



# Finance Act 2002

## 2002 CHAPTER 23

### PART 3

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

### CHAPTER 2

#### OTHER PROVISIONS

#### *Charitable giving*

#### **97 Gifts of real property to charity**

- (1) In section 587B of the Taxes Act 1988 (gifts of shares and securities to charities) in subsection (9), in the definition of “qualifying investment”, omit the word “and” immediately preceding paragraph (d) and at the end of that paragraph insert “; and  
(e) a qualifying interest in land”.

- (2) After that subsection insert—

“(9A) In this section a “qualifying interest in land” means—

- (a) a freehold interest in land, or
- (b) a leasehold interest in land which is a term of years absolute, where the land in question is in the United Kingdom.

This subsection is subject to subsections (9B) to (9D) below.

(9B) Where a person makes a disposal to a charity of—

- (a) the whole of his beneficial interest in such freehold or leasehold interest in land as is described in subsection (9A)(a) or (b) above, and
- (b) any easement, servitude, right or privilege so far as benefiting that land,

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the disposal falling within paragraph (b) above is to be regarded for the purposes of this section as a disposal by the person of the whole of his beneficial interest in a qualifying interest in land.

(9C) Where a person who has a freehold or leasehold interest in land in the United Kingdom grants a lease for a term of years absolute (or, in the case of land in Scotland, grants a lease) to a charity of the whole or part of that land, the grant of that lease is to be regarded for the purposes of this section as a disposal by the person of the whole of the beneficial interest in the leasehold interest so granted.

(9D) For the purposes of subsection (9A) above, an agreement to acquire a freehold interest and an agreement for a lease are not qualifying interests in land.

(9E) In the application of this section to Scotland—

- (a) references to a freehold interest in land are references to the interest of the owner,
- (b) references to a leasehold interest in land which is a term of years absolute are references to a tenant's right over or interest in a property subject to a lease, and
- (c) references to an agreement for a lease do not include references to missives of let that constitute an actual lease.”.

(3) After subsection (11) of that section insert—

“(12) This section is supplemented by section 587C below.”.

(4) In consequence of the amendments made by subsections (1) to (3), the sidenote of section 587B becomes “Gifts of shares, securities and real property to charities etc”.

(5) After section 587B of the Taxes Act 1988 insert—

**“587C Supplementary provision for gifts of real property**

(1) This section applies for the purposes of section 587B where a qualifying investment is a qualifying interest in land.

(2) Where two or more persons—

- (a) are jointly beneficially entitled to the qualifying interest in land, or
- (b) are, taken together, beneficially entitled in common to the qualifying interest in land,

section 587B applies only if each of those persons disposes of the whole of his beneficial interest in the qualifying interest in land to the charity.

(3) Relief under section 587B shall be available to each of the persons referred to in subsection (2) above, but the amount that may be allowed as respects any of them shall be only such share of the relevant amount as they may agree in the case of that person.

(4) No person may make a claim for a relief under subsection (2) of section 587B unless he has received a certificate given by or on behalf of the charity.

(5) The certificate must—

- (a) specify the description of the qualifying interest in land which is the subject of the disposal,

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- (b) specify the date of the disposal, and
  - (c) contain a statement that the charity has acquired the qualifying interest in land.
- (6) If, in the case of a disposal of a qualifying interest in land, a disqualifying event occurs at any time in the relevant period, the person (or each of the persons) who made the disposal to the charity shall be treated as never having been entitled to relief under section 587B in respect of the disposal.
- (7) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (6) above.
- (8) For the purposes of subsection (6) above a disqualifying event occurs if the person (or any one of the persons) who made the disposal or any person connected with him (or any one of them)—
  - (a) becomes entitled to an interest or right in relation to all or part of the land to which the disposal relates, or
  - (b) becomes party to an arrangement under which he enjoys some right in relation to all or part of that land,otherwise than for full consideration in money or money's worth.
- (9) A disqualifying event does not occur, for the purposes of subsection (6) above, if a person becomes entitled to an interest or right as mentioned in subsection (8)(a) above as a result of a disposition of property on death, whether the disposition is effected by will, under the law relating to intestacy or otherwise.
- (10) For the purposes of subsection (6) above the relevant period is the period beginning with the date of the disposal of the qualifying interest in land and ending with—
  - (a) in the case of an individual, the fifth anniversary of the 31st January next following the end of the year of assessment in which the disposal was made, and
  - (b) in the case of a company, the sixth anniversary of the end of the accounting period in which the disposal was made.
- (11) Section 839 (connected persons) applies for the purposes of this section.
- (12) This section shall be construed as one with section 587B.”.
- (6) This section has effect in relation to any disposal of a qualifying interest in land to a charity where the disposal is made—
  - (a) in the case of a disposal to the charity by an individual, on or after 6th April 2002, or
  - (b) in the case of a disposal to the charity by a company, on or after 1st April 2002.
- (7) Subsection (9E)(a) of section 587B of the Taxes Act 1988 has effect until the appointed day as if for “the interest of the owner” there were substituted “the estate or interest of the proprietor of the *dominium utile* (or, in the case of property other than feudal property, of the owner)”.
- (8) For the purposes of subsection (7) “the appointed day” means such day as may be appointed by the Scottish Ministers under section 71 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 for the purposes of the Act.

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**98 Gift aid: election to be treated as if gift made in previous tax year**

- (1) A person (“the donor”) who makes a gift that is a qualifying donation within section 25 of the Finance Act 1990 (c. 29) (gift aid) may elect to be treated for the purposes of that section as if the gift were a qualifying donation made by him in the previous year of assessment.
- (2) Any such election must be made by notice in writing to an officer of the Inland Revenue—
  - (a) on or before the date on which the donor delivers his return for the previous year of assessment under section 8 of the Taxes Management Act 1970 (c. 9) (personal return), and
  - (b) not later than the 31st January next following the end of that year.
- (3) No such election may be made unless in the previous year the grossed up amount of the gift would, if made in that year, be payable out of profits or gains brought into charge to income tax or capital gains tax.
- (4) The effect of an election under this section is that the provisions of section 25(6) to (9A) of the Finance Act 1990 (c. 29) have effect in relation to the donor as if the gift were a qualifying donation made in the previous year of assessment.
- (5) An election under this section does not affect the position of the recipient of the gift.

The reference in section 25(10) of the Finance Act 1990 to the relevant year of assessment shall be construed accordingly as a reference to the year of assessment in which the gift is actually made.
- (6) This section has effect in relation to gifts made on or after 6th April 2003.