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## SCHEDULES

### SCHEDULE 3

Section 27

#### TAINED CHARITY DONATIONS

#### PART 1

#### INCOME TAX

1 In Part 13 of ITA 2007 (tax avoidance), after Chapter 7 insert—

#### “CHAPTER 8

#### TAINED CHARITY DONATIONS

#### *Introduction*

#### **Overview of Chapter**

809Z(H) This Chapter makes provision for removing entitlement to income tax reliefs, and counteracting income tax advantages, where a person makes a relievable charity donation which is a tainted donation.

(2) See section 257A of TCGA 1992 and Part 21C of CTA 2010 for the removal of entitlement to other reliefs where a person makes a relievable charity donation which is a tainted donation.

#### **Relievable charity donations**

809Z(I) In this Chapter “relievable charity donation” means a gift or other disposal which—

- (a) is made by a person to a charity, and
- (b) is eligible for tax relief.

(2) A gift or other disposal is eligible for tax relief if one or both of the following apply—

- (a) (ignoring the tainted donation provisions) tax relief would be available in respect of it under a relevant relieving provision;
- (b) the charity is entitled to claim a repayment of tax in respect of it.

(3) “The tainted donation provisions” are—

- (a) this Chapter,
- (b) section 257A of TCGA 1992 (tainted charity donations: disapplication of section 257), and

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- (c) Part 21C of CTA 2010 (tainted charity donations: removal of corporation tax reliefs).
- (4) The following are “relevant relieving provisions”—
  - (a) section 257 of TCGA 1992 (gifts of chargeable assets),
  - (b) section 63(2)(a), (aa) and (ab) of CAA 2001 (gifts of plant and machinery),
  - (c) Part 12 of ITEPA 2003 (payroll giving),
  - (d) section 108 of ITTOIA 2005 (gifts of trading stock),
  - (e) Chapters 2 and 3 of Part 8 of this Act (gift aid and gifts of shares),
  - (f) section 105 of CTA 2009 (gifts of trading stock), and
  - (g) Part 6 of CTA 2010 (charitable donations relief).
- (5) For the purposes of this Chapter, an amount of income which arises under a UK settlement and to which a charity is entitled under the terms of the settlement is to be regarded as an amount gifted to the charity by the trustees of the settlement.

“UK settlement” has the same meaning as in section 628 of ITTOIA 2005.

### *Tainted donations*

#### **Tainted donations**

809Z(1) For the purposes of this Chapter, a relievable charity donation is a tainted donation if (and only if) Conditions A, B and C are met.

- (2) Condition A is that—
  - (a) a linked person enters into arrangements (whether before or after the donation is made), and
  - (b) it is reasonable to assume from either or both of—
    - (i) the likely effects of the donation and the arrangements, and
    - (ii) the circumstances in which the donation is made and the circumstances in which the arrangements are entered into,
 that the donation would not have been made and the arrangements would not have been entered into independently of one another.
- (3) “Linked person” means—
  - (a) the person who made the donation (“the donor”), or
  - (b) a person connected with the donor at a relevant time.
- (4) In subsection (3) “relevant time” means a time during the period which begins with the earliest, and ends with the latest, of the following times—
  - (a) the time when the arrangements are entered into as mentioned in subsection (2);
  - (b) the time when the relievable charity donation is made;
  - (c) the time when the arrangements are first materially implemented.
- (5) Condition B is that the main purpose, or one of the main purposes, of the linked person in entering into the arrangements is to obtain a financial advantage—

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- (a) directly or indirectly from the charity to which the donation is made or a connected charity,
  - (b) for one or more linked persons who are not charities (each of whom is referred to in this Chapter as “a potentially advantaged person”).
- (6) Condition C is that the donor is not—
  - (a) a qualifying charity-owned company, or
  - (b) a relevant housing provider linked with the charity to which the donation is made.
- (7) For the purposes of subsection (6)(b) a relevant housing provider is linked with the charity if (and only if)—
  - (a) one is wholly owned, or subject to control, by the other, or
  - (b) both are wholly owned, or subject to control, by the same person.
- (8) In this section—
  - “qualifying charity-owned company”, in relation to a relievable charity donation, means a company which—
    - (a) is wholly owned by one or more charities, at least one of which is the charity to which the donation is made or a connected charity, and
    - (b) has not previously been under the control of, and does not carry on a trade or business previously carried on by, one or more of the following—
      - (i) a potentially advantaged person;
      - (ii) a person (other than a charity) who, at any time within the period of 4 years ending with the day on which paragraph (a) was first satisfied, was connected with a person who is a potentially advantaged person;
  - “relevant housing provider” means a body which is—
    - (a) a non-profit registered provider of social housing, or
    - (b) entered on a register maintained under section 1 of the Housing Act 1996, section 20 of the Housing (Scotland) Act 2010 (asp 17) or Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)).
- (9) Section 200 of CTA 2010 (company wholly owned by a charity) applies for the purposes of subsection (8), and for those purposes references in that section to “charity” include a registered club within the meaning of section 658(6) of that Act.
- (10) This section is subject to section 809ZL (certain financial advantages to be ignored).

