

Tainted charity donations

HMRC has issued draft “tainted charity donations” rules which are set to replace current “substantial donor” rules that received much criticism for affecting charities’ tax exemptions and reliefs even for some genuine donations.

At present the “substantial donor” rules restrict the tax reliefs and exemptions a charity is entitled to if it enters into certain transactions with a substantial donor that provide value to the donor. A substantial donor is an individual or a business which donates £25,000 in one year or £150,000 over 6 years to that particular charity (the “minimum thresholds”).

The flaw in the current system is that the restrictions on the tax reliefs and exemptions can be triggered even when it is a genuine donation. It therefore has the potential to discourage substantial but legitimate donations to charity from donors who might also carry out certain transactions with that charity.

The proposed “tainted charity donations” rules will remove the minimum thresholds, and whilst this will mean that in principle any donation could be a ‘tainted’ donation, a new test will be put in place to limit the scope of the rules solely to donations which fulfil certain conditions. The conditions are all of the following:

- The donor or a person “connected” to the donor enters into arrangements with the charity where it is reasonable to assume that the donations and arrangements would not have been entered into independently of each other; and
- The main purpose or one of the main purposes of the arrangements is to obtain an advantage directly or indirectly from the charity that received the donation, or a connected charity; and
- The donor is not a company wholly owned by one or more charities (for example a wholly owned trading subsidiary which donates its profits to its parent charity).

The test will not apply to any benefits received by the donor which are acceptable under the Gift Aid scheme. The key benefit for charities is that the consequences of a tainted charity donation would no longer lie solely with the charity. However, submissions already made in response to the consultation demonstrate how on a close analysis, these new rules may also catch genuine donations (for example a sale at an undervalue), and many are now querying whether or not the tainted charity donations rules will improve the current position.

The tainted charity donations rules form part of the draft Finance Bill 2011 and if approved will come into force on 1 April 2011.

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