



Finance Act 1988

1988 CHAPTER 39

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Tax rates and personal reliefs

23 Charge and basic rate of income tax for 1988-89.

Income tax shall be charged for the year 1988-89, and the basic rate of tax shall be 25 per cent.

24 Higher and additional rates of income tax.

- (1) The rate at which income tax is charged for the year 1988-89 in respect of so much of an individual's total income as exceeds £19,300 shall be 40 per cent.
- (2) In accordance with subsection (1) above, section 1 of the Taxes Act 1988 shall be amended as follows—
 - (a) for paragraph (b) of subsection (2) there shall be substituted—
 - “(b) in respect of so much of an individual's total income as exceeds £19,300, at such higher rate as Parliament may determine”
 - (b) in subsection (3) the words “and the” onwards shall cease to have effect;
 - (c) in subsection (4) for the words “each of the amounts” there shall be substituted the words “the amount”;
 - (d) in subsection (6) for the word “amounts” there shall be substituted the word “amount”;

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for the Finance Act 1988, Part III. (See end of Document for details)*

and section 1(4) (indexation) shall not apply for the year 1988-89.

- (3) In section 694 of the Taxes Act 1988 (which imposes a charge on trustees of maintenance funds for historic buildings in certain circumstances), in subsection (2), the words “at the rate of 30 per cent.” shall cease to have effect; and after that subsection there shall be inserted—

“(2A) The rate at which tax is charged under this section shall be equivalent to the higher rate of income tax for the year of assessment during which the charge arises, reduced by the sum of the basic and additional rates for that year.”

^{F1}(4)

Textual Amendments

- F1** s. 24(4) repealed (19.3.1997 with effect in relation to the year 1997-98 and subsequent years of assessment) by 1997 c. 16, s. 113, **Sch. 18 Pt. VI(1)** note

25 Personal reliefs.

- (1) In section 257 of the Taxes Act 1988 (personal reliefs)—
- (a) in subsection (1)(a) (married allowance) for “£3,795” there shall be substituted “ £4,095 ”;
 - (b) in subsections (1)(b) (single allowance) and (6) (wife’s earned income relief) for “£2,425” there shall be substituted “ £2,605 ”;
 - (c) in subsection (2)(a) (married allowance: age 65 to 79) for “£4,675” there shall be substituted “ £5,035 ”;
 - (d) in subsection (2)(b) (single allowance: age 65 to 79) for “£2,960” there shall be substituted “ £3,180 ”;
 - (e) in subsection (3)(a) (married allowance: age 80 and over) for “£4,845” there shall be substituted “ £5,205 ”;
 - (f) in subsection (3)(b) (single allowance: age 80 and over) for “£3,070” there shall be substituted “ £3,310 ”;
 - (g) in subsection (5) (income limit for age allowance) for “£9,800” there shall be substituted “ £10,600 ”.
- (2) Section 257(9) of that Act (indexation) shall not apply for the year 1988-89.
- (3) Sections 258, 263 and 264 of that Act (housekeeper allowance, dependent relative allowance and son’s or daughter’s services allowance) shall not have effect for the year 1988-89 or any subsequent year of assessment.

26 Charge and rate of corporation tax for financial year 1988.

Corporation tax shall be charged for the financial year 1988 at the rate of 35 per cent.

27 Corporation tax: small companies.

- (1) For the financial year 1988 the small companies rate shall be 25 per cent.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (2) For the financial year 1988 the fraction mentioned in section 13(2) of the Taxes Act 1988, and in section 95(2) of the ^{M1}Finance Act 1972, (marginal relief for small companies) shall be one fortieth.

Marginal Citations

M1 1972 c. 41.

28 Deduction rate for sub-contractors in construction industry.

Section 559(4) of the Taxes Act 1988 (which requires deductions to be made from payments to certain sub-contractors in the construction industry) shall have effect in relation to payments made on or after 31st October 1988 with the substitution for the words “27 per cent.” of the words “25 per cent.”.

29 Life assurance premium relief.

- (1) In sections 266(5)(a) and 274(3)(a) of the Taxes Act 1988, and in paragraph 3(3)(a) of Schedule 14 to that Act, (rate of relief on premiums on life policies etc.) for the words “15 per cent.” wherever they occur there shall be substituted the words “12.5 per cent.”.
- (2) This section shall have effect on and after 6th April 1989.

30 Additional relief in respect of children.

- (1) In section 259 of the Taxes Act 1988 (additional relief in respect of children), in subsection (2), for the words “and (4)” there shall be substituted the words “to (4A)”; and after subsection (4) there shall be inserted—
- “(4A) Where—
- (a) a man and a woman who are not married to each other live together as husband and wife for the whole or any part of a year of assessment, and
 - (b) apart from this subsection each of them would on making a claim be entitled to a deduction under subsection (2) above,
- neither of them shall be entitled to such a deduction except in respect of the youngest of the children concerned (that is to say, the children in respect of whom either would otherwise be entitled to a deduction).”

- (2) This section shall apply for the year 1989-90 and subsequent years of assessment.

31 Non-residents’ personal reliefs.

- (1) For the year 1990-91 and subsequent years of assessment section 278 of the Taxes Act 1988 (which with certain exceptions denies relief under Chapter I of Part VII to non-residents) shall have effect with the following amendments.
- (2) In subsection (2)(e) (exception for widows of Crown servants) after the word “husband” there shall be inserted the words “, or a widower whose late wife,”.
- (3) After subsection (2) there shall be inserted—

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“(2A) Notwithstanding subsection (2) above, no relief shall be given under section 257D in a case where the husband is not resident in the United Kingdom.”

(4) Subsections (3) to (7) shall be omitted.

Married couples

32 Abolition of aggregation of income.

Section 279 of the Taxes Act 1988 (which treats the income of a woman living with her husband as his income for income tax purposes) shall not have effect for the year 1990-91 or any subsequent year of assessment.

33 Personal allowance and married couple’s allowance.

The Taxes Act 1988 shall have effect for the year 1990-91 and subsequent years of assessment with the substitution of the following sections for section 257—

“257 Personal allowance.

- (1) The claimant shall be entitled to a deduction from his total income of £2,605.
- (2) If the claimant proves that he is at any time within the year of assessment of the age of 65 or upwards, he shall be entitled to a deduction from his total income of £3,180 (instead of the deduction provided for by subsection (1) above).
- (3) If the claimant proves that he is at any time within the year of assessment of the age of 80 or upwards, he shall be entitled to a deduction from his total income of £3,310 (instead of the deduction provided for by subsection (1) or (2) above).
- (4) For the purposes of subsections (2) and (3) above a person who would have been of or over a specified age within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.
- (5) In relation to a claimant whose total income for the year of assessment exceeds £10,600, subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by two-thirds of the excess (but not so as to reduce those amounts below that specified in subsection (1) above).

257A Married couple’s allowance.

- (1) If the claimant proves that for the whole or any part of the year of assessment he is a married man whose wife is living with him, he shall be entitled to a deduction from his total income of £1,490.
- (2) If the claimant proves that for the whole or any part of the year of assessment he is a married man whose wife is living with him, and that either of them is at any time within that year of the age of 65 or upwards, he shall be entitled to a deduction from his total income of £1,855 (instead of the deduction provided for by subsection (1) above).

