

*Taxation of charities***1 Legacies to charities to be within scope of tax**

- (1) Part 10 of ITA 2007 (special rules about charitable trusts etc) is amended as follows.
- (2) After section 523 insert—

“523A Legacies: income tax liability and exemption

- (1) This section applies to property received by a charitable trust under a testamentary disposition.
 - (2) Income tax is charged on the property.
 - (3) It is charged on the total value of the property so received in the tax year; and for that purpose the value of any property other than money is its market value as at the time of the disposition.
 - (4) But property is not taken into account in calculating total income so far as it is applied to charitable purposes only.
 - (5) The trustees of the charitable trust are liable for any tax charged under this section.
 - (6) In this section, “property” includes rights and interests of any description.”
- (3) In section 540 (the non-exempt amount)—
 - (a) in subsection (3)(a) (definition of “attributable income”), after “the charitable trust’s income” insert “(including any property received by it under a testamentary disposition)”;
(b) at the end insert—

“(6) In subsection (3)(a), “property” includes rights and interests of any description.”
 - (4) In section 562 (excess expenditure), in subsection (5) (definition of “non-taxable sums”), omit “, legacies”.

2 Approved charitable investments: purpose test

- (1) Section 558 of ITA 2007 (approved charitable investments) is amended in accordance with subsections (2) to (5).
- (2) The existing text becomes subsection (2).
- (3) Before that subsection insert—

“(1) For the purposes of section 543, “approved charitable investment” means an investment—

 - (a) that is of a type listed in subsection (2) and is made for an allowable purpose, or

- (b) that is not of a type listed in subsection (2) but that is approved under subsection (3).”
- (4) In subsection (2) –
 - (a) for the words before Type 1 substitute “The following are the types of investment mentioned in subsection (1)(a).”;
 - (b) omit Type 12.
- (5) At the end insert –
 - “(3) An officer of Revenue and Customs may approve a loan or other investment under this subsection if satisfied, on a claim, that it is made for an allowable purpose.
 - (4) For the purposes of this section, an investment is made “for an allowable purpose” if it is reasonable to draw the conclusion, from all the circumstances of the case, that the investment is made for the sole purpose of benefiting the charitable trust.”

3 Tainted charity donations: replacement of purpose test with outcome test

- (1) Section 809ZJ of ITA 2007 (tainted donations) is amended in accordance with subsections (2) and (3).
- (2) For subsection (5) substitute –
 - “(5) Condition B is that a linked person who is not a charity receives financial assistance –
 - (a) under or in connection with the arrangements, and
 - (b) directly or indirectly from the charity to which the donation is made or from a connected charity.”
- (3) In subsection (8), at the appropriate place insert –
 - ““financial assistance” includes a loan, a guarantee, an indemnity or any form of investment (in each case, whether or not on arm’s length terms).”
- (4) Schedule 1 contains connected amendments to the tainted charity donations rules in Chapter 8 of Part 13 of ITA 2007.

SCHEDULE 1

Section 3

TAINTED DONATIONS

Income tax

- 1 Chapter 8 of Part 13 of ITA 2007 (tainted charity donations) is amended as follows.
- 2 (1) Section 809ZJ (tainted donations) is amended as follows.
 - (2) In subsection (1) –
 - (a) the words from “is a tainted donation” to the end become paragraph (a);
 - (b) after that paragraph insert “, and
 - (b) becomes a tainted donation at the earliest time when all those conditions are met.””
 - (3) In subsection (2)(b), at the end of sub-paragraph (i) (but before the “and” after it) insert “as at the later of the time when the donation is made and the time when the arrangements are entered into”.
 - (4) In subsection (4), in the words before paragraph (a), for the words from “a time” to “the following times” substitute “any time after the earliest of the following times”.
 - (5) In subsection (8), in the definition of “qualifying charity-owned company”, for “potentially advantaged person” (in both places it occurs) substitute “linked person”.
 - (6) In subsection (10), for “advantages” substitute “assistance”.
- 3 Omit section 809ZK (circumstances in which financial advantage deemed to be obtained).
- 4 (1) Section 809ZL (certain financial advantages to be ignored) is amended as follows.
 - (2) In the heading, for “advantages” substitute “assistance”.
 - (3) In each of subsections (1) to (5), for “a financial advantage” substitute “financial assistance”.
 - (4) In subsection (2), for “for whom it is obtained applies the advantage” substitute “who receives the assistance applies it”.
 - (5) In subsection (4)(b) and (5)(b), for “the advantage” substitute “the assistance”.
 - (6) In subsection (6), at the appropriate place insert –

