



The Law Society

## **Tainted charity donations**

### ***Comments of the Income Tax Sub-Committee of the Law Society of England and Wales***

#### **Introduction**

1. The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others.
2. We are pleased to have the opportunity to comment on the draft legislation dealing with tainted charity donations published on 9 December 2010.
3. This response has been prepared on behalf of the Law Society by members of the Income Tax Sub-Committee. The Sub-Committee is made up of senior and specialist tax lawyers from across the country.

#### **General comments**

4. We welcome replacement of the much criticised Substantial Donor Rules. However the suggested replacement itself is complex and resulting uncertainties which are likely to result seems contrary to the Governments' stated aim to promote greater predictability, stability, simplicity, scrutiny and transparency in the UK tax system.
5. So whilst we support the policy objective to deter the abuse of the charity tax reliefs we are concerned that the legislation may not be easy to follow and apply in practice.

#### **Specific comments**

##### ***Scope of application.***

6. A donor might receive a benefit in terms of public recognition for the donation or otherwise be able to generate goodwill as a result of making the gift. We suggest that this should be an advantage that is expressly ignored if it is incidental to the donation.

##### ***Minimum thresholds***

7. We question the removal of minimum financial thresholds as this means that in principle, a donation of any size could be caught as a 'tainted' donation. In this respect we note that the Substantial Donor Rules include financial thresholds of £25,000 gifted in one year and £150,000 in a six year period. We accept that such thresholds are

likely to be too generous here but an annual de minimis would be beneficial as it could allow the new rules to be disregarded for the vast majority of donations. This would remove many ordinary taxpayers from the scope for this anti-avoidance regime. An annual limit of £5,000 is suggested.

### ***Joint and several liability***

8. We are concerned that the joint and several liability obligation might operate unfairly. A level of protection is given to any charity, because of the awareness qualification, but not anyone else. If joint and several liability is retained then perhaps HMRC might be given some discretionary powers to ensure fairness as between the various persons who may be concerned.

### **Contact details:**

If you have any questions concerning these representations or would like to discuss anything contained in them, please contact the Chair of the Income Tax Sub-committee Mr Richard Stratton (tel: 020 7295 3219, email: [richard.stratton@traverssmith.com](mailto:richard.stratton@traverssmith.com)).

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