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (3) If the claimant proves that for the whole or any part of the year of assessment he is a married man whose wife is living with him, and that either of them is at any time within that year of the age of 80 or upwards, he shall be entitled to a deduction from his total income of £1,895 (instead of the deduction provided for by subsection (1) or (2) above).
- (4) For the purposes of subsections (2) and (3) above a person who would have been of or over a specified age within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.
- (5) In relation to a claimant whose total income for the year of assessment exceeds £10,600, subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by—
 - (a) two-thirds of the excess, less
 - (b) any reduction made in his allowance under section 257 by virtue of subsection (5) of that section,(but not so as to reduce the amounts so specified below the amount specified in subsection (1) above).
- (6) A man shall not be entitled by virtue of this section to more than one deduction for any year of assessment; and in relation to a claim by a man who becomes married in the year of assessment and has not previously in the year been entitled to relief under this section, this section shall have effect as if the amounts specified in subsections (1) to (3) above were reduced by one twelfth for each month of the year ending before the date of the marriage.

In this subsection “month” means a month beginning with the 6th day of a month of the calendar year.

257B Transfer of relief under section 257A.

- (1) Where —
 - (a) a man is entitled to relief under section 257A, but
 - (b) the amount which he is entitled to deduct from his total income by virtue of that section exceeds what is left of his total income after all other deductions have been made from it,his wife shall be entitled to a deduction from her total income of an amount equal to the excess.
- (2) In determining for the purposes of subsection (1)(b) above the amount that is left of a person’s total income for a year of assessment after other deductions have been made from it, there shall be disregarded any deduction made—
 - (a) on account of any payments of relevant loan interest which become due in that year and to which section 369 applies, or
 - (b) under section 289.
- (3) This section shall not apply for a year of assessment unless the claimant’s husband has given to the inspector written notice that it is to apply; and any such notice—
 - (a) shall be given not later than six years after the end of the year of assessment to which it relates,
 - (b) shall be in such form as the Board may determine, and

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(c) shall be irrevocable.

257C Indexation of amounts in sections 257 and 257A.

- (1) If the retail prices index for the month of December preceding a year of assessment is higher than it was for the previous December, then, unless Parliament otherwise determines, sections 257 and 257A shall apply for that year as if for each amount specified in them as they applied for the previous year (whether by virtue of this section or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index, and—
 - (a) if in the case of an amount specified in sections 257(5) and 257A(5) the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple;
 - (b) if in the case of any other amount the increase is not a multiple of £10, rounding the increase up to the nearest amount which is such a multiple.
- (2) Subsection (1) above shall not require any change to be made in the amounts deductible or repayable under section 203 between the beginning of a year of assessment and 5th May in that year.
- (3) The Treasury shall in each year of assessment make an order specifying the amounts which by virtue of subsection (1) above will be treated as specified for the following year of assessment in sections 257 and 257A.
- (4) This section shall have effect in relation to reliefs for the year 1990-91 (as well as for later years); and for that purpose it shall be assumed that sections 257 and 257A applied for the year 1989-90 as they apply, apart from this section, for the year 1990-91.

257D Transitional relief: husband with excess allowances.

- (1) Where—
 - (a) a husband and wife are living together for the whole or any part of the year 1990-91 and section 279 (but not section 287) applied in relation to them for the whole or any part of the year 1989-90, and
 - (b) the deductions which the husband was entitled to make from his total income for the year 1989-90 under this Chapter exceed the aggregate mentioned in subsection (2) below,

the wife shall be entitled to a deduction from her total income for the year 1990-91 of an amount equal to the excess.
- (2) The aggregate referred to in subsection (1) above is the aggregate of—
 - (a) the husband's total income for the year 1990-91, and
 - (b) the deductions which the wife is entitled to make from her total income for that year under this Chapter (apart from this section).
- (3) Where—
 - (a) a husband and wife are living together for the whole or any part of the year 1990-91 and for part of the year 1989-90 but section 279 did not apply in relation to them for any part of the year 1989-90, and

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (b) the deductions which the husband was entitled to make from his total income for the year 1989-90 under this Chapter, apart from section 257(6), exceed his total income for the year 1990-91, then, subject to subsection (4) below, the wife shall be entitled to a deduction from her total income for the year 1990-91 of an amount equal to the excess.
- (4) If the deductions which the wife is entitled to make from her total income for the year 1990-91 under this Chapter (apart from this section) exceed the lesser of—
- (a) her total income for the year 1989-90, and
 - (b) the deductions which she was entitled to make from her total income for that year under this Chapter, apart from section 259, section 262 and section 280,
- the deduction provided for by subsection (3) above shall be reduced by an amount equal to the excess.
- (5) Where—
- (a) a husband and wife are living together for the whole or any part of the year 1991-92 or any subsequent year of assessment (“the year in question”), and
 - (b) they were also living together throughout the immediately preceding year of assessment and the wife made a deduction from her total income for that year under this section, and
 - (c) the deductions which the wife is entitled to make from her total income under this Chapter (apart from this section) are either no greater for the year in question than for the immediately preceding year, or greater by a margin which does not exceed the deduction referred to in paragraph (b) above, and
 - (d) the deductions which the husband is entitled to make from his total income for the year in question under this Chapter, apart from section 257A and section 265, exceed his total income for that year,
- the wife shall be entitled to a deduction from her total income for that year.
- (6) The amount of that deduction shall be equal to—
- (a) the deduction referred to in subsection (5)(b) above, reduced where applicable by an amount equal to the margin referred to in subsection (5)(c), or
 - (b) the excess referred to in subsection (5)(d),
- whichever is less.
- (7) In determining for the purposes of subsection (5)(b) above whether the wife made a deduction from her total income for the immediately preceding year of assessment under this section, and the amount of any such deduction, it shall be assumed that a deduction under this section is made after all other deductions (except any deduction under section 289).
- (8) In determining for the purposes of this section a person’s total income for a year of assessment there shall be disregarded any deduction made—
- (a) on account of any payments of relevant loan interest which become due in that year and to which section 369 applies, or
 - (b) under this Chapter or under section 289;

Status: Point in time view as at 31/07/1998.

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for the Finance Act 1988, Part III. (See end of Document for details)*

and in determining for the purposes of subsection (1)(b) above the deductions which a man was entitled to make under this Chapter for the year 1989-90, any application under section 283 shall be disregarded.

- (9) This section shall not apply for a year of assessment unless the claimant's husband has given to the inspector written notice that it is to apply; and any such notice—
- (a) shall be given not later than six years after the end of the year of assessment to which it relates,
 - (b) shall be in such form as the Board may determine, and
 - (c) shall be irrevocable.
- (10) A notice given under subsection (9) above in relation to a year of assessment shall have effect also as a notice under section 257B(3) (and, where it is relevant, under section 265(5)).

257E Transitional relief: the elderly.

