

**EXPLANATORY MEMORANDUM TO
THE SUBSTANTIAL DONOR TRANSACTIONS (VARIATION OF THRESHOLD
LIMITS) REGULATIONS 2009**

2009 No. 1029

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These regulations increase the threshold before a person becomes a substantial donor to a charity from relievable gifts of £100,000 to £150,000 in a period of six years.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 These regulations will take effect the day after they are laid in order to allow charities and their donors to benefit from the relaxation in the threshold as soon as possible. This Budget announcement is purely a relieving amendment and will reduce the administration burden on charities that receive relievable donations from a particular donor of between £100,000 and £150,000 in a six year period.

4. **Legislative Context**

- 4.1 Section 506A to section 506C of the Income and Corporation Taxes Act 1988 and section 549 to section 557 of the Income Taxes Act 2007 contain anti-avoidance legislation in relation to transactions between charities and their substantial donors. The legislation creates a tax charge where charities enter into specified transactions with their substantial donors.
- 4.2 A person will be a substantial donor of a charity if the charity receives relievable gifts of at least £25,000 from them in a period of 12 months or £100,000 in a period of 6 years. These regulations increase the threshold of relievable gifts which can be made in a six year period before a person becomes a substantial donor of a charity.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

The Financial Secretary to the Treasury, Stephen Timms MP has made the following statement regarding Human Rights:

In my view the provisions of the Substantial Donor Transactions (Variation of Threshold Limits) Regulations 2009 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

- 7.1 The substantial donors to charities rules potentially apply to all charities carrying out transactions with their largest donors (where tax relief is available in respect of their donation(s)). The rules tackle those who influence or set up charities with a view to avoiding tax rather than with any charitable intent.
- 7.2 The threshold of relievable gifts that a person can make to a charity before they become a substantial donor to that charity will be increased from £100,000 in a period of 6 years to £150,000 in a period of 6 years. This is aimed at easing the burden for charities that monitor donations over this 6 year period and will ensure that fewer donors become substantial donors. The annual threshold of £25,000 will remain the same.

- *Consolidation*

- 7.3 There are no current plans to consolidate the Acts that are being amended.

8. Consultation outcome

- 8.1 Formal public consultation on the substantial donor legislation took place over summer 2008 which included a proposal to increase the threshold at which a particular donor becomes a substantial donor. The proposal to increase the threshold was largely welcome although the package of proposals as a whole was not thought to sufficiently address charities' concerns over the current legislation.
- 8.2 Budget 2009 announced further informal consultation that will be taking place over summer 2009 to develop a replacement to the current legislation.

9. Guidance

- 9.1 Guidance on the regulations will be included in the HMRC Detailed Guidance Notes for Charities which is available on the HMRC website at www.hmrc.gov.uk/charities/guidance-notes/intro.htm

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is that the regulations should provide an administrative easement for charities that receive regular donations of up to £24,999 a year from particular donors.
- 10.2 The impact on the public sector is nil.
- 10.3 An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of the change will be assessed as part of the ongoing informal consultation on the future of the substantial donor legislation.

13. Contact

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