### **Circumstances in which financial advantage deemed to be obtained**

809ZK1) This section applies for the purposes of Condition B.

- (2) Subsection (3) applies where the arrangements entered into by the linked person (as mentioned in Condition A) involve a transaction to which—
  - (a) that or any other linked person (“X”), and
  - (b) another person (“Y”),

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are parties.

- (3) X obtains a financial advantage from the charity to which the donation is made or a connected charity if—
- (a) the terms of the transaction are less beneficial to Y or more beneficial to X (or both) than those which might reasonably be expected in a transaction concluded between parties dealing at arm's length, or
  - (b) the transaction is not of a kind which a person dealing at arm's length and in place of Y might reasonably be expected to make.
- (4) Nothing in this section is intended to limit the circumstances in which a linked person may be regarded as obtaining a financial advantage for the purposes of section 809ZJ.
- (5) In this section—
- “Condition A” and “Condition B” have the same meaning as in section 809ZJ;
  - “linked person” has the meaning given by section 809ZJ(3);
  - “transaction” includes (for example)—
- (a) the sale or letting of property,
  - (b) the provision of services,
  - (c) the exchange of property,
  - (d) the provision of a loan or any other form of financial assistance, and
  - (e) investment in a business.

### **Certain financial advantages to be ignored**

- 809Z(1) When determining whether a relievable charity donation is a tainted donation, a financial advantage within subsection (2), (3), (4) or (5) is to be ignored.
- (2) A financial advantage is within this subsection if the person for whom it is obtained applies the advantage for charitable purposes only.
- (3) A financial advantage is within this subsection if (ignoring the tainted donation provisions) it is—
- (a) a benefit associated with a gift which is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid), or
  - (b) a benefit associated with a payment which is a qualifying payment for the purposes of Chapter 2 of Part 6 of CTA 2010 (charitable donations relief: payments to charity).
- (4) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—
- (a) the relievable charity donation is a disposal in respect of which tax relief would be available under Chapter 3 of Part 8 of this Act (gifts of shares, securities and real property to charities etc) or Chapter 3 of Part 6 of CTA 2010 (charitable donations: certain disposals to charity), and

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- (b) the advantage is a benefit the value of which would be taken into account in determining the relievable amount in respect of the disposal for the purposes of the Chapter in question.
- (5) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—
- (a) the relievable charity donation is a gift in respect of which tax relief would be available under section 108 of ITTOIA 2005 or section 105 of CTA 2009 (gifts of trading stock to charities etc), and
  - (b) the advantage is a benefit attributable to the making of the gift in respect of which an amount would be brought into account under section 109 of ITTOIA 2005 or section 108 of CTA 2009 (receipt of benefits by donor or connected person).
- (6) In this section—
- “benefit associated with a gift” has the meaning given by section 417;
  - “benefit associated with a payment” has the meaning given by section 196 of CTA 2010;
  - “the tainted donation provisions” has the meaning given by section 809ZI(3).

#### *Removal of reliefs and imposition of charge to tax*

#### **Removal of income tax relief in respect of tainted donations etc**

809ZM(1) This section applies where a tainted donation is made by a person.

- (2) Where (ignoring this Chapter) income tax relief would be available in respect of the tainted donation, that relief is not available.
- (3) Where—
  - (a) (ignoring this Chapter) income tax relief would be available in respect of an associated donation, and
  - (b) entitlement to that relief is not withdrawn by subsection (2), that relief is not available.
- (4) In this section—
  - “associated donation”, in relation to a tainted donation, means a relievable charity donation made—
    - (a) in accordance with the relevant arrangements, and
    - (b) by a person, other than—
      - (i) a qualifying charity-owned company in relation to that relievable charity donation, or
      - (ii) a relevant housing provider linked (within the meaning of section 809ZJ(7)) with the charity to which that donation is made;
  - “income tax relief” means relief under—
    - (a) section 63(2)(a), (aa) or (ab) of CAA 2001 (gifts of plant and machinery), so far as it applies in relation to income tax,
    - (b) Part 12 of ITEPA 2003 (payroll giving),