- (1) This section shall apply in relation to a claimant for any year of assessment for the whole or any part of which he has his wife living with him if he proves—
- (a) that for the year 1989-90 he was entitled to relief by virtue of section 257(2)(a) of this Act (as it had effect for that year) and that his entitlement was due to her age and not to his (he being under the age of 65 throughout that year), or
 - (b) that for the year 1989-90 he was entitled to relief by virtue of section 257(3)(a) of this Act (as it had effect for that year) and that his entitlement was due to her age and not to his (he being under the age of 80 throughout that year),
- and, in either case, that the amount of that relief exceeded the aggregate amount of any relief to which he would be entitled for the year 1990-91 under sections 257 and 257A (apart from this section).
- (2) Where this section applies, section 257 shall have effect—
- (a) in a case within subsection (1)(a) above, as if for the amount specified in subsection (1) of that section there were substituted £3,180, and
 - (b) in a case within subsection (1)(b) above, as if for the amounts specified in subsections (1) and (2) of that section there were substituted £3,310.
- (3) Section 257(5) shall have effect in relation to section 257(1) as modified by this section as it has effect in relation to section 257(2) and (3); and in all cases the reference in section 257(5) to the amount specified in section 257(1) is a reference to the amount specified apart from this section.
- (4) The references in section 257C to the amounts specified in section 257 are references to the amounts specified apart from this section.
- (5) In determining for the purposes of this section the amount of any reliefs to which a person was entitled for the year 1989-90, any application under section 283 shall be disregarded.

257F Transitional relief: separated couples.

If the claimant proves—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) that he and his wife ceased to live together before 6th April 1990 but that ever since they ceased to live together they have continued to be married to one another and she has been wholly maintained by him, and
 - (b) that he is not entitled to make any deduction in respect of the sums paid for her maintenance in computing for income tax purposes the amount of his income for the year to which the claim relates, and
 - (c) that he was entitled to a deduction for the year 1989-90 by virtue of section 257(1)(a) of this Act (as it had effect for that year) and, if the claim relates to a year later than 1990-91, that he has been entitled by virtue of this section to a deduction under section 257A for each intervening year,
- sections 257A and 257E (but not section 257B or section 257D) shall have effect for the year to which the claim relates as if his wife were living with him.”

34 Jointly held property.

The Taxes Act 1988 shall have effect for the year 1990-91 and subsequent years of assessment with the insertion of the following sections after section 282—

“282A Jointly held property.

- (1) Subject to the following provisions of this section, income arising from property held in the names of a husband and his wife shall for the purposes of income tax be regarded as income to which they are beneficially entitled in equal shares.
- (2) Subsection (1) above shall not apply to income to which neither the husband nor the wife is beneficially entitled.
- (3) Subsection (1) above shall not apply to income—
 - (a) to which either the husband or the wife is beneficially entitled to the exclusion of the other, or
 - (b) to which they are beneficially entitled in unequal shares, if a declaration relating to it has effect under section 282B.
- (4) Subsection (1) above shall not apply to—
 - (a) earned income, or
 - (b) income which is not earned income but to which section 111 applies.
- (5) Subsection (1) above shall not apply to income to which the husband or the wife is beneficially entitled if or to the extent that it is treated by virtue of any other provision of the Income Tax Acts as the income of the other of them or of a third party.
- (6) References in this section to a husband and his wife are references to a husband and wife living together.

282B Jointly held property: declarations.

- (1) The declaration referred to in section 282A (3) is a declaration by both the husband and the wife of their beneficial interests in—
 - (a) the income to which the declaration relates, and

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

- (b) the property from which that income arises.
- (2) Subject to the following subsections, a declaration shall have effect under this section in relation to income arising on or after the date of the declaration; but a declaration made before 6th June 1990 shall also have effect in relation to income arising before that date.
- (3) A declaration shall not have effect under this section unless notice of it is given to the inspector, in such form and manner as the Board may prescribe, within the period of 60 days beginning with the date of the declaration.
- (4) A declaration shall not have effect under this section in relation to income from property if the beneficial interests of the husband and the wife in the property itself do not correspond to their beneficial interests in the income.
- (5) A declaration having effect under this section shall continue to have effect unless and until the beneficial interests of the husband and wife in either the income to which it relates, or the property from which the income arises, cease to accord with the declaration.”

35 Minor and consequential provisions.

Schedule 3 to this Act (which makes provision consequential on sections 32 and 33 above and other minor amendments relating to the treatment for income tax purposes of husbands, wives, widowers and widows) shall have effect.

Annual payments

36 Annual payments.

- (1) The following sections shall be inserted at the beginning of Part IX of the Taxes Act 1988—

“347A General rule.

- (1) A payment to which this section applies shall not be a charge on the income of the person liable to make it, and accordingly—
- (a) his income shall be computed without any deduction being made on account of the payment, and
 - (b) the payment shall not form part of the income of the person to whom it is made or of any other person.
- (2) This section applies to any annual payment made by an individual which would otherwise be within the charge to tax under Case III of Schedule D except—
- (a) a payment of interest;
 - (b) a covenanted payment to charity (within the meaning given by section 660(3));
 - (c) a payment made for bona fide commercial reasons in connection with the individual’s trade, profession or vocation; and
 - (d) a payment to which section 125(1) applies.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (3) This section applies to a payment made by personal representatives (within the meaning given in section 701(4)) where—
 - (a) the deceased would have been liable to make the payment if he had not died, and
 - (b) this section would have applied to the payment if he had made it.
- (4) A maintenance payment arising outside the United Kingdom shall not be within the charge to tax under Case V of Schedule D if, because of this section, it would not have been within the charge to tax under Case III had it arisen in the United Kingdom; and for this purpose “maintenance payment” means a periodical payment (not being an instalment of a lump sum) which satisfies the conditions set out in paragraphs (a) and (b) of section 347B(5).
- (5) No deduction shall be made under section 65(1)(b) on account of an annuity or other annual payment which would not have been within the charge to tax under Case III of Schedule D if it had arisen in the United Kingdom.
- (6) References in subsection (2) above to an individual include references to a Scottish partnership in which at least one partner is an individual.

347B Qualifying maintenance payments.

- (1) In this section “qualifying maintenance payment” means a periodical payment which—
 - (a) is made under an order made by a court in the United Kingdom, or under a written agreement the proper law of which is the law of a part of the United Kingdom,
 - (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
 - (i) to or for the benefit of the other party and for the maintenance of the other party, or
 - (ii) to the other party for the maintenance by the other party of any child of the family,
 - (c) is due at a time when—
 - (i) the two parties are not a married couple living together, and
 - (ii) the party to whom or for whose benefit the payment is made has not remarried, and
 - (d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section.
- (2) Notwithstanding section 347A(1)(a) but subject to subsections (3) and (4) below, a person making a claim for the purpose shall be entitled, in computing his total income for a year of assessment, to deduct an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.
- (3) The amount which may be deducted under this section by a person in computing his total income for a year of assessment shall not exceed the amount of the difference between the higher (married person’s) relief and the lower (single person’s) relief under subsection (1) of section 257 as it applies for the year to a person not falling within subsection (2) or (3) of that section.

