



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 6

#### CHARITABLE DONATIONS RELIEF

### CHAPTER 3

#### CERTAIN DISPOSALS TO CHARITY

*Amounts treated as qualifying charitable donations*

#### **203 Certain disposals of investments**

- (1) This section applies if—
  - (a) a company disposes of the whole of the beneficial interest in a qualifying investment to a charity,
  - (b) the disposal is otherwise than by way of a bargain made at arm's length,
  - (c) the company is not itself a charity, and
  - (d) the company makes a claim.
- (2) The relievable amount is treated for corporation tax purposes as a qualifying charitable donation made by the company in the accounting period in which the disposal is made.
- (3) No relief in respect of the disposal is to be given under section 105 of CTA 2009 (gifts of trading stock to charities etc).
- (4) For the calculation of the relievable amount, see section 206.
- (5) If the qualifying investment is a qualifying interest in land, this section is subject to—
  - section 213 (certificates),
  - section 214 (qualifying interests in land held jointly),
  - section 215 (calculation of relievable amount etc where joint disposal), and
  - section 216 (disqualifying events).

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## **204 Meaning of qualifying investment**

- (1) In this Chapter “qualifying investment” means any of the following—
- (a) shares or securities which are listed on a recognised stock exchange or dealt in on a designated market in the United Kingdom,
  - (b) units in an authorised unit trust,
  - (c) shares in an open-ended investment company,
  - (d) an interest in an offshore fund, and
  - (e) a qualifying interest in land.
- (2) In this section—
- “offshore fund” has the meaning given by section 355 of TIOPA 2010, and
- “open-ended investment company” is to be read in accordance with sections 613 and 615.
- (3) In paragraph (a) of subsection (1) “designated” means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that paragraph.
- (4) An order under subsection (3)—
- (a) may designate a market by name or by reference to a class or description of market,
  - (b) may vary or revoke a previous order under that subsection.

## **205 Meaning of qualifying interest in land**

- (1) In this Chapter “qualifying interest in land” means—
- (a) a freehold interest in land in the United Kingdom, or
  - (b) a leasehold interest in land in the United Kingdom which is a term of years absolute.
- This is subject to subsections (2) to (5).
- (2) Subsection (3) applies if a company with a beneficial interest in a freehold or leasehold interest mentioned in subsection (1)(a) or (b) makes a disposal to a charity of—
- (a) the whole of the beneficial interest, and
  - (b) an easement, servitude, right or privilege so far as benefiting the land in question.
- (3) The disposal mentioned in subsection (2)(b) is regarded for the purposes of this Chapter as a disposal by the company of the whole of its beneficial interest in a qualifying interest in land separate from the disposal mentioned in subsection (2)(a).
- (4) If a company which has a freehold or leasehold interest in land in the United Kingdom grants a lease for a term of years absolute to a charity of the whole or part of the land, the grant of the lease is regarded for the purposes of this Chapter as a disposal by the company of the whole of the beneficial interest in the leasehold interest so granted.
- (5) Neither an agreement to acquire a freehold interest nor an agreement for a lease is a qualifying interest in land.
- (6) In the application of this section to Scotland—
- (a) references to a freehold interest in land are to the interest of the owner,

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- (b) references to a leasehold interest in land which is a term of years absolute are to a tenant's right over or interest in a property subject to a lease,
- (c) references to an agreement for a lease do not include missives of let that constitute an actual lease, and
- (d) the reference in subsection (4) to granting a lease for a term of years absolute is to granting a lease.

## 206 The relievable amount

- (1) If the disposal is a gift, the relievable amount is given by the formula—

$$V + IC - B$$

where—

V is the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever is less),

IC is the amount of the incidental costs of making the disposal to the company making it, and

B is the total value of any benefits received in consequence of making the disposal by the company making the disposal or a person connected with the company.

- (2) If the disposal is at an undervalue, the relievable amount is given by the formula—

$$E + C - B$$

where—

E is the amount (if any) by which V (as defined in subsection (1)) exceeds the amount or value of the consideration for the disposal,

C is given by subsection (4), and

B is as defined in subsection (1).

- (3) But if the amount given by the formula in subsection (1) or (2) is a negative amount, the relievable amount is nil.

- (4) C is found as follows.

### *Step 1*

Calculate the consideration for which the disposal is treated as made for the purposes of TCGA 1992 as a result of section 257(2)(a) of that Act (in case of disposal to charity etc, consideration to be such that no gain or loss accrues).

### *Step 2*

Find the excess (if any) of the amount calculated at step 1 over the amount or value of the consideration for the disposal.

If there is such an excess, C is the amount of that excess or, if less, the amount of the incidental costs of making the disposal to the company making it.

If there is no such excess, C is nil.

- (5) This section needs to be read with—

- (a) section 207 (incidental costs of making disposal),
- (b) section 208 (consideration), and

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- (c) sections 209 to 212 (value of net benefit to charity).