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- (c) section 108 of ITTOIA 2005 (gifts of trading stock),
  - (d) Chapter 2 of Part 8 of this Act (gift aid), or
  - (e) Chapter 3 of that Part (gifts of shares etc);
- “qualifying charity-owned company” has the meaning given by section 809ZJ(8) (except that paragraph (b) of that definition does not apply);
- “relevant housing provider” has the meaning given by section 809ZJ(8);
- “the relevant arrangements”, in relation to a tainted donation, means the arrangements by reference to which Conditions A and B in section 809ZJ are met.
- (5) Where entitlement to relief is withdrawn under this section in respect of a donation—
    - (a) subsections (6) and (7) apply if the relief is under Chapter 2 of Part 8 (gift aid), and
    - (b) subsection (8) applies if the relief is under Part 12 of ITEPA 2003 (payroll giving).
  - (6) For the purposes of Step 2 in section 58(1), the donation is not a qualifying donation for the purposes of Chapter 2 of Part 8.
  - (7) But—
    - (a) the donation remains a qualifying donation for the purposes of—
      - (i) Part 10 (special rules about charitable trusts etc),
      - (ii) section 899(5) (meaning of “qualifying annual payment”),
      - (iii) Chapter 2 of Part 11 of CTA 2010 (charitable companies: gifts and other payments),
      - (iv) section 664 of that Act (community amateur sports clubs: exemption for interest and gift aid income), and
    - (b) accordingly, section 414(2)(a) (donation treated as made after deduction of basic rate income tax) applies for the purposes of section 520(4) (income tax treated as deducted to be treated as income tax paid by charitable trust).
  - (8) The donation remains a donation for the purposes of Part 12 of ITEPA 2003 for the purposes of—
    - (a) section 521A (gifts under payroll deduction scheme: income tax liability and exemption), and
    - (b) section 472A of CTA 2010 (gifts under payroll reduction scheme: corporation tax liability and exemption).

### **Income tax charge where gift aid is withdrawn**

- 809Z~~N~~) Income tax is charged under this section if—
- (a) a person makes a tainted donation in a tax year,
  - (b) (ignoring this Chapter) relief would have been available under Chapter 2 of Part 8 in respect of the tainted donation or an associated donation (“the gift aid donation”), and
  - (c) the charity to which the gift aid donation is made is entitled to claim a repayment of tax in respect of that donation.

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- (2) The amount of the tax charged under this section is equal to the amount of the repayment of tax which the charity is entitled to claim in respect of the gift aid donation (whether or not such a claim is made).
- (3) Each of the persons mentioned in subsection (4) is liable for any tax charged under this section, and the liability of those persons is joint and several.
- (4) The persons are—
  - (a) the donor in respect of the gift aid donation,
  - (b) if different, the donor in respect of the tainted donation,
  - (c) each potentially advantaged person under the relevant arrangements relating to the tainted donation, and
  - (d) any charity to which the gift aid donation or (if different) the tainted donation is made, or any connected charity, which falls within subsection (5).
- (5) A charity falls within this subsection if the charity—
  - (a) is or was party to the relevant arrangements relating to the tainted donation, and
  - (b) was aware, at the time it entered into those arrangements, that a linked person was entering (or had entered or was likely to enter) into the arrangements in circumstances falling within Condition B in section 809ZJ.
- (6) No liability to income tax arises under this section in respect of a repayment of tax, if (and to the extent that) the repayment is itself repaid to the Commissioners for Her Majesty's Revenue and Customs under any other provision of the Tax Acts.
- (7) In this section—
  - “associated donation” has the same meaning as in section 809ZM;
  - “linked person” has the same meaning as in section 809ZJ;
  - “the relevant arrangements” has the same meaning as in section 809ZM.

### **Income tax charge where payment of trust income to charity**

- 809ZQ(1) Income tax is charged under this section if—
- (a) a person makes a tainted donation in a tax year,
  - (b) the tainted donation or an associated donation is a payment by the trustees of a settlement of income arising under the settlement (“the trust donation”), and
  - (c) the charity to which the trust donation is made is entitled to claim a repayment of tax in respect of that donation.
- (2) The amount of the tax charged under this section is equal to the amount of the repayment of tax which the charity is entitled to claim in respect of the trust donation (whether or not such a claim is made).
  - (3) Each of the persons mentioned in subsection (4) is liable for any tax charged under this section, and the liability of those persons is joint and several.
  - (4) The persons are—

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- (a) the trustees of the settlement who made the trust donation,
  - (b) if different, the donor in respect of the tainted donation,
  - (c) if section 628 or 630 of ITTOIA 2005 (gifts from settlor-interested trusts etc) applies in relation to the income out of which the trust donation is made, the settlor in relation to the settlement,
  - (d) each potentially advantaged person under the relevant arrangements relating to the tainted donation,
  - (e) any beneficiary of the settlement who is party to those arrangements, and
  - (f) any charity to which the trust donation or (if different) the tainted donation is made, or any connected charity, which falls within subsection (5).
- (5) A charity falls within this subsection if—
- (a) the charity is or was party to the relevant arrangements relating to the tainted donation, and
  - (b) the charity was aware, at the time it entered into those arrangements, that a linked person was entering (or had entered or was likely to enter) into the arrangements in circumstances falling within Condition B in section 809ZJ.
- (6) No liability to income tax arises under this section in respect of a repayment of tax if that repayment is itself repaid to the Commissioners for Her Majesty's Revenue and Customs under any other provision of the Tax Acts.
- (7) In this section—
- “associated donation” has the same meaning as in section 809ZM;
  - “linked person” has the same meaning as in section 809ZJ;
  - “the relevant arrangements” has the same meaning as in section 809ZM;
  - “settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).