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

- (4) Where qualifying maintenance payments falling due in a year of assessment are made by a person who also makes other maintenance payments attracting relief for that year, subsection (3) above shall apply as if the limit imposed by it were reduced by an amount equal to the aggregate amount of those other payments.
- (5) The reference in subsection (4) above to other maintenance payments attracting relief for a year is a reference to periodical payments which—
- (a) are made under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement, and
 - (b) are made by a person—
 - (i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or
 - (ii) to any person under 21 years of age for his own benefit, maintenance or education, or
 - (iii) to any person for the benefit, maintenance or education of a person under 21 years of age,
and in respect of which the person making them is entitled otherwise than under this section to make a deduction in computing his income for the year.
- (6) The reference in subsection (1) above to a married couple living together shall be construed in accordance with section 282(1), but section 282(2) shall not apply for the purposes of this section.
- (7) In this section—
- “child of the family”, in relation to the parties to a marriage, means a person under 21 years of age—
- (a) who is a child of both those parties, or
 - (b) who (not being a person who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family;

“periodical payment” does not include an instalment of a lump sum.”

- (2) The following sections shall be inserted at the beginning of Part II of the Taxes Act 1970—

“51A General rule.

- (1) A payment to which this section applies shall not be a charge on the income of the person liable to make it, and accordingly—
- (a) his income shall be computed without any deduction being made on account of the payment, and
 - (b) the payment shall not form part of the income of the person to whom it is made or of any other person.
- (2) This section applies to any annual payment made by an individual which would otherwise be within the charge to tax under Case III of Schedule D except—
- (a) a payment of interest;

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (b) a covenanted payment to charity (within the meaning given by section 434(2) below);
 - (c) a payment made for bona fide commercial reasons in connection with the individual's trade, profession or vocation; and
 - (d) a payment to which section 48(1) of the Finance Act 1977 applies.
- (3) This section applies to a payment made by personal representatives (within the meaning given in section 432(4) below) where—
- (a) the deceased would have been liable to make the payment if he had not died, and
 - (b) this section would have applied to the payment if he had made it.
- (4) A maintenance payment arising outside the United Kingdom shall not be within the charge to tax under Case V of Schedule D if, because of this section, it would not have been within the charge to tax under Case III had it arisen in the United Kingdom; and for this purpose “maintenance payment” means a periodical payment (not being an instalment of a lump sum) which satisfies the conditions set out in paragraphs (a) and (b) of section 51B(5) below.
- (5) No deduction shall be made under section 122(1)(b) below on account of an annuity or other annual payment which would not have been within the charge to tax under Case III of Schedule D if it had arisen in the United Kingdom.
- (6) References in subsection (2) above to an individual include references to a Scottish partnership in which at least one partner is an individual.

51B Qualifying maintenance payments.

- (1) In this section “qualifying maintenance payment” means a periodical payment which—
- (a) is made under an order made by a court in the United Kingdom, or under a written agreement the proper law of which is the law of a part of the United Kingdom,
 - (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
 - (i) to or for the benefit of the other party and for the maintenance of the other party, or
 - (ii) to the other party for the maintenance by the other party of any child of the family,
 - (c) is due at a time when—
 - (i) the two parties are not a married couple living together, and
 - (ii) the party to whom or for whose benefit the payment is made has not remarried, and
 - (d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section.
- (2) Notwithstanding section 51A(1)(a) above but subject to subsections (3) and (4) below, a person making a claim for the purpose shall be entitled, in computing his total income for the year 1987-88, to deduct an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (3) The amount which may be deducted under this section by a person in computing his total income for the year 1987-88 shall not exceed £1,370.
- (4) Where qualifying maintenance payments falling due in the year 1987-88 are made by a person who also makes other maintenance payments attracting relief for that year, subsection (3) above shall apply as if the limit imposed by it were reduced by an amount equal to the aggregate amount of those other payments.
- (5) The reference in subsection (4) above to other maintenance payments attracting relief for the year 1987-88 is a reference to periodical payments which—
- (a) are made under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement, and
 - (b) are made by a person—
 - (i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or
 - (ii) to any person under 21 years of age for his own benefit, maintenance or education, or
 - (iii) to any person for the benefit, maintenance or education of a person under 21 years of age,
 and in respect of which the person making them is entitled otherwise than under this section to make a deduction in computing his income for the year.
- (6) The reference in subsection (1) above to a married couple living together shall be construed in accordance with section 42(1) above, but section 42(2) above shall not apply for the purposes of this section.
- (7) In this section—
- “child of the family”, in relation to the parties to a marriage, means a person under 21 years of age—
- (a) who is a child of both those parties, or
 - (b) who (not being a person who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family;
- “periodical payment” does not include an instalment of a lump sum.”
- (3) This section shall have effect in relation to any payment falling due on or after 15th March 1988 unless it is made in pursuance of an existing obligation.
- (4) In subsection (3) above “existing obligation” means a binding obligation—
- (a) under an order made by a court (whether in the United Kingdom or elsewhere) before 15th March 1988, or before the end of June 1988 on an application made on or before 15th March 1988;
 - (b) under a deed executed or written agreement made before 15th March 1988 and received by an inspector before the end of June 1988;
 - (c) under an oral agreement made before 15th March 1988, written particulars of which have been received by an inspector before the end of June 1988; or

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (d) under an order made by a court (whether in the United Kingdom or elsewhere) on or after 15th March 1988, or under a written agreement made on or after that date, where the order or agreement replaces, varies or supplements an order or agreement within this subsection;

but subject to subsection (5) below.

- (5) An obligation within subsection (4)(d) above is an existing obligation only if—
- (a) it is an obligation to make periodical payments (not being instalments of a lump sum) which are made by a person—
- (i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or
 - (ii) to any person under 21 years of age for his own benefit, maintenance or education, or
 - (iii) to any person for the benefit, maintenance or education of a person under 21 years of age, and
- (b) the order or agreement replaced, varied or supplemented provided for such payments to be made for the benefit, maintenance or, as the case may be, education of the same person.

[^{F2}(5A) The reference in subsection (4)(d) above to an order made by a court, and the reference in subsection (5)(b) above to an order, in each case includes a reference to a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.]

- (6) Section 351 of the Taxes Act 1988 and section 65 of the Taxes Act 1970 shall not apply to any payment in relation to which this section has effect.

Textual Amendments

F2 S. 36(5A) inserted (6.4.1993) by Finance (No. 2) Act 1992 (c. 48), s. 62(2)(6); S.I. 1992/2642, art.2.

Modifications etc. (not altering text)

C1 S. 36(3) excluded (27.7.1999 with effect in relation to any payment falling due on or after 6.4.2000) by 1999 c. 16, s. 36(7)(8)

37 Maintenance payments under existing obligations:

- (1) This section applies to any annual payment due in the ^{M2}year 1988–89 which—
- (a) is made in pursuance of an existing obligation under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement,
- (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
- (i) to or for the benefit of the other party and for the maintenance of the other party, or
 - (ii) to the other party for the maintenance by the other party of any child of the family,
- (c) is due at a time when—
- (i) the two parties are not a married couple living together, and

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

- (ii) the party to whom or for whose benefit the payments are made has not remarried, and
 - (d) is within the charge to tax under Case III or Case V of Schedule D, and is not by virtue of Part XV of the Taxes Act 1988 treated for any purpose as the income of the person making it.
- (2) On making a claim for the purpose a person chargeable to tax in respect of payments to which this section applies shall be entitled, in computing his total income for the year 1988-89, to deduct an amount equal to the aggregate amount of the payments, or £1,490, whichever is less.

Marginal Citations

M2 1988–89.

