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

Overview

747. This Part deals with qualifying charitable donations, known as "charges on income" in the source legislation.

748. Chapter 1 gives relief for qualifying charitable donations and defines the term as qualifying payments and amounts treated as qualifying charitable donations. Chapter 2 deals with qualifying payments and Chapter 3 is about disposals treated as qualifying charitable donations.

749. For corporation tax purposes charges on income are now reduced to charitable donations only (see section 338A(2) of ICTA). A more accurate description has therefore been substituted for "charges on income". The term "charges on income" was dispensed with for income tax purposes by ITA and this Act now follows that path.

750. It is not considered that by relabelling "charges on income" as "qualifying charitable donations" there is any danger of either depriving a company of a relief which is due or allowing relief that is not due for a payment.

Chapter 1: Nature of relief

Overview

751. This Chapter allows a deduction from a company's total profits for qualifying charitable donations and explains what constitutes qualifying charitable donations. It is based on sections 338, 338A, and 339(1) of ICTA.

Section 189: Relief for qualifying charitable donations

752. This section allows qualifying charitable donations as deductions from a company's total profits. It is based on section 338 of ICTA.

753. Allowable deductions are limited to an amount which reduces the taxable total profits for a period to nil.

Section 190: Qualifying charitable donations: meaning

754. This section gives the meaning of qualifying charitable donations. It is based on sections 338A(1) to (3) and 339(1) of ICTA.

755. *Subsection (2)* rewrites both section 338A(3) and section 339(1)(b) of ICTA. These two subsections cover the same ground.

756. A similar rule is found in section 337A(1)(b) of ICTA which provides that a company's income from any source is to be computed without any deduction in respect of charges on income. This is rewritten and inserted into Chapter 1 of Part 20 of CTA 2009 (restriction of deductions) by Schedule 1 but expressed as a qualifying charitable donation rather than a charge on income.

Chapter 2: Certain payments to charity

Overview

757. This Chapter gives relief for certain payments of money by companies to charities. It is based on section 339 of ICTA.

Section 191: Qualifying payments

758. This section sets out the conditions which have to be met if a sum paid to a charity is to be a qualifying payment and hence a qualifying charitable donation. It is based on section 339(1), (3B), (3E), and (3G) of ICTA.

Section 192: Condition as to repayment

759. This section provides that under certain conditions a charitable payment is not subject to a "condition as to repayment" (see section 191(3)). It is based on sections 339(3BA) and (3BB) of ICTA.

760. *Subsection (6)*, in referring to non-charitable expenditure, rewrites the cross-reference to "section 505(4)" of ICTA in section 339(3BB) of ICTA as section 493 and section 515. Section 515 rewrites section 505(4) of ICTA and section 493 section 505(5) of ICTA. Non-charitable expenditure referred to in section 505(5) is, by implication, the same non-charitable expenditure as is referred to in section 505(4). It was considered helpful however to clarify in the rewrite that non-charitable expenditure in both the accounting period (section 505(4)) and previous accounting period (section 505(5)) are referred to by subsection (6).

Section 193: Associated acquisition etc

761. This section specifies circumstances in which a payment to a charity is prevented from being a qualifying payment because of association with an acquisition of property by the charity from the donor or an associated company. It is based on section 339(3E) of ICTA.

Section 194: Distributions

762. This section prevents a distribution from being a qualifying payment other than in the case of a payment from a company which is whollyowned by a charity. It is based on section 339(1), (1A) and (1B) of ICTA.

Section 195: Associated benefits

763. This section prevents one or more payments which result in benefits from being qualifying payments, unless the benefits are within the limits set out in section 197 (restrictions on associated benefits). It is based on section 339(3B) of ICTA.

Section 196: Associated benefits: meaning

764. This section explains for the purposes of the Chapter when a benefit is associated with a payment to a charity. It is based on section 339(3B) of ICTA.

Section 197: Restrictions on associated benefits

765. This section sets out two conditions which, if either is met, mean that the restrictions on benefits associated with a payment to a charity are breached. It is based on section 339(3B), (3C), (3D) and (3DA) of ICTA.

766. The two conditions are:

- a stepped scale, depending on the amount of each payment (Condition A) – the "benefit per payment" test; and
- an overall monetary limit on benefits associated with the total of any payments to a single charity in the course of an accounting period – the "benefit per accounting period" test (Condition B). This is unrelated to the size of any particular payment.

767. Both these restrictions apply to any benefit "associated with" a payment.

Section 198: Payments and benefits linked to periods of less than 12 months

768. This section modifies the application of section 197 where payments or benefits are linked to periods of less than 12 months. It is based on section 339(3DB), (3DC) and (3DD) of ICTA.

769. The section provides, according to the case, for annualising:

- the actual amount of the payment; or
- both the amount of the payment and the value of the benefit(s) associated with the payment.

770. Only the annualised amount in each case is to be compared with the cash limits given in section 197. This prevents periods of less than 12 months being used to exploit the cash limits.

771. *Subsection (8)* states the formula for annualising in each case. In the source legislation some of the conditions could overlap, so that more than one condition could apply to the payment(s) and associated benefits concerned. This subsection removes doubt about which might take priority by providing a priority rule where payments are made at intervals of less than 12 months. See *Change 27* in Annex 1.

Section 199: Payment attributed to earlier accounting period

772. This section allows an election to be made for a payment to be attributed to an earlier accounting period which falls within a period of nine months prior to the date of the payment instead of the accounting period in which the payment is made. It is based on section 339(7AA) of ICTA.

773. *Subsection (3)* sets out the time within which a claim must be made. The reference in the source legislation to claims being to the Board of Inland Revenue has been changed. Claims are simply to an officer of Revenue and Customs. See *Change 5* in Annex 1.

Section 200: Company wholly owned by a charity

774. This section sets out what conditions are required to be met in order for a company to be wholly owned by a charity. It is based on section 339(7AB) and (7AC) of ICTA.

Section 201: Associated persons

775. This section defines an associated person as a person who is connected with the company or who is connected with such a person. It is based on section 339(7A) of ICTA.

Section 202: "Charity"

776. This section defines "charity" for the purposes of the Chapter and is based on section 339(9) of ICTA.

777. Section 339(9) of ICTA defines charity, in part, by reference to the bodies mentioned in section 507 of ICTA. That section includes the Trustees of the BritishMuseum and the Trustees of the Natural History Museum. The BritishMuseum and NaturalHistoryMuseum are established for charitable purposes and so there is no need to refer to them separately in this definition.

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.