



# Finance Act 1990

## 1990 CHAPTER 29

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

#### *Charities*

#### **24 Payroll deduction scheme**

- (1) In section 202(7) of the Taxes Act 1988 (which limits to £480 the deductions attracting relief) for “£480” there shall be substituted “£600”.
- (2) This section shall have effect for the year 1990-91 and subsequent years of assessment.

#### **25 Donations to charity by individuals**

- (1) For the purposes of this section, a gift to a charity by an individual (“the donor”) is a qualifying donation if—
  - (a) it is made on or after 1st October 1990,
  - (b) it satisfies the requirements of subsection (2) below, and
  - (c) the donor gives an appropriate certificate in relation to it to the charity.
- (2) A gift satisfies the requirements of this subsection if—
  - (a) it takes the form of a payment of a sum of money;
  - (b) it is not subject to a condition as to repayment;
  - (c) it is not a covenanted payment to charity;
  - (d) it does not constitute a sum falling within section 202(2) of the Taxes Act 1988 (payroll deduction scheme);

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- (e) neither the donor nor any person connected with him receives a benefit in consequence of making it or, where the donor or a person connected with him does receive a benefit in consequence of making it, the relevant value in relation to the gift does not exceed two and a half per cent. of the amount of the gift and the amount to be taken into account for the purposes of this paragraph in relation to the gift does not exceed £250;
  - (f) it is not conditional on or associated with, or part of an arrangement involving, the acquisition of property by the charity, otherwise than by way of gift, from the donor or a person connected with him;
  - (g) the sum paid is not less than £600;
  - (h) the sum paid does not, when aggregated with any other qualifying donations already made by the donor in the relevant year of assessment, exceed £5,000,000; and
  - (i) the donor is resident in the United Kingdom at the time the gift is made.
- (3) The reference in subsection (1)(c) above to an appropriate certificate is a reference to a certificate which is in such form as the Board may prescribe and contains statements to the following effect—
- (a) that the gift satisfies the requirements of subsection (2) above, and
  - (b) that, either directly or by deduction from profits or gains brought into charge to tax in the relevant year of assessment, the donor has paid or will pay to the Board income tax of an amount equal to income tax at the basic rate for the relevant year of assessment on the grossed up amount of the gift.
- (4) For the purposes of subsections (2)(e) above and (5) below, the relevant value in relation to a gift is—
- (a) where there is one benefit received in consequence of making it which is received by the donor or a person connected with him, the value of that benefit;
  - (b) where there is more than one benefit received in consequence of making it which is received by the donor or a person connected with him, the aggregate value of all the benefits received in consequence of making it which are received by the donor or a person connected with him.
- (5) The amount to be taken into account for the purposes of subsection (2)(e) above in relation to a gift to a charity is an amount equal to the aggregate of—
- (a) the relevant value in relation to the gift, and
  - (b) the relevant value in relation to each gift already made to the charity by the donor in the relevant year of assessment which is a qualifying donation for the purposes of this section.
- (6) Where a gift is a qualifying donation, the Income Tax Acts, except Part IX of the Taxes Act 1988 (annual payments), shall have effect, in their application to the donor, as if the making of the gift were the making of a covenanted payment to charity of an amount equal to the grossed up amount of the gift, being a payment falling to be made at the time the gift is made.
- (7) Where the payment which the donor is treated by virtue of subsection (6) above as making would, if in fact made, be payable wholly or partly out of profits or gains brought into charge to income tax, they shall be assessed and charged with income tax on the donor without distinguishing the payment and in respect of so much of them as is equal to the payment and may be deducted in computing his total income the donor shall be charged at the appropriate rate.

- (8) Where the payment which the donor is treated by virtue of subsection (6) above as making would, if in fact made, not be payable or not be wholly payable out of profits or gains brought into charge to income tax, the donor shall be assessable and chargeable with income tax at the appropriate rate on the payment, or on so much of it as would not be payable out of profits or gains brought into charge to income tax.
- (9) For the purposes of subsections (7) and (8) above the appropriate rate is the basic rate for the year of assessment in which, in accordance with subsection (6) above, the payment falls to be made.
- (10) The receipt by a charity of a gift which is a qualifying donation shall be treated for the purposes of the Tax Acts, in their application to the charity, as the receipt, under deduction of income tax at the basic rate for the relevant year of assessment, of an annual payment of an amount equal to the grossed up amount of the gift.
- (11) Section 839 of the Taxes Act 1988 applies for the purposes of subsections (2) and (4) above.
- (12) For the purposes of this section—
  - (a) “charity” has the same meaning as in section 506 of the Taxes Act 1988 and includes each of the bodies mentioned in section 507 of that Act;
  - (b) “covenanted payment to charity” has the meaning given by section 660(3) of the Taxes Act 1988;
  - (c) “relevant year of assessment”, in relation to a gift, means the year of assessment in which the gift is made;
  - (d) references, in relation to a gift, to the grossed up amount are to the amount which after deducting income tax at the basic rate for the relevant year of assessment leaves the amount of the gift; and
  - (e) references to profits or gains brought into charge to income tax are to profits or gains which are treated for the purposes of section 348 of the Taxes Act 1988 as brought into charge to income tax.