38 Maintenance payments under existing obligations:

- (1) This section applies to any annual payment due in the ^{M3}year 1989-90 or any subsequent year of assessment which—
- (a) is made in pursuance of an existing obligation under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement,
 - (b) is made by an individual—
 - (i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or
 - (ii) to any person under 21 years of age for his own benefit, maintenance or education, or
 - (iii) to any person for the benefit, maintenance or education of a person under 21 years of age, and
 - (c) is (apart from this section) within the charge to tax under Case III or Case V of Schedule D, and is not by virtue of Part XV of the Taxes Act 1988 treated for any purpose as the income of the person making it.
- (2) A payment to which this section applies shall not be a charge on the income of the person liable to make it, but—
- (a) that person shall be entitled, on making a claim for the purpose, to make a deduction of an amount determined in accordance with subsection (3) below in computing his total income for the year of assessment in which the payment falls due, and
 - (b) the payment shall form part of the income of the recipient, but subject to subsections (4) and (5) below.
- (3) The amount which a person may deduct under subsection (2)(a) above in computing his total income for a year of assessment shall be equal to the [^{F3}amount (if any) by which the relevant aggregate exceeds the amount specified in section 257A(1) of the Taxes Act 1988 for the year; and in this subsection and subsection (3A) below “the relevant aggregate” means whichever is the smaller of the following, that is to say, the aggregate amount of the payments made by him which fall due in that year and to which this section applies and] the aggregate amount of any payments due in the year 1988-89—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) which satisfy the conditions in paragraphs (a), (b) and (c) of subsection (1) above, and
 - (b) in respect of which he was entitled to make a deduction in computing his income for that year.
- [^{F4}(3A) Sections 347A and 347B of the Taxes Act 1988 (except, in the case of section 347A, so far as it restricts the extent to which any payment is to be treated as forming part of the income of the person to whom it is made or any other person) shall have effect as if so much of the relevant aggregate for any year of assessment as does not exceed the amount specified for that year in section 257A(1) of that Act were a qualifying maintenance payment made otherwise than in pursuance of an existing obligation.]
- (4) The amount which, by virtue of subsection (2)(b) above, is treated as forming part of a person's income for a year of assessment by reason of payments made by another person ("the payer") shall not exceed the aggregate amount of any payments made by the payer which—
 - (a) formed part of the same recipient's income for the year 1988-89, and
 - (b) satisfy the conditions in paragraphs (a), (b) and (c) of subsection (1) above.
 - (5) The amount which, by virtue of subsection (2)(b) above, would apart from this subsection be treated as forming part of a person's income for a year of assessment by reason of payments within subsection (6) below shall, if he makes a claim for the purpose, be reduced by the amount of the difference between the higher (married person's) relief and the lower (single person's) relief under subsection (1) of section 257 of the Taxes Act 1988 as it applies for that year to a person not falling within subsection (2) or (3) of that section.
 - (6) The payments referred to in subsection (5) above are payments which—
 - (a) are made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
 - (i) to or for the benefit of the other party and for the maintenance of the other party, or
 - (ii) to the other party for the maintenance by the other party of any child of the family, and
 - (b) are due at a time when—
 - (i) the two parties are not a married couple living together, and
 - (ii) the party to whom or for whose benefit the payments are made has not remarried.
 - (7) A payment to which this section applies shall be made without deduction of income tax.
 - (8) A payment to which this section applies shall be within the charge to tax under Case III or (if it arises outside the United Kingdom) Case V of Schedule D; and tax chargeable under Case III shall, notwithstanding anything in sections 64 to 67 of the Taxes Act 1988, be computed on the payments falling due in the year of assessment, so far as paid in that or any other year.
- [^{F5}(8A) The reference in subsection (1)(a) above to an order made by a court includes a reference to a maintenance assessment made under the Child Support Act 1991 or under the Child Support (Northern Ireland) Order 1991.]
- (9) No deduction shall be made under section 65(1)(b) [^{F6}, 68(1)(b) or 192(3)] of the Taxes Act 1988 on account of a payment to which this section applies.

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
 for the Finance Act 1988, Part III. (See end of Document for details)*

Textual Amendments

- F3** Words in s. 38(3) substituted (3.5.1994 with effect as mentioned in s. 79(1) of the amending Act) by 1994 c. 9, s. 79(1)(7)
- F4** S. 38(3A) inserted (3.5.1994 with effect as mentioned in s. 79(1) of the amending Act) by 1994 c. 9, s. 79(1)(8)
- F5** S. 38(8A) inserted (6.4.1993) by Finance (No. 2) Act 1992 (c. 48), s. 62(3)(6); S.I. 1992/2642, art. 2.
- F6** Words in s. 38(9) inserted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 60.

Marginal Citations

- M3** 1989–90 onwards.

39 Maintenance payments under existing obligations: election for new rules.

- (1) If an election is duly made for the purpose by any person, section 36 above shall have effect in relation to all payments made by him—
- (a) to which section 37 or section 38 above would apply apart from the election, and
 - (b) which fall due in a year of assessment for which the election has effect; and accordingly sections 37 and 38 shall not apply to the payments.
- (2) An election under subsection (1) above—
- (a) shall be made in such form and manner as the Board may prescribe,
 - (b) shall be made [^{F7}on or before the first anniversary of the 31st January next following] the first year of assessment for which it is to have effect,
 - (c) shall have effect for any subsequent year of assessment, and
 - (d) shall be irrevocable.
- (3) A person making an election under subsection (1) above shall, before the end of the period of 30 days beginning with the day on which it is made, give notice of it to every recipient of a payment affected by the election.

Textual Amendments

- F7** Words in s. 39(2)(b) substituted (29.4.1996 for the purposes specified in s. 135(2) of the amending Act) by 1996 c. 8, s. 135, Sch. 21, para. 25

40 Provisions supplementary to sections 37 to 39.

- (1) In sections 37 to 39 above—
- “child of the family”, in relation to the parties to a marriage, means a person under 21 years of age—
- (a) who is a child of both those parties, or
 - (b) who (not being a person who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family;
- “existing obligation” has the same meaning as in section 36(3) above.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (2) The references in sections 38(2)(b) and (4) and 39(3) above to the recipient of a payment are, in a case of the kind described in sections 37(1)(b)(i) and 38(1)(b)(i), references to the other party there mentioned.
- [^{F8}(3) The references in sections 37 and 38 above to a married couple living together shall be construed in accordance with section 282(1) of the Taxes Act 1988, but section 282(2) shall not apply for the purposes of those sections.]

Textual Amendments

- F8** S. 40(3) repealed (for 1990-91 and subsequent years of assessment) by Finance Act 1988 (c. 39, SIF 63:2), s. 148, Sch. 14 Pt. VIII, Note 6.

Relief for interest

41 Qualifying maximum for loans.

For the year 1988-89 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

42 Home loans: restriction of relief.

- (1) The following sections shall be inserted after section 356 of the Taxes Act 1988—

“356A Limit on relief for home loans: residence basis.