## 207 Incidental costs of making disposal

References in section 206 to the incidental costs of making the disposal to the company making it are to—

- (a) fees, commission or remuneration paid for the professional services of a surveyor, valuer, auctioneer, accountant, agent or legal adviser which are wholly and exclusively incurred by the company for the purposes of the disposal,
- (b) costs of transfer or conveyance wholly and exclusively incurred by the company for the purposes of the disposal,
- (c) costs of advertising to find a buyer, and
- (d) costs reasonably incurred in making any valuation or apportionment required for the purposes of this Chapter.

## 208 Consideration

If the disposal is at an undervalue, section 48 of TCGA 1992 (consideration due after time of disposal) applies in relation to the calculation of the relievable amount as it applies in relation to the calculation of a gain.

*Value of net benefit to charity*

## 209 Value of net benefit to charity

- (1) For the purposes of this Chapter the value of the net benefit to a charity is—
- (a) the [<sup>F1</sup>relevant] value of the qualifying investment, or
  - (b) if the charity is, or becomes, subject to a disposal-related obligation, the [<sup>F1</sup>relevant] value of the qualifying investment reduced by the total amount of the disposal-related liabilities of the charity.

[<sup>F2</sup>(1A) In subsection (1) “ relevant value ” means—

- (a) where subsection (1B) applies, the lower of the market value and the acquisition value, and
- (b) otherwise, the market value.

(1B) This subsection applies where—

- (a) the qualifying investment, or anything from which it derives or which it represents (whether in whole or in part and whether directly or indirectly), was acquired by the company making the disposal within the period of 4 years ending with the day on which the disposal is made,
- (b) the acquisition was made as part of a scheme, and
- (c) the main purpose, or one of the main purposes, of the company in entering into the scheme was to obtain relief, or an increased amount of relief, as a result of this Chapter.

(1C) In subsection (1B) “ scheme ” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions. ]

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- (2) This section is supplemented by—
- (a) section 210 (market value of qualifying investments),
  - [<sup>F3</sup>(aa) section 210A (acquisition value of qualifying investments),]
  - (b) section 211 (meaning of disposal-related obligation), and
  - (c) section 212 (meaning and amount of disposal-related liability).

#### Textual Amendments

- F1** Word in s. 209(1) substituted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 7 para. 6\(2\)](#)
- F2** S. 209(1A)-(1C) inserted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 7 para. 6\(3\)](#)
- F3** S. 209(2)(aa) inserted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 7 para. 6\(4\)](#)

## 210 Market value of qualifying investments

- (1) For the purposes of this Chapter the market value of a qualifying investment is determined in accordance with sections 272 to 274 of TCGA 1992 (subject to Part I of Schedule 11 to that Act).
- (2) But, in the case of an interest in an offshore fund for which separate buying and selling prices are published regularly by the managers of the fund, the market value for the purposes of this Chapter is an amount equal to the buying price (that is the lower price) published on—
- (a) the day of the disposal, or
  - (b) if none were published on that day, the latest day on which the prices were published before that day.
- (3) In this section “offshore fund” has the meaning given by section 355 of TIOPA 2010.

### [<sup>F4</sup>210A Acquisition value of qualifying investments

- (1) For the purposes of this Chapter the acquisition value of a qualifying investment disposed of by a company is—
- (a) where the qualifying investment was acquired by the company within the period of 4 years ending with the day on which the disposal is made, the cost to the company of acquiring it, or
  - (b) where something from which the qualifying investment derives or which it represents was so acquired, such proportion of the cost to the company of acquiring that thing as is just and reasonable to attribute to the qualifying investment.
- (2) A reference in subsection (1) to the cost to the company of an acquisition is to—
- (a) the consideration given by the company for the acquisition, less
  - (b) any amount that is received in connection with the acquisition, by the company or a person connected with it, as part of the scheme in question.]

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### Textual Amendments

- F4** S. 210A inserted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 7 para. 7](#)

## 211 Meaning of “disposal-related obligation”

- (1) For the purposes of this Chapter an obligation is a “disposal-related obligation”, in relation to a qualifying investment, if condition A or B is met in relation to it.
- (2) The obligation may be to any person (whether or not the company making the disposal or a person connected with it).
- (3) Condition A is that it is reasonable to suppose that the disposal of the qualifying investment to the charity would not have been made in the absence of the obligation.
- (4) Condition B is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a disposal-related investment.
- (5) In applying condition A all the circumstances must be taken into account (including in particular the difference in the value of the net benefit to the charity calculated under section 209(1)(a) and that value calculated under section 209(1)(b) on the assumption that the obligation under consideration is a disposal-related obligation).
- (6) In subsection (4) “disposal-related investment” means any of the following—
  - (a) an asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount),
  - (b) an asset derived from, or representing, the qualifying investment, whether in whole or in part and whether directly or indirectly, and
  - (c) an asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.
- (7) In this section “obligation” includes a reference to each of the following—
  - (a) a scheme, arrangement or understanding of any kind, whether or not legally enforceable, and
  - (b) a series of obligations (whether or not between the same parties).