““financial assistance” has the meaning given by section 809ZJ(8);”.
- 5 (1) Section 809ZM (removal of income tax relief in respect of tainted donations etc) is amended as follows.

- (2) In the heading, for “in respect of tainted donations etc” substitute “where donation becomes tainted in same year”.

- (3) For subsection (1) substitute –

“(1) This section applies where –

- (a) a person makes a relievable charity donation in a tax year, and
- (b) the donation becomes a tainted donation in the same tax year.”

- 6 After section 809ZM insert –

“809ZMA Income tax charge where donation becomes tainted in later year

- (1) This section applies where –

- (a) a person makes a relievable charity donation in a tax year (“the earlier tax year”), and
- (b) the donation becomes a tainted donation in a later tax year (“the later tax year”).

- (2) Income tax is charged under this subsection if the person who made the tainted donation –

- (a) obtained an income tax relief in respect of the donation for the earlier tax year, or
- (b) otherwise was liable for less income tax than they would have been absent the donation.

- (3) The amount of the tax charged under subsection (2) is equal to the difference between –

- (a) the amount of income tax for which the person who made the tainted donation would have been liable for the earlier tax year if the donation had not been made, and
- (b) the amount of income tax for which the donor was in fact liable for the earlier tax year.

- (4) Income tax is charged under this subsection if that person or any other person –

- (a) obtained an income tax relief in respect of an associated donation for the earlier tax year, or
- (b) otherwise was liable for less income tax than they would have been absent the associated donation.

- (5) The amount of the tax charged under subsection (4) is equal to the difference between –

- (a) the amount of income tax for which the person who makes the associated donation would have been liable for the earlier tax year if the associated donation had not been made, and
- (b) the amount of income tax for which that person was in fact liable for the earlier tax year.

- (6) Tax charged under subsection (2) or (4) is charged for the later tax year.
 - (7) The person liable for any tax charged under subsection (2) is the person who made the tainted donation.
 - (8) The person liable for any tax charged under subsection (4) is the person who makes or made the associated donation.
 - (9) In this section, “associated donation” and “income tax relief” have the same meaning as in section 809ZM.”
- 7 (1) Section 809ZN (income tax charge where gift aid is withdrawn) is amended as follows.
 - (2) In subsection (1) –
 - (a) in paragraph (a), for “tainted donation” substitute “relievable charity donation”;
 - (b) after paragraph (a) insert –
 - “(aa) the donation becomes a tainted donation (whether in that tax year or a later tax year),”.
 - (3) After subsection (2) insert –
 - “(2A) Tax charged under this section is charged for the tax year in which the donation mentioned in subsection (1)(a) becomes a tainted donation.”
 - (4) In subsection (4), omit paragraph (c) (but not the “and” after it).
 - (5) In subsection (5) omit paragraph (b) and the “and” before it.
- 8 (1) Section 809ZO (income tax charge where payment of trust income to charity) is amended as follows.
 - (2) In subsection (1) –
 - (a) in paragraph (a), for “tainted donation” substitute “relievable charity donation”;
 - (b) after paragraph (a) insert –
 - “(aa) the donation becomes a tainted donation (whether in that tax year or a later tax year),”
 - (3) After subsection (2) insert –
 - “(2A) Tax charged under this section is charged for the tax year in which the donation mentioned in subsection (1)(a) becomes a tainted donation.”
 - (4) In subsection (4), omit paragraph (d).
 - (5) In subsection (5), omit paragraph (b) and the “and” before it.