- (1) Where all the qualifying interest payable for any period in relation to a residence is payable by one person, it shall be eligible for relief only to the extent that the amount on which it is payable does not exceed the qualifying maximum during the period.
- (2) Where qualifying interest is payable for any period in relation to a residence by more than one person, the interest paid by each of them shall be eligible for relief only to the extent that the amount on which it is payable by him does not exceed the sharer’s limit for the period in his case.
- (3) Subject to the following provisions of this section and section 356B, in this section and section 356B “the sharer’s limit”, in relation to a person by whom qualifying interest is payable for a period in relation to a residence, means the amount arrived at by dividing the amount of the qualifying maximum during the period by the number of persons by whom qualifying interest is payable for the period in relation to the residence.
- (4) Subsection (5) below applies where—
- in the case of any person by whom qualifying interest is payable for any period in relation to a residence the sharer’s limit for the period exceeds the amount on which the interest is payable by him, and
 - the amount which (apart from that subsection) would be the sharer’s limit for the period in the case of any other person by whom qualifying interest is payable for the period in relation to the residence falls short of the amount on which qualifying interest is so payable by him.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (5) Where this subsection applies—
- (a) the sharer's limit for the period in the case of the person mentioned in subsection (4)(a) above shall be reduced by the amount of the excess, and
 - (b) the sharer's limit for the period in the case of any person such as is mentioned in subsection (4)(b) above shall be increased in accordance with subsections (6) to (8) below.
- (6) Where there is only one other person by whom qualifying interest is payable for the period in relation to the residence, the sharer's limit in his case shall be increased by the amount of the excess.
- (7) Where there is more than one other person by whom qualifying interest is payable for the period in relation to the residence, the sharer's limit in the case of each of them shall be increased by such part of the excess as bears to the whole of it the same proportion as any shortfall in his case bears to the aggregate of any shortfalls in the case of each of them.
- (8) In subsection (7) above "shortfall" means the amount by which what would be the sharer's limit in the case of a person (apart from subsection (5) above) falls short of the amount on which qualifying interest is payable by him.

356B Residence basis: married couples.

- (1) Subject to subsections (2) and (4) below, qualifying interest payable or paid by a married woman who is not separated from her husband shall be treated for the purposes of sections 353 to 356A and 369 to 379 as payable or paid by her husband (and not by her).
- (2) Where—
- (a) qualifying interest is payable, or treated by subsection (1) above as payable, for a period in relation to a residence by a married man who is not separated from his wife, and
 - (b) qualifying interest is also payable for the period in relation to the residence by one or more persons other than the man and his wife,
- then for the purposes of section 356A(2) and (3) qualifying interest shall be treated as payable by the wife for the period in relation to the residence (whether or not it actually is).
- (3) The application of subsection (2) above in the case of a husband and wife shall not give rise to a separate sharer's limit for the period in question in the case of the wife; but the limit arrived at under subsection (3) of section 356A for the period in the case of the husband shall be increased by the amount which (apart from this subsection) would be the limit arrived at under that subsection in the case of the wife.
- (4) Where an application under section 283 or an election under section 287 is in force in relation to a husband and wife for a year of assessment, subsections (1) to (3) above shall not apply in relation to them for the year but they may jointly elect—
- (a) that qualifying interest payable or paid by one of them for the year (or a period within the year), or such part of that interest as may be specified in the election, shall be treated for the purposes of sections

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- 353 to 356A and 369 to 379 (and section 287(7)) as payable or paid by the other, and
- (b) that the sharer's limit under section 356A for the year (or period) in the case of one of them shall be reduced by such amount as may be specified in the election and the sharer's limit under that section for the year (or period) in the case of the other shall be correspondingly increased.
- (5) An election under subsection (4) above—
- (a) shall be made before the end of the period of twelve months beginning with the end of the first year of assessment for which it is made or such longer period as the Board may in any particular case allow,
- (b) shall, subject to subsection (6) below, have effect if made for the year 1988-89 not only for that year but also for the year 1989-90, and
- (c) shall be in such form, and be made in such manner, as the Board may prescribe.
- (6) Where a husband and wife have made an election under subsection (4) above for the year 1988-89 they may give, for the year 1989-90, a notice to withdraw that election; and, if they do so, the election shall not have effect for the year 1989-90.
- (7) A notice of withdrawal under subsection (6) above—
- (a) shall be in such form, and be given in such manner, as the Board may prescribe,
- (b) shall not be given after 5th April 1991 or such later date as the Board may in any particular case allow, and
- (c) shall not prejudice the making of a fresh election for 1989-90.
- (8) Where—
- (a) a husband and wife are not separated,
- (b) the husband pays interest in relation to a residence used or to be used as his only or main residence, and
- (c) his wife pays interest in relation to some other residence used or to be used as her only or main residence,
- the residence which was purchased first shall be treated for the purposes of sections 355(1)(a) and 356 as used or to be used as the only or main residence of both of them and the other residence shall be treated as used or to be used as the only or main residence of neither.

356C Payments to which sections 356A and 356B apply.

- (1) Subject to subsection (2) below, sections 356A and 356B shall have effect with respect to payments of qualifying interest made on or after 1st August 1988.
- (2) Subject to subsection (5) below, those sections shall not have effect with respect to a payment of qualifying interest made by a person in relation to a residence if—
- (a) the payment is made under a loan made before 1st August 1988,

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (b) qualifying interest was payable in relation to the residence for 1st August 1988 by someone other than the person making the payment or his spouse,
 - (c) qualifying interest has been payable in relation to the residence by the person making the payment or his spouse throughout the time beginning with 1st August 1988 and ending with the date of the payment, and
 - (d) someone other than the person making the payment or his spouse owns an estate or interest or property in the residence at each point during that time and at each such point at least one such person is a person by whom qualifying interest is payable in relation to the residence at some point during that time.
- (3) For the purposes of subsection (2) above a loan made on or after 1st August 1988 shall be treated as made before that date if it is proved by written evidence—
- (a) that the loan was made in pursuance of an offer made before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, and
 - (b) that the loan was used to defray money applied in pursuance of a binding contract entered into before that date;
- and where a payment is made under such a loan the references in subsection (2) above to 1st August 1988 shall be treated as references to the first day for which qualifying interest is payable in relation to the residence under the loan (or where there is more than one such loan the latest such day).
- (4) Subject to subsection (5) below, where by virtue of subsection (2) above sections 356A and 356B do not have effect with respect to payments of qualifying interest made by a person for any period in relation to a residence under one loan those sections shall not have effect with respect to payments of qualifying interest for that period in relation to the residence made by that person or his spouse under any other loan.
- (5) Where all the persons by whom qualifying interest is payable in relation to a residence have made a joint election for the purpose, sections 356A and 356B shall have effect with respect to all payments of qualifying interest made by any person in relation to the residence notwithstanding that they would otherwise be payments with respect to which those sections would not have effect.
- (6) An election under subsection (5) above—
- (a) shall have effect for the period in which it is made and subsequent periods,
 - (b) shall be irrevocable, and
 - (c) shall be in such form, and be made in such manner, as the Board may prescribe.
- (7) Sections 356A and 356B shall not have effect with respect to payments of qualifying interest if the interest is qualifying interest only by reason of its being paid in relation to a residence used or to be used as the only or main residence of a dependent relative or former or separated spouse of the person by whom the payment is made.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (8) In this section references to a spouse do not include references to a separated spouse.

356D Provisions supplementary to sections 356A to 356C.

