

**BOARD OF INLAND REVENUE
RESOLUTIONS:**

**FINANCE BILL 2004
REPORT**

***NEW CLAUSE: GIFTS OF
SHARES, SECURITIES
AND REAL PROPERTY TO
CHARITIES ETC**

Mr Chancellor of the Exchequer

**NEW CLAUSE: GIFTS OF SHARES, SECURITIES AND
REAL PROPERTY ETC**

To move the following Clause-

‘(1) Section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc) is amended as follows.

(2) For subsection (4) (the relevant amount) substitute—

“(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—

(a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);

(b) where the disposal is at an undervalue, the amount by which—

(i) the value described in paragraph (a) above, exceeds

(ii) the amount or value of the consideration for the disposal, or, if there is no such excess, nil.

(3) After subsection (8) insert—

“(8A) The value of the net benefit to the charity is—

(a) the market value of the qualifying investment, unless subsection (8B) below applies;

(b) where that subsection applies, that market value reduced by the aggregate amount of the related liabilities of the charity (see subsections (8E) to (8G)).

(8B) This subsection applies in any case where—

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(a) the charity is, or becomes, subject to an obligation to any person (whether or not the person making the disposal or a person connected with him), and

(b) one or more of the conditions in subsection (8C) below is satisfied.

(8C) For the purposes of subsection (8B) above—

(a) condition 1 is that, taking into account all the circumstances (including, in particular, the difference in the value of the net benefit to the charity if subsection (8B) applies and if it does not) it is reasonable to suppose that the disposal would not have been made in the absence of the obligation;

(b) condition 2 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 related investment (see subsection (8D)).

(8D) In subsection (8C) “related investment” means any of the following—

(a) any asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount);

(b) any asset derived from, or representing, the qualifying Investment whether in whole or in part and whether directly or indirectly;

(c) any 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.

(8E) For the purposes of this section, the liabilities which are related liabilities in the case of any qualifying investment are the liabilities of the charity under each of the obligations that

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fall within subsection (8B) above (as read with subsection (8C) above) in relation to that investment.

(8F) Where an obligation is contingent and the contingency occurs, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, under the obligation is the amount or value of the liability actually incurred in consequence of the occurrence of the contingency.

(8G) Where an obligation is contingent and the contingency does not occur, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, is nil.”.

(4) In subsection (9) (definitions) insert each of the following definitions at the appropriate place—

““obligation” includes a reference to each of the following—

(a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;

(b) a series of obligations (whether or not between the same parties);”:

““related liabilities” shall be construed in accordance with subsection (8E) above;”;

““Value of the net benefit to the charity” shall be construed in accordance with subsection (8A) above;”.

(5) After subsection (10) (market value) insert—

“(10A) Section 839 (connected persons) applies for the purposes of this section.”.

(6) The amendments made by this section have effect in relation to any disposal to a charity on or after 2nd July 2004, except where the disposal is in performance of a contract entered into before that date and not varied on or after that date.

EXPLANATORY NOTE

SUMMARY

1. This clause will prevent individuals from obtaining income tax relief on an amount in excess of the benefit received by a charity from the donation of shares or securities.

DETAILS OF THE CLAUSE

2. Subsection (1) of this clause amends Section 587B of the Taxes Act 1988.
3. Subsection (2) substitutes a new subsection (4) to section 587B. The new subsection operates to restrict the income tax relief available to the donor to relief on an amount equal to the value of the net benefit received by the charity. It looks at the value of the net benefit at and immediately after the disposal to the charity - allowing relief on the lower amount.
4. In the case of a disposal at undervalue, any consideration received in relation to the disposal is deducted in calculating the amount on which income tax relief is available. Relief is available only on an amount equivalent to the value of the net benefit to the charity taking into account the consideration. Where there is no excess of benefit over consideration, no relief will be given.
5. Subsection (3) introduces new subsections (8A)-(8G) to section 587B.
6. Subsection (8A) outlines how the net benefit to the charity is to be valued. It provides that the value of the net benefit is the market value of the qualifying investment unless subsection (8B) applies. Where subsection (8B) applies, the value of the net benefit to the charity is the market value of the qualifying investment reduced by

the value of any liabilities resulting from an obligation that effectively reduces the value of that investment to the charity.