### *Supplementary*

#### **Connected charities**

**809ZP** For the purposes of this Chapter, a “connected charity” in relation to another charity means a charity which is connected with that other charity in a matter relating to the structure, administration or control of either charity.

#### **Connected persons**

**809ZQ** Section 993 (meaning of “connected” persons) applies for the purposes of this Chapter—

- (a) subject to section 809ZP, and
  - (b) as if, after subsection (7) there were inserted the provision in subsection (2).
- (2) That provision is—
- “(8) A person who is a beneficiary of a settlement is connected with—

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- (a) a person in the capacity as trustee of the settlement, and
  - (b) the settlor in relation to the settlement.
- (9) For the purposes of this section—
- (a) a man and woman living together as husband and wife are treated as if they were husband and wife,
  - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other, and
  - (c) “close company” includes a company that would be a close company if it were resident in the United Kingdom.”

### **Minor definitions**

809ZRL) In this Chapter—

“arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;

“charity” includes a registered club within the meaning of section 658(6) of CTA 2010 (meaning of “community amateur sports club” and “registered club”).

- (2) In this Chapter, in the case of a charitable trust, references to a charity being entitled to a repayment of, or liable to pay, tax are to be read as references to the trustees of the trust being so entitled or liable.”

## **PART 2**

### CORPORATION TAX

2 After Part 21B of CTA 2010 (inserted by Schedule 5 to this Act) insert—

#### **“PART 21C**

### TAINED CHARITY DONATIONS

#### *Introduction*

#### **Overview of Part**

939AI) This Part makes provision for removing entitlement to corporation tax reliefs where a person makes a relievable charity donation which is a tainted donation.

- (2) See Chapter 8 of Part 13 of ITA 2007 and section 257A of TCGA 1992 for the removal of entitlement to other reliefs, and the ways in which other income tax advantages are counteracted, where a person makes a relievable charity donation which is a tainted donation.

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### **Relievable charity donations**

- 939(B) In this Chapter “relievable charity donation” means a gift or other disposal which—
- (a) is made by a person to a charity, and
  - (b) is eligible for tax relief.
- (2) A gift or other disposal is eligible for tax relief if one or both of the following apply—
- (a) (ignoring the tainted donation provisions) tax relief would be available in respect of it under a relevant relieving provision;
  - (b) the charity is entitled to claim a repayment of tax in respect of it.
- (3) “The tainted donation provisions” are—
- (a) this Part,
  - (b) section 257A of TCGA 1992 (tainted charity donations: disapplication of section 257), and
  - (c) Chapter 8 of Part 13 of ITA 2007 (tainted charity donations: removal of income tax relief etc).
- (4) The following are “relevant relieving provisions”—
- (a) section 257 of TCGA 1992 (gifts of chargeable assets),
  - (b) section 63(2)(a), (aa) and (ab) of CAA 2001 (gifts of plant and machinery),
  - (c) Part 12 of ITEPA 2003 (payroll giving),
  - (d) section 108 of ITTOIA 2005 (gifts of trading stock),
  - (e) Chapters 2 and 3 of Part 8 of ITA 2007 (gift aid and gifts of shares),
  - (f) section 105 of CTA 2009 (gifts of trading stock), and
  - (g) Part 6 of this Act (charitable donations relief).
- (5) For the purposes of this Part, an amount of income which arises under a UK settlement and to which a charity is entitled under the terms of the settlement is to be regarded as an amount gifted to the charity by the trustees of the settlement.

“UK settlement” has the same meaning as in section 628 of ITTOIA 2005.

### *Tainted donations*

### **Tainted donations**

- 939(C) For the purposes of this Part, a relievable charity donation is a tainted donation if (and only if) Conditions A, B and C are met.
- (2) Condition A is that—
- (a) a linked person enters into arrangements (whether before or after the donation is made), and
  - (b) it is reasonable to assume from either or both of—
    - (i) the likely effects of the donation and the arrangements, and

