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(Bristol South – Lab)

Amendment 71

Clause 57,page 43 [Vol I], leave out line 36.

Amendment 72

Schedule 26,page 203 [Vol II], leave out lines 14 to 18.

SUMMARY

1. The clause as drafted has the undesired effect of preventing companies from achieving a company Gift Aid deduction for donations to charities that have a shareholding in the company, even though the donations may be wholly unconnected to the shareholding. The first amendment removes that effect. The second amendment makes a consequential amendment to the repeals schedule.

DETAILS

2. A company making a qualifying donation to a charity can deduct that payment by virtue of section 339(1)(a) Income and Corporation Taxes Act 1988 (ICTA) in computing taxable profits. The existing S339(1)(a) denies this treatment to payments which represent distributions of profit, other than distributions within S209(4) ICTA.
3. It has been the long held view of HM Revenue and Customs (HMRC) that where a company was wholly owned by a single charity, payments from the company to the charity could be treated as Gift Aid donations under section 339 ICTA. The intention of Clause 57 was to confirm and extend that treatment to a company wholly owned by one or more charities. Clause 57 was intended to

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ensure that a payment (other than a dividend) by such a company will not be regarded as a distribution for the purposes of S339(1)(a) ICTA. The clause also provides that relief is not available for distributions in respect of shares made by companies partly owned by charities.

4. It was thought that the widening of gift aid relief in this way would mean that the existing reference in S339(1)(a) to S209(4) was no longer required. Clause 57, therefore, removes this reference. However a donation by a company to a charity which happens to be a shareholder is a distribution within S209(4). Currently the company secures a Gift Aid deduction under S339(1)(a) because that section specifically allows distributions within only S209(4) ICTA to obtain Gift Aid treatment. One effect of clause 57 is, therefore, to remove the relief for such donations.
5. The amendment reverses the proposed removal of the existing text in S339(1)(a) concerning S209(4).
6. Companies that make donations to charities within Gift Aid receive a deduction from their trading profits. This encourages charitable giving.
7. Some charities conduct fund-raising through subsidiary companies. This organisational structure enables those charities to carry on activities that may be outside their primary purpose. For a company wholly owned by a single charity, company gift aid can be used to pass up the profits of the subsidiary company to the parent charity. Those profits then do not incur corporation tax.
8. Where a subsidiary is owned by more than one charity and that subsidiary makes payments to the parent charities in proportion to their shareholdings, the payments will be distributions of profit. Such distributions are not allowable as gift aid payments, and so are not deductible in computing profits for tax purposes. This results in a tax charge on the subsidiary and reduces the income flow to the charities from the subsidiary. This is discouraging charities from working together.

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9. Submissions from charity sector representative bodies led to an announcement in the 2005 Budget statement. The Chancellor said that HMRC (at that time the Inland Revenue) would seek to find an approach that would allow jointly owned charity subsidiaries to donate their profits to parent charities using gift aid. This legislation provides the desired solution.