



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### [<sup>F1</sup>PART 21C U.K.]

#### TAINTED CHARITY DONATIONS

##### Textual Amendments

- F1** Pt. 21C inserted (with effect in accordance with Sch. 3 para. 27 28 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 2](#)

##### *Introduction*

#### **939A Overview of Part U.K.**

- (1) 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.

#### **939B Relievable charity donations U.K.**

- (1) 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.

*Status: Point in time view as at 17/07/2012.*

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- (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*

#### 939C Tainted donations **U.K.**

- (1) 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
    - (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.

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- (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
  - (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).

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

C1 S. 939C(8) modified (temp.) (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 31\(b\)](#)

**939D Circumstances in which financial advantage deemed to be obtained** **U.K.**

- (1) This section applies for the purposes of Condition B.

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- (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.

### **939E Certain financial advantages to be ignored U.K.**

- (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 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

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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 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*

### **939F Removal of corporation tax relief in respect of tainted donations etc** **U.K.**

- (1) 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),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);

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“ 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*

#### **939G Connected charities** **U.K.**

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.

#### **939H Connected persons** **U.K.**

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

#### **939I Minor definitions** **U.K.**

- (1) 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.]

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