## **26 Company donations to charity**

- (1) Section 339 of the Taxes Act 1988 (charges on income: donations to charity) shall be amended as follows.
- (2) In subsection (1) after the word “payment” there shall be inserted the words “of a sum of money”.
- (3) In subsection (2) the words “and is not a close company” shall be omitted.
- (4) The following subsections shall be inserted after subsection (3)—
  - “(3A) A payment made by a close company is not a qualifying donation if it is of a sum which leaves less than £600 after deducting income tax under subsection (3) above.
  - (3B) A payment made by a close company is not a qualifying donation if—
    - (a) it is made subject to a condition as to repayment, or
    - (b) the company or a connected person receives a benefit in consequence of making it and either the relevant value in relation to the payment exceeds two and a half per cent. of the amount given after deducting

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tax under section 339(3) or the amount to be taken into account for the purposes of this paragraph in relation to the payment exceeds £250.

(3C) For the purposes of subsections (3B) above and (3D) below, the relevant value in relation to a payment to a charity is—

- (a) where there is one benefit received in consequence of making it which is received by the company or a connected person, the value of that benefit;
- (b) where there is more than one benefit received in consequence of making it which is received by the company or a connected person, the aggregate value of all the benefits received in consequence of making it which are received by the company or a connected person.

(3D) The amount to be taken into account for the purposes of subsection (3B)(b) above in relation to a payment to a charity is an amount equal to the aggregate of—

- (a) the relevant value in relation to the payment, and
- (b) the relevant value in relation to each payment already made to the charity by the company in the accounting period in which the payment is made which is a qualifying donation within the meaning of this section.

(3E) A payment made by a close company is not a qualifying donation if it is conditional on, or associated with, or part of an arrangement involving, the acquisition of property by the charity, otherwise than by way of gift, from the company or a connected person.

(3F) A payment made by a company is not a qualifying donation unless the company gives to the charity to which the payment is made a certificate in such form as the Board may prescribe and containing—

- (a) in the case of any company, a statement to the effect that the payment is one out of which the company has deducted tax under subsection (3) above, and
- (b) in the case of a close company, a statement to the effect that the payment satisfies the requirements of subsections (3A) to (3E) above.

(3G) A payment made by a company is not a qualifying donation if the company is itself a charity.”

(5) The following subsection shall be inserted after subsection (7)—

“(7A) In subsections (3B) to (3E) above references to a connected person are to a person connected with—

- (a) the company, or
- (b) a person connected with the company;

and section 839 applies for the purposes of this subsection.”

(6) This section applies in relation to payments made on or after 1st October 1990.

## 27 **Maximum qualifying company donations**

(1) In section 338 of the Taxes Act 1988 (allowance of charges on income and capital) in subsection (2) for the words “to section 339” there shall be substituted the words “to sections 339 and 339A”.

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- (2) In section 339 of that Act (charges on income: donations to charity) subsection (5) shall be omitted and in subsection (9) for “(5)” there shall be substituted “(4)”.
- (3) The following section shall be inserted after section 339 of that Act—

**“339A Maximum qualifying donations**

- (1) If in a particular accounting period of a company the company has no associated company, a qualifying donation made by the company in that period shall not be allowable under section 338 by virtue of subsection (2) (b) of that section to the extent that, when taken together with any qualifying donations already made by the company in that period, the amount given, after deducting income tax under section 339(3), exceeds £5 million.
- (2) If in a particular accounting period of a company the company has one or more associated companies, a qualifying donation made by the company in that period shall not be allowable under section 338 by virtue of subsection (2) (b) of that section to the extent that, when taken together with any qualifying donations already made by the company in that period, the amount given, after deducting income tax under section 339(3), exceeds the appropriate fraction of £5 million.
- (3) Subsection (1) or (2) above shall not apply where—
  - (a) the company concerned is not a close company in the accounting period concerned, and
  - (b) in that period the maximum amount allowable under section 338 by virtue of subsection (2)(b) of that section (“the allowable maximum”) is (apart from this subsection) less than a sum equal to 3 per cent. of the dividends paid on the company’s ordinary share capital in that period (“the relevant sum”);and in such a case the allowable maximum in that period shall be the relevant sum.
- (4) For the purposes of subsection (2) above, the appropriate fraction is a fraction whose numerator is one and whose denominator is one plus the number of associated companies.
- (5) In applying subsections (1) to (4) above to any accounting period of a company, an associated company shall be disregarded if—
  - (a) it has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period), or
  - (b) it is a charity throughout that accounting period (or, if an associated company during part only of that accounting period, throughout that part of that accounting period).
- (6) In determining for the purposes of this section how many associated companies a company has got in an accounting period or whether a company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the period, and two or more associated companies shall be counted even if they were associated companies for different parts of the period.

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- (7) For an accounting period of less than 12 months the figure of £5 million specified in subsections (1) and (2) above shall be proportionately reduced.
  - (8) For the purposes of this section a company is an associated company of another at a particular time if at that time one of the two has control of the other or both are under the control of the same person or persons; and in this subsection “control” shall be construed in accordance with section 416.”
- (4) This section applies in relation to accounting periods ending on or after 1st October 1990.