7. Subsection (8B) applies where the charity is party to an obligation (as defined here and in the Interpretation Act 1978) to any person and one or more of the conditions set out in subsection (8C) applies. The person in whose favour the obligation operates does not need to be the person making the disposal or a person connected with them.
8. Subsection (8C) specifies the conditions that must apply in order for the market value of the qualifying investment to be restricted. These are that the obligation can be linked to the assets given (or to a related investment), or it is reasonable to believe that the gift would not have been made without the existence of the obligation.
9. Subsection (8D) outlines those assets that will be treated as being related investments for the purposes of subsection (8C). An asset will be a related investment where:
 - It is the same class or description of asset, regardless of quantity, size or amount.
 - Where it is derived from or represents the qualifying investment - in whole or part whether directly or indirectly.
 - Where it is an asset from which the qualifying investment is derived or which the qualifying investment represents - in whole or part whether directly or indirectly. This covers scenarios where the obligation might be framed by reference to something that is itself not actually gifted but some derivative or representative of which is gifted.In short, any asset in any way (directly or indirectly, wholly or in part) linked to, representing or represented by the qualifying investment will be a related investment.
10. Subsection (8D) contemplates a situation where the charity is entitled to settle the obligation otherwise than by transferring the qualifying investment itself (e.g. by settling the obligation by way of cash payment). In such circumstances, the value of the qualifying investment is not itself affected by the obligation but the value of the net benefit to the charity is much less than the value of

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the qualifying investment itself. This subsection ensures that the value of the net benefit to the charity is calculated in just the same way as if the value of the qualifying investment itself were reduced in the hands of the charity.

11. Subsection (8E) sets out what liabilities should be treated as related liabilities for the purposes of (8A)(b). These are any liabilities that can be linked to the assets given (or to a related investment), or in the absence of which the donation would probably not have been made. Its effect is that where a charity is subject to one or more such obligations the value of the net benefit to the charity will be the market value of the qualifying investment less the aggregate value of all the liabilities resulting from those obligations.
12. Subsection (8F) deals with cases where the requirement on the charity to meet an obligation or the nature of the resultant liability is in some way dependant on some supervening event and that event takes place. In such cases, the reduction in the value of the net benefit is restricted to the amount of the value of liabilities that in fact arise as a result of that event taking place.
13. Subsection (8G) deals with cases where the requirement on the charity to meet an obligation is dependant on some supervening event and that event does not occur. In such cases, the reduction in the value of the net benefit is not affected by the contingent obligation – though, of course, other related liabilities may still need to be taken into account.
14. Subsection (4) of this clause amends subsection (9) of section 587B by adding relevant definitions. It defines “obligation” widely to include any scheme, arrangement or other understanding (whether or not they are legally enforceable) and will apply equally to a series of obligations. It states that “related liabilities” will be those outlined in subsection (8E). It provides that “value of the net benefit to charity” should mean the value given by subsection (8A).
15. Subsection (5) provides for a new subsection (10A). Subsection (10A) ensures that Section 839 Taxes Act 1988 applies to Section 587B. Section 839 outlines whom should be treated as being a connected party for the purposes of the section.

BACKGROUND NOTE

16. This measure is intended to prevent schemes that enable individuals to obtain income tax relief in excess of the benefit received by a charity from the donation of shares or securities. The effect of these schemes is to very nearly eliminate the value of the gift in the hands of the charity while potentially returning virtually the whole value of the gift to the control of the donor. The donor gets substantial tax relief and to a large extent gets his donation back.

EXISTING LEGISLATION

17. Section 587B ICTA provides relief for gifts of shares, securities and real property to charity. The relief applies where an individual or company disposes of the whole of his beneficial interest in a qualifying investment to a charity otherwise than by way of a bargain at arms length.
18. Subsection (2) provides for the ‘relevant amount’ to be allowed as a deduction in calculating an individual’s total income in the year of the donation. For companies the amount is allowed as a charge against income for the purposes of corporation tax in the accounting period in which the disposal is made.
19. Subsections (4)-(7) define ‘relevant amount’. This is the market value of the qualifying asset at the time of the disposal, or if the disposal is at undervalue, the difference between market value and the consideration received for the disposal.
20. The relevant amount is reduced by the value of any benefits received by the person making the disposal, or a connected person, but can be increased by the amount of any incidental costs of making the disposal.
21. Subsection (8) applies only in the case of a donation by a company carrying on life assurance business.
22. Subsection (9) defines various terms.

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23. Subsection (10) requires the market value of a qualifying investment to be determined by the rules set out in TGGGA 1992.