



# Finance Act 1990

## 1990 CHAPTER 29

### PART II

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

### CHAPTER I

#### GENERAL

#### *Charities*

<sup>F1</sup>24 .....

#### Textual Amendments

<sup>F1</sup> S. 24 repealed (27.07.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 213, **Sch. 23 Pt. III**.

#### 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 [<sup>F2</sup>an appropriate declaration] 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;
  - <sup>F3</sup>(c) .....

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- (d) it does not constitute a sum falling within [<sup>F4</sup>section 713(3) of the Income Tax (Earnings and Pensions) Act 2003] (payroll deduction scheme);
- (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 [<sup>F5</sup>the limit imposed by subsection (5A) below] 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;
- <sup>F3</sup>(g) .....
- <sup>F6</sup>(h) .....
- [<sup>F7</sup>(i) either—
- (i) at the time the gift is made, the donor is resident in the United Kingdom [<sup>F8</sup>or is in Crown employment as defined in section 28(2) of the Income Tax (Earnings and Pensions) Act 2003] ; or
- (ii) the grossed up amount of the gift would, if in fact made, be payable out of profits or gains brought into charge to income tax or capital gains tax.]
- [<sup>F9</sup>(3) The reference in subsection (1)(c) above to an appropriate declaration is a reference to a declaration which—
- (a) is given in such manner as may be prescribed by regulations made by the Board; and
- (b) contains such information and such statements as may be so prescribed.
- (3A) Regulations made for the purposes of subsection (3) above may—
- (a) provide for declarations to have effect, to cease to have effect or to be deemed never to have had effect in such circumstances and for such purposes as may be prescribed by the regulations;
- (b) require charities to keep records with respect to declarations given to them by donors; and
- (c) make different provision for declarations made in a different manner.]
- (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.
- [<sup>F10</sup>(5A) The limit imposed by this subsection is—

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- (a) where the amount of the gift does not exceed £100, 25 per cent of the amount of the gift;
  - (b) where the amount of the gift exceeds £100 but does not exceed £1,000, £25;
  - (c) where the amount of the gift exceeds £1,000, 2.5 per cent of the amount of the gift.
- (5B) Where a benefit received in consequence of making a gift—
- (a) consists of the right to receive benefits at intervals over a period of less than twelve months;
  - (b) relates to a period of less than twelve months; or
  - (c) is one of a series of benefits received at intervals in consequence of making a series of gifts at intervals of less than twelve months,
- the value of the benefit shall be adjusted for the purposes of subsection (4) above and the amount of the gift shall be adjusted for the purposes of subsection (5A) above.
- (5C) Where a benefit, other than a benefit which is one of a series of benefits received at intervals, is received in consequence of making a gift which is one of a series of gifts made at intervals of less than twelve months, the amount of the gift shall be adjusted for the purposes of subsection (5A) above.
- (5D) Where the value of a benefit, or the amount of a gift, falls to be adjusted under subsection (5B) or (5C) above, the value or amount shall be multiplied by 365 and the result shall be divided by—
- (a) in a case falling within subsection (5B)(a) or (b) above, the number of days in the period of less than twelve months;
  - (b) in a case falling within subsection (5B)(c) or (5C) above, the average number of days in the intervals of less than twelve months;
- and the reference in subsection (5B) above to subsection (4) above is a reference to that subsection as it applies for the purposes of subsection (2)(e) above.
- [<sup>F11</sup>(5E) In determining whether a gift to a charity is a qualifying donation the benefit of any right of admission received in consequence of the gift shall be disregarded if subsections (5F) to (5H) are satisfied in relation to the right.
- (5F) This subsection is satisfied if the opportunity to make a gift and to receive the right of admission in consequence is available to the public.
- (5G) This subsection is satisfied if the right of admission is a right granted by the charity for the purpose of viewing property preserved, maintained, kept or created by a charity in pursuance of its charitable purposes, including, in particular—
- (a) buildings,
  - (b) grounds or other land,
  - (c) plants,
  - (d) animals,
  - (e) works of art (but not performances),
  - (f) artefacts, and
  - (g) property of a scientific nature.
- (5H) This subsection is satisfied if—
- (a) the right of admission applies, during a period of at least one year, at all times at which the public can obtain admission, or

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- (b) a member of the public could purchase the same right of admission and the amount of the gift is greater by at least 10% than the amount which he would have to pay.

