adjustments must be made to give effect to this. Conversely, if the contingency does not occur, to that extent there is no obligation and no liability.

Section 213: Certificate required from charity

805. This section, which is the first of four that deal specifically with qualifying interests in land, requires any claim for relief in relation to a qualifying interest in land to be supported by a certificate from the charity. It is based on section 587C(1), (4) and (5) of ICTA.

Section 214: Qualifying interests in land held jointly

806. This section deals with a disposal of land by all joint holders where at least one of the owners is a qualifying company. It is based on section 587BA(1) to (5) and (13) of ICTA.

Section 215: Calculation of relievable amount etc where joint disposal of interest in land

807. This section provides details for calculating the "relievable amount" in cases where there is a joint disposal of an interest in land. It is based on section 587BA(6) to (11) of ICTA.

808. If the joint owners include an individual *subsection (3)* directs the reader to Chapter 3 of Part 8 of ITA for the purposes of the relievable amount where that situation is catered for.

Section 216: Disqualifying events

809. This section provides for the recovery of relief if a "disqualifying event" occurs within the "provisional period". It is based on section 587C(1) and (6) to (10) of ICTA.

810. In the simplest case, such an event occurs if any of the persons who made the disposal are entitled to buy the land back from the charity at an undervalue.

Section 217: "Charity"

811. This section defines "charity" for the purposes of the Chapter. It is based on section 587B(9) of ICTA.