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- (ii) the circumstances in which the donation is made and the circumstances in which the arrangements are entered into, that the donation would not have been made and the arrangements would not have been entered into independently of one another.
- (3) “Linked person” means—
- (a) the person who made the donation (“the donor”), or
  - (b) a person who is connected with the donor at a relevant time.
- (4) In subsection (3) “relevant time” means a time during the period which begins with the earliest, and ends with the latest, of the following times—
- (a) the time when the arrangements are entered into as mentioned in subsection (2);
  - (b) the time when the relievable charity donation is made;
  - (c) the time when the arrangements are first materially implemented.
- (5) Condition B is that the main purpose, or one of the main purposes, of the linked person in entering into the arrangements is to obtain a financial advantage—
- (a) directly or indirectly from the charity to which the donation is made or a connected charity,
  - (b) for one or more linked persons who are not charities (each of whom is referred to in this Part as “a potentially advantaged person”).
- (6) Condition C is that the donor is not—
- (a) a qualifying charity-owned company, or
  - (b) a relevant housing provider linked with the charity to which the donation is made.
- (7) For the purposes of subsection (6)(b) a relevant housing provider is linked with the charity if (and only if)—
- (a) one is wholly owned, or subject to control, by the other, or
  - (b) both are wholly owned, or subject to control, by the same person.
- (8) In this section—
- “qualifying charity-owned company”, in relation to a relievable charity donation, means a company which—
- (a) is wholly owned by one or more charities, at least one of which is the charity to which the donation is made or a connected charity, and
  - (b) has not previously been under the control of, and does not carry on a trade or business previously carried on by, one or more of the following—
    - (i) a potentially advantaged person;
    - (ii) a person (other than a charity) who, at any time within the period of 4 years ending with the day on which paragraph (a) was first satisfied, was connected with a person who is a potentially advantaged person;
- “relevant housing provider” means a body which is—
- (a) a non-profit registered provider of social housing, or

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- (b) entered on a register maintained under section 1 of the Housing Act 1996, section 20 of the Housing (Scotland) Act 2010 (asp 17) or Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)).
- (9) Section 200 (company wholly owned by a charity) applies for the purposes of subsection (8), and for those purposes references in that section to “charity” include a registered club within the meaning of section 658(6).
- (10) This section is subject to section 939E (certain financial advantages to be ignored).

### **Circumstances in which financial advantage deemed to be obtained**

- 939D) This section applies for the purposes of Condition B.
- (2) Subsection (3) applies where the arrangements entered into by the linked person (as mentioned in Condition A) involve a transaction to which—
    - (a) that or another linked person (“X”), and
    - (b) another person (“Y”),
 are parties.
  - (3) X obtains a financial advantage from the charity to which the donation is made or a connected charity if—
    - (a) the terms of the transaction are less beneficial to Y or more beneficial to X (or both) than those which might reasonably be expected in a transaction concluded between parties dealing at arm's length, or
    - (b) the transaction is not of a kind which a person dealing at arm's length and in place of Y might reasonably be expected to make.
  - (4) Nothing in this section is intended to limit the circumstances in which a linked person may be regarded as obtaining a financial advantage for the purposes of section 939C.
  - (5) In this section—
    - “Condition A” and “Condition B” have the same meaning as in section 939C;
    - “linked person” has the meaning given by section 939C(3);
    - “transaction” includes (for example)—
      - (a) the sale or letting of property,
      - (b) the provision of services,
      - (c) the exchange of property,
      - (d) the provision of a loan or any other form of financial assistance, and
      - (e) investment in a business.

### **Certain financial advantages to be ignored**

- 939E) When determining whether a relievable charity donation is a tainted donation, a financial advantage within subsection (2), (3), (4) or (5) is to be ignored.

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- (2) A financial advantage is within this subsection if the person for whom it is obtained applies the advantage for charitable purposes only.
- (3) A financial advantage is within this subsection if (ignoring the tainted donation provisions) it is—
  - (a) a benefit associated with a gift which is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid), or
  - (b) a benefit associated with a payment which is a qualifying payment for the purposes of Chapter 2 of Part 6 (charitable donations relief: payments to charity).
- (4) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—
  - (a) the relievable charity donation is a disposal in respect of which tax relief would be available under Chapter 3 of Part 8 of ITA 2007 (gifts of shares, securities and real property to charities etc) or Chapter 3 of Part 6 (charitable donations: certain disposals to charity), and
  - (b) the advantage is a benefit the value of which would be taken into account in determining the relievable amount in respect of the disposal for the purposes of the Chapter in question.
- (5) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—
  - (a) the relievable charity donation is a gift in respect of which tax relief would be available under section 108 of ITTOIA 2005 or section 105 of CTA 2009 (gifts of trading stock to charities etc), and
  - (b) the advantage is a benefit attributable to the making of the gift in respect of which an amount would be brought into account under section 109 of ITTOIA 2005 or section 108 of CTA 2009 (receipt of benefits by donor or connected person).
- (6) In this section—

“benefit associated with a gift” has the meaning given by section 417 of ITA 2007;

“benefit associated with a payment” has the meaning given by section 196;

“the tainted donation provisions” has the meaning given by section 939B(3).