(5I) In subsection (5E) “right of admission” means a right of admission—

- (a) of the person who makes the gift or of that person and one or more members of his family (whether or not the right must be exercised by all those persons at the same time),
- (b) to premises or property to which the public are admitted on payment of an admission fee, and
- (c) without payment of the admission fee or on payment of a reduced fee;

and in the application of subsection (5H)(b) “the same right of admission” means a right relating to the same property, classes of person and periods of time as the right received in consequence of the gift.

(5J) For the purposes of subsection (5H)(a) a right of admission shall be treated as applying at all times at which the public can obtain admission despite the fact that the right does not apply on days specified by the charity, being days on each of which an event is to take place on the premises to which the right relates; provided that no more than 5 days are specified for that purpose in relation to—

- (a) the period during which the right applies, in the case of a period of one year, or
- (b) each calendar year during all or part of which the right applies, in the case of a right applying for a period of more than one year.]

[ Where any gift made by the donor in a year of assessment is a qualifying donation,<sup>F12</sup>(6) then, for that year—

- (a) the Income Tax Acts and the<sup>M1</sup>Taxation of Chargeable Gains Act 1992 shall have effect, in their application to him, as if—
  - (i) the gift had been made after deduction of income tax at the basic rate; and
  - (ii) the basic rate limit were increased by an amount equal to the grossed up amount of the gift;
- (b) the provisions mentioned in subsection (7) below shall have effect, in their application to him, as if any reference to income tax which he is entitled to charge against any person included a reference to the tax treated as deducted from the gift; and
- (c) to the extent, if any, necessary to ensure that he is charged to an amount of income tax and capital gains tax equal to the tax treated as deducted from the gift, he shall not be entitled to relief under Chapter I of Part VII of the Taxes Act 1988;

but paragraph (a)(ii) above shall not apply for the purposes of any computation under [<sup>F13</sup>sections 535 to 537 of the Income Tax (Trading and Other Income) Act 2005 (top slicing relief)] .

(7) The provisions referred to in subsection (6)(b) above are—

- (a) section 289A(5)(e) of the Taxes Act 1988 (relief under enterprise investment scheme);
- (b) section 796(3) of that Act (credit for foreign tax); and
- (c) paragraph 1(6)(f) of Schedule 15B to that Act (venture capital trusts).

(8) Where the tax treated as deducted from a gift by virtue of subsection (6) above exceeds the amount of income tax and capital gains tax with which the donor is charged for

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the year of assessment, the donor shall be assessable and chargeable with income tax at the basic rate on so much of the gift as is necessary to recover an amount of tax equal to the excess.

(9) In determining for the purposes of subsection (8) above the total amount of income tax and capital gains tax with which the donor is charged for the year of assessment, there shall be disregarded—

- (a) any tax charged at the basic rate by virtue of—
  - (i) section 348 of the Taxes Act 1988 (read with section 3 of that Act); or
  - (ii) section 349 of that Act (read with section 350 of that Act);

- <sup>F14</sup>(b) any tax treated as having been paid under—
  - (i) section 399(2) or 400(2) of the Income Tax (Trading and Other Income) Act 2005 (distributions from UK resident companies etc. on which there is no tax credit);
  - (ii) section 414(1) of that Act (stock dividend income);
  - (iii) section 421(1) of that Act (release of loan to participator in close company); or
  - (iv) section 530(1) of that Act (gains from contracts for life insurance etc.);

- (c) any relief to which section 256(2) [<sup>F15</sup>of the Taxes Act 1988] applies (relief by way of income tax reduction);

- (d) any relief under—
  - (i) section 347B of that Act (relief for maintenance payments);
  - (ii) section 788 of that Act (relief by agreement with other countries); or
  - (iii) section 790(1) of that Act (unilateral relief);

- (e) any set off of tax deducted, or treated as deducted, from income other than—
  - <sup>F16</sup>(i) .....
  - (ii) tax treated as deducted from [<sup>F17</sup>estate income under section 656(3) or 657(4) of the Income Tax (Trading and Other Income) Act 2005, so far as that income is treated under section 679 of that Act as paid from sums within section 680(3)(b) or (4) of that Act] ; and

- (f) any set off of tax credits.

