

[1.0.2] Interpretation of Corporation Tax Acts

Definition of company

“Company” is defined in Section 4(1) TCA 1997. Only companies are subject to corporation tax.

“**Company**” means any body corporate but does not include:

- (a) the Health Service Executive,
- (b) a grouping within the meaning of section 1014 TCA 1997 (i.e. a European Economic Interest Grouping (EEIG),
- (c) an education and training board,
- (d) a committee of agriculture established under the Agriculture Act, 1931, or
- (e) a local authority, and for this purpose “local authority” has the meaning assigned to it by section 2(2) of the Local Government Act, 1941, and includes a body established under the Local Government Services (Corporate Bodies) Act, 1971.

Body Corporate

A **body corporate** is a group of persons which has had conferred on it by law an identity separate from the members comprising it. All companies established under the Companies Acts with or without limited liability, and those limited by share capital or by guarantee would be included. Also included are:

- societies registered under the Industrial and Provident Societies Acts such as cooperative societies and friendly societies,
- companies established by **statute** or incorporated by charter (whether in Ireland or abroad) e.g. the Electricity Supply Board, Bord na Móna, Radio Telefís Éireann, Shannon Free Airport Development Company Ltd.

A body corporate does not include an unincorporated society or other body, i.e. a group of persons, whether specially recognised by law or not, which has no identity separate from its members (and which is consequently not a company) e.g.

- (i) an association formed for some social or charitable object which has not formed itself into an incorporated company;
- (ii) sporting clubs which have not formed themselves into incorporated companies,
- (iii) a trade union,
- (iv) an unregistered friendly society,

(v) partnerships and other similar associations.

Charities

[Tax Instruction 7.1.6 “Charity Exemption” also refers]

The TCA 1997 does not contain a definition of a charitable company nor are any specific provisions set down.

Charities may be established in the form of trusts, societies or limited liability companies. A charity which is not a company within the definition in section 4(1) TCA 1997 is outside the scope of corporation tax and, unless specifically exempted, remains chargeable to income tax.

Under Section 76(6) TCA 1997 the income tax provisions providing exemptions or imposing a charge to tax are carried over into corporation tax. For example, an exemption under income tax is granted in respect of profits of a trade carried on by any charity if the profits are applied solely for the charity. Under section 207 TCA 1997 charities are exempt in respect of rental income, interest and dividends received.

A charity is defined in the case of both income and chargeable gains as “any body of persons or trust established for charitable purposes only” in section 208(1) TCA 1997, this section deals with lands owned and occupied, and trades carried on by, charities.

In deciding what constitutes “charitable purposes” the principles laid down by Lord Mac Naughton in *Special Commissioners of Income Tax V Pemsel* (3 TC 33) are the guiding factors (e.g. relief of poverty, the advancement of religion or education).

Section 78 TCA 1997 in effect exempts from corporation tax capital gains accruing to a charity which is a company where those gains would be exempt from capital gains tax under section 609 TCA 1997.

Claims for charity exemption should be referred to Charities Section, Collector-General’s Division, Office of the Revenue Commissioners, Nenagh, Co. Tipperary (Tel: 353. 067.63.400 or [charities@revenue.ie]).

Clubs

[see Tax Instruction 36.0.5 “Mutual Trading”]

Trade Associations

[see Tax Instruction 36.0.5 “Mutual Trading”]

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