#### *Removal of reliefs*

#### **Removal of corporation tax relief in respect of tainted donations etc**

- 939(F) This section applies where a tainted donation is made by a company.
- (2) Where (ignoring this Part) corporation tax relief would be available in respect of the tainted donation, that relief is not available.
  - (3) Where—
    - (a) (ignoring this Part) corporation tax relief would be available in respect of an associated donation, and
    - (b) entitlement to that relief is not withdrawn by subsection (2),

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that relief is not available.

(4) In this section —

“associated donation”, in relation to a tainted donation, means a relievable charity donation made—

- (a) in accordance with the relevant arrangements, and
- (b) by a person, other than—
  - (i) a qualifying charity-owned company in relation to that relievable charity donation, or
  - (ii) a relevant housing provider linked (within the meaning of section 939C(7)) with the charity to which that donation is made;

“corporation tax relief” means relief under—

- (a) section 63(2)(a), (aa) or (ab) of CAA 2001 (gifts of plant and machinery), so far as it applies in relation to corporation tax,
- (b) section 105 of CTA 2009 (gifts of trading stock), or
- (c) Part 6 of CTA 2010 (charitable donations relief);

“qualifying charity-owned company” has the meaning given by section 939C(8) (except that paragraph (b) of that definition does not apply);

“relevant housing provider” has the meaning given by section 939C(8);

“the relevant arrangements”, in relation to a tainted donation, means the arrangements by reference to which Conditions A to C in section 939C are met.

### *Supplementary*

#### **Connected charities**

939G For the purposes of this Part, a “connected charity” in relation to another charity means a charity which is connected with that other charity in a matter relating to the structure, administration or control of either charity.

#### **Connected persons**

939H(1) Section 1122 (meaning of “connected” persons) applies for the purposes of this Part (except section 939G), but subject to the following modification.

(2) Section 1122 has effect as if after subsection (8) there were inserted—

“(9) A person who is a beneficiary of a settlement is connected with—

- (a) a person in the capacity as trustee of the settlement, and
- (b) the settlor in relation to the settlement.

(10) For the purposes of this section—

- (a) a man and woman living together as husband and wife are treated as if they were husband and wife,
- (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other, and

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- (c) “close company” includes a company that would be a close company if it were resident in the United Kingdom.”

### Minor definitions

939I) In this Part—

“arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;

“charity” includes a registered club within the meaning of section 658(6) (meaning of “community amateur sports club” and “registered club”).

- (2) In this Part, in the case of a charitable trust, references to a charity being entitled to a repayment of tax are to be read as references to the trustees of the trust being so entitled.”

## PART 3

### CAPITAL GAINS TAX

- 3 After section 257 of TCGA 1992 insert—

#### “257A Tainted charity donations

(1) Section 257 does not apply in relation to—

- (a) a tainted donation made by a person, or
- (b) any associated donation.

(2) For the purposes of this section—

- (a) “tainted donation” means a tainted donation within the meaning of Chapter 8 of Part 13 of ITA 2007 (tainted charity donations: removal of income tax reliefs etc) or Part 21C of CTA 2010 (tainted charity donations: removal of corporation tax relief), and
- (b) “associated donation” means an associated donation within the meaning of section 809ZM of ITA 2010 or section 939F of CTA 2010.”

## PART 4

### CONSEQUENTIAL AMENDMENTS

#### *Capital Allowances Act 2001*

- 4 In section 63 of CAA 2001 (cases in which disposal value is nil), in subsection (4)—
- (a) after “Subsection (2)” insert “—  
(a),  
and
  - (b) at the end insert “, and

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- (b) is subject to section 809ZM of ITA 2007 and section 939F of CTA 2010 (removal of tax relief in respect of tainted charity donations etc).”

*Income Tax (Employment and Pensions) Act 2003*

- 5 In section 713 of ITEPA 2003 (donations to charity: payroll deduction scheme), after subsection (5) insert—

“(6) This section is subject to section 809ZM of ITA 2007 (removal of income tax relief in respect of tainted charity donations etc).”

*Income Tax (Trading and Other Income) Act 2005*

- 6 In section 108 of ITTOIA 2005 (gifts of trading stock to charities etc), in subsection (5)—

- (a) after “This section” insert “—

(a),  
and

- (b) at the end insert “, and

- (b) is subject to section 809ZM of ITA 2007 (removal of income tax relief in respect of tainted charity donations etc).”

*Income Tax Act 2007*

- 7 ITA 2007 is amended as follows.

- 8 In section 30 (calculation of income tax liability: additional tax)—

- (a) in subsection (1) before the entry for section 205 of FA 2004 insert—

“section 809ZN (tainted gift aid donations: charge to tax),  
section 809ZO (tainted charity donations by trustees: charge to tax),” and

- (b) for subsection (2) substitute—

“(2) If the taxpayer is a trustee, the provisions referred to at Step 7 of the calculation in section 23 are—

section 496 (discretionary payments by trustees: tax pool adjustment),

section 809ZN (tainted gift aid donations: charge to tax), and  
section 809ZO (tainted charity donations by trustees: charge to tax).”