## 212 Meaning and amount of “disposal-related liability”

- (1) For the purposes of this Chapter a liability is a “disposal-related liability” in the case of a qualifying investment if it is a liability of the charity under a disposal-related obligation in relation to the qualifying investment.
- (2) If the disposal-related obligation is contingent, the amount to be brought into account for the purposes of section 209 at any time in respect of the disposal-related liability, so far as contingent, is—
  - (a) if the contingency occurs, the amount or value of the liability actually incurred in consequence of the occurrence of the contingency, or
  - (b) if the contingency does not occur, nil.

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### *Special provisions about qualifying interests in land*

#### **213 Certificate required from charity**

- (1) This section applies if the qualifying investment is a qualifying interest in land.
- (2) A company may not make a claim under section 203 unless the company has received a certificate given by or on behalf of the charity.
- (3) The certificate must—
  - (a) describe the qualifying interest in land,
  - (b) specify the date of the disposal, and
  - (c) state that the charity has acquired the qualifying interest in land.

#### **214 Qualifying interests in land held jointly**

- (1) This section applies if the qualifying investment is a qualifying interest in land.
- (2) It applies if two or more persons (“the owners”)—
  - (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.
- (3) Relief as a result of this Chapter is available if—
  - (a) at least one of the owners is a qualifying company, and
  - (b) all the owners dispose of the whole of their beneficial interests in the qualifying interest in land to the charity.
- (4) Relief as a result of this Chapter is available to each of the owners which is a qualifying company (and section 215 applies).
- (5) A company is a qualifying company if it is not itself a charity.
- (6) Subsection (7) applies if one or more of the owners is not a company.
- (7) For the purpose of determining whether the owners' beneficial interests are disposed of as mentioned in subsection (3)(b), section 205(2) to (4) applies as if references to a company included references to a person who is not a company.

#### **215 Calculation of relievable amount etc where joint disposal of interest in land**

- (1) If relief as a result of this Chapter is available because of section 214, this section applies for the purpose of finding—
  - (a) the relievable amount, and
  - (b) the amount of relief to be given to a qualifying company.
- (2) If one or more of the owners is an individual, subsections (3) and (4) apply.
- (3) The relievable amount is taken to be the relievable amount calculated for the purposes of Chapter 3 of Part 8 of ITA 2007.
- (4) The amount of relief to be given to a qualifying company as a result of this Chapter is calculated on the basis that the reference in section 203(2) to the relievable amount is read as a reference to such share of the relievable amount found under subsection (3)

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above as is allocated to the company by the agreement mentioned in section 442(5) of ITA 2007.

- (5) If none of the owners is an individual, subsections (6) to (9) apply.
- (6) Calculate the relievable amount under this Chapter as if—
  - (a) the owners were a single qualifying company, and
  - (b) the disposals of the owners' beneficial interests were a single disposal by that single company of the whole of the beneficial interest in the qualifying interest in land.
- (7) In particular, calculate the consideration mentioned at Step 1 in section 206(4) by—
  - (a) calculating, for each owner, the consideration for which the disposal of the owner's beneficial interest is treated as made for the purposes of TCGA 1992 as a result of section 257(2)(a) of that Act, and
  - (b) adding together all the consideration calculated under paragraph (a).
- (8) If one or more of the owners is not a qualifying company, in calculating the relievable amount make just and reasonable adjustments to reduce the relievable amount to reflect the fact that relief as a result of this Chapter is not available to that owner or to those owners.
- (9) The amount of relief to be given to a qualifying company as a result of this Chapter is calculated on the basis that the reference in section 203(2) to the relievable amount is read as a reference to such share of the relievable amount found under subsections (6) to (8) above as is allocated to the company by an agreement made between those owners which are qualifying companies.

## **216 Disqualifying events**

- (1) This section applies if the qualifying investment is a qualifying interest in land.
- (2) If a disqualifying event occurs at any time in the provisional period, the following are treated as never having been entitled to relief as a result of this Chapter in respect of the disposal of the qualifying interest in land—
  - (a) in a case where sections 214 and 215 do not apply, the company which made the disposal, and
  - (b) in a case where those sections apply, each qualifying company which is an owner.
- (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).
- (4) A disqualifying event occurs if a person mentioned in subsection (5) becomes (otherwise than for full consideration in money or money's worth)—
  - (a) entitled to an interest or right in relation to all or part of the land to which the disposal relates, or
  - (b) party to an arrangement under which he enjoys some right in relation to all or part of that land.
- (5) The persons are—
  - (a) in a case where sections 214 and 215 do not apply, the company which made the disposal or a person connected with that company, and



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- (b) in a case where those sections apply, a person who is an owner or a person connected with such a person.
- (6) A disqualifying event does not occur if a person becomes entitled to an interest or right as mentioned in subsection (4)(a) 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).
- (7) “The provisional period” is the period beginning with the date of the disposal of the qualifying interest in land and ending with the sixth anniversary of the end of the accounting period in which the disposal was made.

### *Interpretation*

#### **217 “Charity”**

In this Chapter “charity” means—

- (a) a body of persons or trust established for charitable purposes only,
- (b) the Trustees of the National Heritage Memorial Fund,
- (c) the Historic Buildings and Monuments Commission for England, or
- (d) the National Endowment for Science, Technology and the Arts.

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