



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

### [<sup>F1</sup>CHAPTER 8

#### TAINED CHARITY DONATIONS

#### Textual Amendments

- F1** Pt. 13 Ch. 8 inserted (19.7.2011) (with effect in accordance with Sch. 3 para. 27 28 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 1](#)

#### *Introduction*

#### **809ZH Overview of Chapter**

- (1) This Chapter makes provision for removing entitlement to income tax reliefs, and counteracting income tax advantages, where a person makes a relievably 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 relievably charity donation which is a tainted donation.

#### **809ZI Relievably charity donations**

- (1) In this Chapter “relievably 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.

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- (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
  - (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*

#### **809ZJ Tainted donations**

- (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—

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- (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 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).

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

**C1** S. 809ZJ(8) modified (temp.) (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), Sch. 3 para. 31(a)

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### **809ZK Circumstances in which financial advantage deemed to be obtained**

- (1) 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”),
 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.

### **809ZL Certain financial advantages to be ignored**

- (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,

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- securities and real property to charities etc) or Chapter 3 of Part 6 of CTA 2010 (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;
- “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*

### **809ZM Removal of income tax relief in respect of tainted donations etc**

- (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,

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- (b) Part 12 of ITEPA 2003 (payroll giving),
  - (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).

### **809ZN Income tax charge where gift aid is withdrawn**

- (1) 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.

### **809ZO Income tax charge where payment of trust income to charity**

- (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—
  - (a) the trustees of the settlement who made the trust donation,
  - (b) if different, the donor in respect of the tainted donation,

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- (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*

#### **809ZP Connected charities**

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.

#### **809ZQ Connected persons**

- (1) 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—
    - (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—



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- [<sup>F2</sup>(a) two people living together as if they were a married couple or civil partners are treated as if they were spouses or 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.”

#### Textual Amendments

- F2** Words in s. 809ZQ(2) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), **Sch. 3 para. 29(3)**

### 809ZR Minor definitions

- (1) 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.]

**Changes to legislation:**

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