- 9 In section 58 (meaning of “adjusted net income), at the end insert—

“(4) Subsection (6) of section 809ZM (removal of income tax relief in respect of tainted donations etc) excludes certain donations from being deducted at step 2 in subsection (1).”

- 10 In section 413 (gift aid: overview of Chapter), after subsection (4) insert—

“(4A) This Chapter is subject to section 809ZM (removal of income tax relief in respect of tainted charity donations etc).”

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11 In section 431 (gifts of shares, securities and real property to charities etc), after subsection (6) insert—

“(7) This Chapter is subject to section 809ZM (removal of income tax relief in respect of tainted charity donations etc).”

12 In section 543 (meaning of “non-charitable expenditure”), omit subsection (1)(g) and (h).

13 Sections 549 to 557 (substantial donor transactions) are repealed.

14 In Schedule 2 (transitionals and savings), omit paragraphs 105 and 106.

15 In Schedule 4 (index of defined expressions), at the appropriate places insert—

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“arrangements (in Chapter 8 of Part 13)	section 809ZR”
“charity (in Chapter 8 of Part 13)	paragraph 1 of Schedule 6 to FA 2010 (and see also section 809ZR)”
“the donor (in Chapter 8 of Part 13)	section 809ZJ(3)”
“potentially advantaged person (in Chapter 8 of Part 13)	section 809ZJ(5)”
“relievable charity donation (in Chapter 8 of Part 13)	section 809ZI(1)”
“tainted donation (in Chapter 8 of Part 13)	section 809ZJ”.

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#### *Housing and Regeneration Act 2008*

16 In Schedule 9 (amendment of enactments: Part 1), omit paragraph 34.

#### *Corporation Tax Act 2009*

17 In section 105 of CTA 2009 (gifts of trading stock to charities etc), in subsection (6) after “charity” insert “ and section 939F of that Act (removal of corporation tax relief in respect of tainted charity donations etc) ”.

18 In Schedule 1 (minor and consequential amendments), omit paragraphs 703 and 704.

#### *Corporation Tax Act 2010*

19 CTA 2010 is amended as follows.

20 In section 1 (overview of Act), in subsection (4)—

(a) in the opening words for “21” substitute “ 21C ”, and

(b) after paragraph (j) insert “, and

(k) tainted donations made to charities (see Part 21C).”

21 In section 189 (relief for qualifying charitable donations), in subsection (5) for “any” substitute “ section 939F and to any other ”.

22 In section 496 (meaning of “non-charitable expenditure”), omit subsection (1)(e) and (f).

23 Sections 502 to 510 (substantial donor transactions) are repealed.

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24	In Schedule 1 (minor and consequential amendments), omit paragraphs 532 to 535.												
25	In Schedule 2 (transitionals and savings etc), omit paragraphs 73 to 76.												
26	In Schedule 4 (index of defined expressions), at the appropriate places insert—												
	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">“arrangements (in Part 21C)</td> <td>section 939I”</td> </tr> <tr> <td>“charity (in Part 21C)</td> <td>paragraph 1 of Schedule 6 to FA 2010 (and see also section 939I)”</td> </tr> <tr> <td>“the donor (in Part 21C)</td> <td>section 939C(3)”</td> </tr> <tr> <td>“potentially advantaged person (in Part 21C)</td> <td>section 939C(5)”</td> </tr> <tr> <td>“relievable charity donation (in Part 21C)</td> <td>section 939B(1)”</td> </tr> <tr> <td>“tainted donation (in Part 21C)</td> <td>section 939C”.</td> </tr> </table>	“arrangements (in Part 21C)	section 939I”	“charity (in Part 21C)	paragraph 1 of Schedule 6 to FA 2010 (and see also section 939I)”	“the donor (in Part 21C)	section 939C(3)”	“potentially advantaged person (in Part 21C)	section 939C(5)”	“relievable charity donation (in Part 21C)	section 939B(1)”	“tainted donation (in Part 21C)	section 939C”.
“arrangements (in Part 21C)	section 939I”												
“charity (in Part 21C)	paragraph 1 of Schedule 6 to FA 2010 (and see also section 939I)”												
“the donor (in Part 21C)	section 939C(3)”												
“potentially advantaged person (in Part 21C)	section 939C(5)”												
“relievable charity donation (in Part 21C)	section 939B(1)”												
“tainted donation (in Part 21C)	section 939C”.												

