

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 6: Charitable donations relief

Chapter 2: Certain payments to charity

Overview

757. This Chapter gives relief for certain payments of money by companies to charities. It is based on section 339 of ICTA.

Section 191: Qualifying payments

758. This section sets out the conditions which have to be met if a sum paid to a charity is to be a qualifying payment and hence a qualifying charitable donation. It is based on section 339(1), (3B), (3E), and (3G) of ICTA.

Section 192: Condition as to repayment

759. This section provides that under certain conditions a charitable payment is not subject to a “condition as to repayment” (see section 191(3)). It is based on sections 339(3BA) and (3BB) of ICTA.

760. *Subsection (6)*, in referring to non-charitable expenditure, rewrites the cross-reference to “section 505(4)” of ICTA in section 339(3BB) of ICTA as section 493 and section 515. Section 515 rewrites section 505(4) of ICTA and section 493 section 505(5) of ICTA. Non-charitable expenditure referred to in section 505(5) is, by implication, the same non-charitable expenditure as is referred to in section 505(4). It was considered helpful however to clarify in the rewrite that non-charitable expenditure in both the accounting period (section 505(4)) and previous accounting period (section 505(5)) are referred to by subsection (6).

Section 193: Associated acquisition etc

761. This section specifies circumstances in which a payment to a charity is prevented from being a qualifying payment because of association with an acquisition of property by the charity from the donor or an associated company. It is based on section 339(3E) of ICTA.

Section 194: Distributions

762. This section prevents a distribution from being a qualifying payment other than in the case of a payment from a company which is wholly owned by a charity. It is based on section 339(1), (1A) and (1B) of ICTA.

Section 195: Associated benefits

763. This section prevents one or more payments which result in benefits from being qualifying payments, unless the benefits are within the limits set out in section 197 (restrictions on associated benefits). It is based on section 339(3B) of ICTA.

Section 196: Associated benefits: meaning

764. This section explains for the purposes of the Chapter when a benefit is associated with a payment to a charity. It is based on section 339(3B) of ICTA.

Section 197: Restrictions on associated benefits

765. This section sets out two conditions which, if either is met, mean that the restrictions on benefits associated with a payment to a charity are breached. It is based on section 339(3B), (3C), (3D) and (3DA) of ICTA.

766. The two conditions are:

- a stepped scale, depending on the amount of each payment (Condition A) – the “benefit per payment” test; and
- an overall monetary limit on benefits associated with the total of any payments to a single charity in the course of an accounting period – the “benefit per accounting period” test (Condition B). This is unrelated to the size of any particular payment.

767. Both these restrictions apply to any benefit “associated with” a payment.

Section 198: Payments and benefits linked to periods of less than 12 months

768. This section modifies the application of section 197 where payments or benefits are linked to periods of less than 12 months. It is based on section 339(3DB), (3DC) and (3DD) of ICTA.

769. The section provides, according to the case, for annualising:

- the actual amount of the payment; or
- both the amount of the payment and the value of the benefit(s) associated with the payment.

770. Only the annualised amount in each case is to be compared with the cash limits given in section 197. This prevents periods of less than 12 months being used to exploit the cash limits.

771. *Subsection (8)* states the formula for annualising in each case. In the source legislation some of the conditions could overlap, so that more than one condition could apply to the payment(s) and associated benefits concerned. This subsection removes doubt about which might take priority by providing a priority rule where payments are made at intervals of less than 12 months. See *Change 27* in Annex 1.

Section 199: Payment attributed to earlier accounting period

772. This section allows an election to be made for a payment to be attributed to an earlier accounting period which falls within a period of nine months prior to the date of the payment instead of the accounting period in which the payment is made. It is based on section 339(7AA) of ICTA.

773. *Subsection (3)* sets out the time within which a claim must be made. The reference in the source legislation to claims being to the Board of Inland Revenue has been changed. Claims are simply to an officer of Revenue and Customs. See *Change 5* in Annex 1.

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Section 200: Company wholly owned by a charity

774. This section sets out what conditions are required to be met in order for a company to be wholly owned by a charity. It is based on section 339(7AB) and (7AC) of ICTA.

Section 201: Associated persons

775. This section defines an associated person as a person who is connected with the company or who is connected with such a person. It is based on section 339(7A) of ICTA.

Section 202: “Charity”

776. This section defines “charity” for the purposes of the Chapter and is based on section 339(9) of ICTA.

777. Section 339(9) of ICTA defines charity, in part, by reference to the bodies mentioned in section 507 of ICTA. That section includes the Trustees of the BritishMuseum and the Trustees of the Natural History Museum. The BritishMuseum and NaturalHistoryMuseum are established for charitable purposes and so there is no need to refer to them separately in this definition.