- (1) In sections 356A to 356C and this section “qualifying interest” means interest which (apart from those sections or section 357) is eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).
- (2) In sections 356A to 356C and this section “residence” means a building, or part of a building, occupied or intended to be occupied as a separate residence, or a caravan or house-boat; but a building, or part of a building, which is designed for permanent use as a single residence shall be treated as a single residence notwithstanding that it is temporarily divided into two or more parts which are occupied or intended to be occupied as separate residences.
- (3) In sections 356A to 356C and this section “period”, with respect to qualifying interest payable by a person in relation to a residence, means a period commencing with—
- (a) any day which is the first day for which qualifying interest is payable in relation to the residence by that or any other person (whether or not qualifying interest was payable by any person in relation to the residence for any earlier day),
 - (b) any day immediately following a day which is the last day for which qualifying interest is payable in relation to the residence by any other person (whether or not qualifying interest is payable by any person in relation to the residence for any later day), or
 - (c) the first day of a year of assessment,
- and ending with either the day immediately preceding the next day such as is mentioned in paragraph (a), (b) or (c) above or (if sooner) the day which is the last day for which qualifying interest is payable in relation to the residence by that person.
- (4) In section 356A references to the qualifying maximum during a period are references to the qualifying maximum for the year of assessment in which the period falls.
- (5) Where because of section 356A the full amount of qualifying interest paid by a person for a period is not eligible for relief, the part of that interest that is eligible for relief shall be such as bears to the whole of it the same proportion as the part of the amount on which qualifying interest is payable by him for the period that does not exceed the limit under that section in his case bears to the whole of that amount.
- (6) Where a person pays qualifying interest on more than one loan, the limit under section 356A in his case shall have effect in relation to qualifying interest paid on a later loan as if that loan were reduced by the amount of any earlier loan; and if that amount is equal to or exceeds the limit, none of the interest paid on the later loan is eligible for relief.
- (7) For the purposes of subsection (6) above, where interest is paid on more than one loan made simultaneously to one person it shall be treated as paid on one loan.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (8) Subject to section 356B, where a loan is made jointly to more than one person by whom qualifying interest is payable in relation to a residence under the loan, the amount on which qualifying interest is payable in relation to the residence under the loan by each of the persons shall be treated for the purposes of section 356A as being such amount as is produced by dividing the whole of the amount on which qualifying interest is payable in relation to the residence under the loan by the number of persons by whom qualifying interest is so payable.
- (9) Where section 354 continues to apply to a loan by virtue of section 354(5)(a), then sections 356A to 356C and this section shall also continue to have effect as if section 354 applied to it by virtue of section 355(1)(a).
- (10) In determining whether the amount on which interest is payable exceeds any limit under section 356A, no account shall be taken of so much (if any) of that amount as consists of interest which has been added to capital and which does not exceed £1,000.”
- (2) In section 357 of the Taxes Act 1988 (limit on interest relief for home loans where residence basis does not apply)—
- (a) in subsection (1)—
- (i) for the word “Interest” there shall be substituted the words “Subject to subsection (1A) below, where section 356A does not have effect with respect to a payment of interest because of section 356C(2) or (7) and the payment is of interest”, and
- (ii) after “356(1)” there shall be inserted the words “the payment of interest”, and
- (b) the following subsections shall be inserted after that subsection—
- “(1A) Where section 356A does not have effect with respect to a payment of interest made by a person in relation to land, or a caravan or house-boat, used or to be used as his only or main residence because of section 356C(2), subsection (1) above shall have effect with respect to the payment of interest as if the reference to the qualifying maximum for the year of assessment were a reference to the amount specified in subsection (1B) below.
- (1B) The amount referred to in subsection (1A) above is the lesser of £30,000 and the amount on which interest was payable by the person in relation to the land, caravan or house-boat immediately before 1st August 1988.
- (1C) Where subsection (2) of section 356C applies in the case of a person by virtue of subsection (3) of that section, for the purposes of subsection (1B) above the amount on which interest is payable by him under the loan referred to in section 356C(3) for the first day for which interest is so payable shall be treated as the amount on which interest is payable by him under the loan immediately before 1st August 1988.”
- (3) In the Taxes Act 1988—
- (a) in section 355(1) (requirement that interest be payable in relation to only or main residence of payer), before “357” there shall be inserted the words “356A or”,

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (b) in section 367(5) (meaning of “qualifying maximum”), for “357(1)” there shall be substituted “356A to 357”,
- (c) in section 370(2)(b) (MIRAS: meaning of “relevant loan interest”), before “357” there shall be inserted “356A,”, and
- (d) in section 373 (MIRAS: large loans and joint borrowers)—
 - (i) in subsection (1), before “357(1)” there shall be inserted “356A, section”,
 - (ii) in subsection (3), after the word “applies” there shall be inserted the words “section 356D(6) or”, and
 - (iii) in subsection (4), after the words “by virtue of” there shall be inserted the words “section 356D(7) or”.

(4) This section shall come into force on 1st August 1988.

Modifications etc. (not altering text)

- C2** S. 42 applied (31.7.1998 with effect as mentioned in s. 38 of 1998 c. 36) by 1988 c. 1, s. 21B (as substituted by 1998 c. 36, s. 38, Sch. 5 Pt. I paras. 4, 73, 76)

43 Home improvement loans.

(1) In relation to payments of interest made on or after 6th April 1988 section 355 of the Taxes Act 1988 (limitations on relief for loans for purchase or improvement of land etc.) shall have effect with the insertion of the following subsections after subsection (2)—

“(2A) Section 354 shall not apply by virtue of subsection (1)(a) above where the interest is paid on a home improvement loan unless the loan was made before 6th April 1988.

(2B) In subsection (2A) above “home improvement loan” means—

- (a) a loan to defray money applied in improving or developing land or buildings on land, otherwise than by the erection of a new building (which is not part of an existing residence) on land which immediately before the improvement or development began had no building on it, or
- (b) a loan replacing (whether directly or indirectly) a loan within paragraph (a) above.

(2C) Where it is proved by written evidence that a loan made on or after 6th April 1988 was made in pursuance of an offer made by the lender before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, the loan shall be deemed for the purposes of subsection (2A) above to have been made before that date.”

(2) In relation to payments of interest made on or after 6th April 1988 section 356 of the Taxes Act 1988 (job-related accommodation) shall have effect with the insertion of the following subsection after subsection (1)—

“(1A) Subsection (1) above shall not apply where the interest is paid on a home improvement loan (as defined in section 355(2B)) unless the loan was made

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

before 6th April 1988; and section 355(2C) shall have effect for the purposes of this subsection as for those of section 355(2A).”

- (3) Interest paid by a housing association on a home improvement loan made on or after 6th April 1988 shall not be relevant loan interest for the purposes of Part IX of the Taxes Act 1988; and for the purposes of this subsection—
- (a) “housing association” means a housing association for the time being approved for the purposes of section 488 of that Act or a self-build society for the time being approved for the purposes of section 489,
 - (b) “home improvement loan” has the same meaning as in subsection (2B) of section 355 of that Act, and
 - (c) subsection (2C) of that section shall have effect as it does for the purposes of subsection (2A) of that section.