## PART 5

### COMMENCEMENT AND TRANSITIONAL PROVISION

#### *Commencement*

- 27 (1) Subject to sub-paragraph (2), the amendments made by this Schedule have effect in relation to relievable charity donations made on or after 1 April 2011.
- (2) The repeals made by paragraphs 12 to 14, 16, 18 and 22 to 25 have effect in relation to any transaction, other than an excluded transaction, occurring on or after 1 April 2013.
- (3) A transaction is “excluded” if it is entered into in pursuance of a contract made before 1 April 2013, other than in pursuance of a variation of the contract made on or after that date.

#### **Modifications etc. (not altering text)**

- C1** Sch. 3 para. 27 modified (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 8**
- C2** Sch. 3 para. 27 modified (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**

#### *Treatment of existing arrangements*

- 28 In the amendments made by Parts 1 and 2 of this Schedule, references to arrangements include arrangements made, or made and implemented, before 1 April 2011.

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*Treatment of substantial donor transactions*

- 29 (1) For the purposes of section 549(2) of ITA 2007 (meaning of substantial donor), relievable gifts (within the meaning of section 550 of that Act) received by a charitable trust on or after 1 April 2011 are to be disregarded.
- (2) Sub-paragraphs (3) and (4) apply where—
- (a) a substantial donor transaction is entered into before, or on or after 1 April 2011, and
- (b) that transaction is not tainted.
- (3) Where a payment made on or after 1 April 2011 by a charitable trust to a substantial donor in the course of, or for the purposes of, the substantial donor transaction would (in the absence of this sub-paragraph) be treated under section 551(1) or (5) of ITA 2007 as non-charitable expenditure, that payment is not to be so treated.
- (4) Where, as a result of the substantial donor transaction, non-charitable expenditure would (in the absence of this sub-paragraph) be treated as incurred under section 551(2) of that Act on or after 1 April 2011, that expenditure is not to be treated as so incurred.
- (5) A substantial donor transaction is “tainted” if (and only if) it is reasonable to assume from—
- (a) the likely effects of the relevant relievable gifts and the substantial donor transaction, and
- (b) the circumstances in which the relevant relievable gifts were made and the circumstances in which the substantial donor transaction was entered into, that the relevant relievable gifts (or one or more of them) would not have been made and the transaction would not have been entered into independently of one another.
- (6) In this section—
- “relevant relievable gifts”, in relation to the substantial donor transaction, means the relievable gifts by reason of which a person is a substantial donor and the transaction is a substantial donor transaction;
- “relievable gift” has the meaning given by section 550 of ITA 2007;
- “substantial donor” and “substantial donor transaction” have the meaning given by section 549 of that Act.
- 30 (1) For the purposes of section 502(2) of CTA 2010 (meaning of substantial donor), relievable gifts (within the meaning of section 503 of that Act) received by a charitable company on or after 1 April 2011 are to be disregarded.
- (2) Sub-paragraphs (3) and (4) apply where—
- (a) a substantial donor transaction is entered into before, or on or after, 1 April 2011, and
- (b) that transaction is not tainted.
- (3) Where a payment made on or after 1 April 2011 by a charitable company to a substantial donor in the course of, or for the purposes of, the substantial donor transaction would (in the absence of this sub-paragraph) be treated under section 504(1) or (5) of CTA 2010 as non-charitable expenditure, that payment is not to be so treated.
- (4) Where, as a result of the substantial donor transaction, non-charitable expenditure would (in the absence of this sub-paragraph) be treated as incurred under

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section 504(2) of that Act on or after 1 April 2011, that expenditure is not to be treated as so incurred.

- (5) The substantial donor transaction is “tainted” if (and only if) it is reasonable to assume from—
- (a) the likely effects of the relevant relievable gifts and the substantial donor transaction, and
  - (b) the circumstances in which the relevant relievable gifts were made and the circumstances in which the substantial donor transaction was entered into, that the relevant relievable gifts (or one or more of them) would not have been made and the transaction would not have been entered into independently of one another.
- (6) In this section—
- “relevant relievable gifts”, in relation to the substantial donor transaction, means the relievable gifts by reason of which a person is a substantial donor and the transaction is a substantial donor transaction;
  - “relievable gift” has the meaning given by section 503 of CTA 2010;
  - “substantial donor” and “substantial donor transaction” have the meaning given by section 502 of that Act.

*Housing (Scotland) Act 2010 (asp 17)*

- 31 Until such time as section 20 of the Housing (Scotland) Act 2010 is brought into force, the references to that section in the following provisions are to be read as references to section 57 of the Housing (Scotland) Act 2001 (asp 10)—
- (a) the definition of “relevant housing provider” in section 809ZJ(8) of ITA 2007;
  - (b) the definition of “relevant housing provider” in section 939C(8) of CTA 2010.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 23 para. 45(1)(ia) inserted by [2017 c. 10 Sch. 11 para. 6\(3\)](#)
- Sch. 23 para. 2(1A) inserted by [S.I. 2019/397 reg. 2\(2\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)
- Sch. 23 para. 15A inserted by [S.I. 2019/397 reg. 2\(3\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)