(9A) For the purposes of sections 257(5) and 257A(5) of the Taxes Act 1988 (age related allowances), the donor's total income shall be treated as reduced by the aggregate amount of gifts from which tax is treated as deducted by virtue of subsection (6) above.]

(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;

- <sup>F18</sup>(b) .....

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- (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; <sup>F18</sup> . . .

<sup>F18</sup>(e) . . . . .

[ This section is to be read with—

- <sup>F19</sup>(13) (a) section 98 of the Finance Act 2002 (gift aid: election to be treated as if gift made in previous tax year);
- (b) section 83 of the Finance Act 2004 (gift aid: giving through the self-assessment return).]

#### Textual Amendments

- F2** Words in s. 25(1)(c) substituted (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, s. 39(2)
- F3** S. 25(2)(c)(g) repealed (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, ss. 39(3)(a), 156, Sch. 40 Pt. II(1) note 4
- F4** Words in s. 25(2)(d) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 166(2) (with Sch. 7)
- F5** Words in s. 25(2)(e) substituted (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, s. 39(3)(b)
- F6** S. 25(2)(h) repealed (for gifts made on or after 19.03.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 71(5)(6), 123, Sch. 19 Pt. V Note 12.
- F7** S. 25(2)(i) substituted (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, s. 39(3)(c)
- F8** Words in s. 25(2)(i)(i) substituted (with effect in accordance with Sch. 17 para. 5(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 17 para. 5(1)
- F9** S. 25(3)(3A) substituted for s. 25(3) (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, s. 39(4)
- F10** S. 25(5A)-(5G) inserted (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, s. 39(5)
- F11** S. 25(5E)-(5J) substituted for (with effect in accordance with s. 11(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 11(1)
- F12** S. 25(6)-(9A) substituted for s. 25(6)-(9) (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, s. 39(6)
- F13** Words in s. 25(6) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 415(2) (with Sch. 2)
- F14** S. 25(9)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 415(3)(a) (with Sch. 2)
- F15** Words in s. 25(9)(c) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 415(3)(b) (with Sch. 2) and the same amendment made (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 37 (with Sch. 36)
- F16** S. 25(9)(e)(i) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 415(3)(c), Sch. 3 (with Sch. 2)
- F17** Words in s. 25(9)(e)(ii) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 415(3)(d) (with Sch. 2)
- F18** S. 25(12)(b)(e) and the word “and” immediately preceding paragraph (e) repealed (28.7.2000 with effect as mentioned in s. 39(10) of the amending Act) by 2000 c. 17, ss. 39(7), 156, Sch. 40 Pt. II(1) note 4

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**F19** S. 25(13) inserted (with effect in accordance with s. 83(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 83\(6\)](#)

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

**C1** S. 25 modified (31.7.1998) by [1998 c. 36, s. 48\(1\)\(4\)](#)

S. 25 applied (31.7.1998) by [1998 c. 36, s. 48\(1\)\(10\)](#)

**C2** S. 25 modified (with effect as mentioned in s. 98(6) of the modifying Act) by [Finance Act 2002 \(c. 23\)](#), [s. 98\(1\)-\(5\)](#);

S. 25 modified (with effect as mentioned in s. 58(4) of the modifying Act) by [Finance Act 2002 \(c. 23\)](#), [s. 58\(1\)](#), [Sch. 18 Pt. 3 para. 9\(1\)](#)

**C3** S. 25(2)(e) applied (31.7.1998) by [1998 c. 36, s. 48\(4\)\(d\)](#)

**C4** S. 25(3) (as substituted by [2000 c. 17, s. 39\(4\)](#)): power to make regulations extended (28.7.2000 with effect as mentioned in [s. 39\(10\)](#) of the amending Act) by [2000 c. 17, s. 39\(10\)](#)

**Marginal Citations**

**M1** [1992 c. 12](#).

**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 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—

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- (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.

- <sup>F20</sup>(1) .....
- (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) ”.
- <sup>F20</sup>(3) .....
- (4) This section applies in relation to accounting periods ending on or after 1st October 1990.

### Textual Amendments

**F20** S. 27(1)(3) repealed(for accounting periods beginning on or after 19.03.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt.V** Note 5.



**Status:**

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