44 Loans for residence of dependent relative etc.

- (1) In sections 355(1)(a) and 357(2)(a) of the Taxes Act 1988 the words “or of a dependent relative or former or separated spouse of his,” shall not have effect in relation to payments of interest made on or after 6th April 1988.
- (2) Subsection (1) above shall not apply where the interest is paid on a loan made before 6th April 1988 if interest paid on it at a relevant time was eligible for relief under section 353 of the Taxes Act 1988 only because the land, caravan or house-boat concerned was used as the only or main residence of the same dependent relative or former or separated spouse.
- (3) In subsection (2) above “relevant time” means—
 - (a) the last time when interest was paid on the loan before 6th April 1988, or
 - (b) if no interest was paid on it before that date, any time within the period of 12 months (or any longer period substituted in relation to the case under section 355(2) of the Taxes Act 1988) after the date on which the loan was made;

but paragraph (b) above shall not apply if at any time after the date on which the loan was made and before the date on which the land, caravan or house-boat was first used as mentioned in subsection (2) above, the land, caravan or house-boat was used for any other purpose.
- (4) In section 358(4)(a) of the Taxes Act 1988 (relief where borrower deceased) the words “or of any dependent relative of the deceased” shall not have effect in relation to payments of interest made on or after 6th April 1988 unless—
 - (a) the deceased died before that date, and
 - (b) the land, caravan or house-boat was used as the only or main residence of the dependent relative before that date.
- (5) Where it is proved by written evidence that a loan made on or after 6th April 1988 was made in pursuance of an offer made by the lender before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, the loan shall be deemed for the purposes of this section to have been made before that date.
- (6) Interest paid by a housing association shall not be relevant loan interest for the purposes of Part IX of the Taxes Act 1988 where by virtue of this section it would not be relevant loan interest if paid by a member of the association; and in this subsection

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

“housing association” means a housing association for the time being approved for the purposes of section 488 of that Act or a self-build society for the time being approved for the purposes of section 489.

Modifications etc. (not altering text)

- C3** S. 44 applied (31.7.1998 with effect as mentioned in s. 38 of 1998 c. 36) by 1988 c. 1, s. 21 (as substituted by 1998 c. 36, s. 38, Sch. 5 Pt. I paras. 4, 73, 76)

Benefits in kind

45 Car benefits.

- (1) In Schedule 6 to the Taxes Act 1988 (taxation of directors and others in respect of cars) for Part I (tables of flat rate cash equivalents) there shall be substituted—

“PART I

TABLES OF FLAT RATE CASH EQUIVALENTS

Table A

**CARS WITH AN ORIGINAL MARKET VALUE UP TO
£19,250 AND HAVING A CYLINDER CAPACITY**

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Age of car at end of relevant year of assessment</i>	
	Under 4 years	4 years or more
1400 or less	£1,050	£700
More than 1400 but not more than 2000	£1,400	£940
More than 2000	£2,200	£1,450

Table B

**CARS WITH AN ORIGINAL MARKET VALUE UP TO
£19,250 AND NOT HAVING A CYLINDER CAPACITY**

<i>Original market value of car</i>	<i>Age of car at end of relevant year of assessment</i>	
	Under 4 years	4 years or more
Less than £6,000	£1,050	£700
£6,000 or more but less than £8,500	£1,400	£940
£8,500 or more but not more than £19,250	£2,200	£1,450

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Table C

CARS WITH AN ORIGINAL MARKET VALUE OF MORE THAN £19,250

<i>Original market value of car</i>	<i>Age of car at end of relevant year of assessment</i>	
	Under 4 years	4 years or more
More than £19,250 but not more than £29,000	£2,900	£1,940
More than £29,000	£4,600	£3,060”

(2) This section shall have effect for the year 1988-89 and subsequent years of assessment.

46 Car parking facilities.

(1) In section 141 of the Taxes Act 1988 (non-cash vouchers), in subsection (6), for the words “Subsections (1) and (2)” there shall be substituted the words “ Subsection (1) ” and after that subsection there shall be inserted—

“(6A) Subsection (1) above shall not apply in relation to a non-cash voucher to the extent that it is used by the employee to obtain the use of a car parking space at or near his place of work.”

(2) In section 142 of that Act (credit-tokens), after subsection (3) there shall be inserted—

“(3A) Subsection (1) above shall not apply in relation to a credit-token to the extent that it is used by the employee to obtain the use of a car parking space at or near his place of work.”

(3) In section 155 of that Act (benefits in kind for persons in director’s or higher-paid employment: exceptions from the general charge), after subsection (1) there shall be inserted—

“(1A) Section 154 does not apply to a benefit consisting in the provision for the employee of a car parking space at or near his place of work.”

(4) After section 197 of that Act there shall be inserted—

“197A Car parking facilities.

Any expenditure incurred in paying or reimbursing expenses in connection with the provision for, or use by, a person holding an office or employment of a car parking space at or near his place of work shall not be regarded as an emolument of the office or employment for any purpose of Schedule E.”

(5) This section shall have effect for the year 1988-89 and subsequent years of assessment.

Modifications etc. (not altering text)

C4 S. 46(1)(2) applied (31.7.1998 with effect as mentioned in s. 38 of 1998 c. 36) by 1988 c. 1, s. 21 (as substituted by 1998 c. 36, s. 38, Sch. 5 Pt. I paras. 4, 73, 76)

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

47 Entertainment: non-cash vouchers.

- (1) In section 141 of the Taxes Act 1988 (non-cash vouchers), after subsection (6A) there shall be inserted—

“(6B) Subsection (1) above shall not apply in relation to any non-cash voucher to the extent that it is used to obtain entertainment (including hospitality of any kind) for the employee or a relation of his, if—

- (a) the person providing the non-cash voucher is neither his employer nor a person connected with his employer;
- (b) neither his employer nor a person connected with his employer has directly or indirectly procured the provision of the entertainment; and
- (c) the entertainment is not provided either in recognition of particular services which have been performed by him in the course of his employment or in anticipation of particular services which are to be so performed by him;

and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.”

- (2) In subsection (1) of section 36 of the ^{M4}Finance (No. 2) Act 1975 (vouchers other than cash vouchers), for the words “Subject to subsection (2) below” there shall be substituted the words “ Subject to the provisions of this section ”.

- (3) The provision set out in subsection (1) above shall be inserted after subsection (3A) of that section as subsection (3B) with the substitution—

- (a) for the reference to section 839 of the Taxes Act 1988 of a reference to section 533 of the Taxes Act 1970; and
- (b) for any reference to a non-cash voucher of a reference to a voucher.

- (4) The amendment made by subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and the amendments made by subsections (2) and (3) above shall have effect for the year 1987-88.

Marginal Citations

M4 1975 c. 45.

48 Entertainment: credit-tokens.

- (1) In section 142 of the Taxes Act 1988 (credit-tokens), after subsection (3A) there shall be inserted—

“(3B) Subsection (1) above shall not apply in relation to any credit-token to the extent that it is used to obtain entertainment (including hospitality of any kind) for the employee or a relation of his, if—

- (a) the person providing the credit-token is neither his employer nor a person connected with his employer;
- (b) neither his employer nor a person connected with his employer has directly or indirectly procured the provision of the entertainment; and
- (c) the entertainment is not provided either in recognition of particular services which have been performed by him in the course of his

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

employment or in anticipation of particular services which are to be so performed by him;

and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.”

- (2) The provision set out in subsection (1) above shall be inserted after subsection (3) of section 36A of the ^{M5}Finance (No. 2) Act 1975 (credit-tokens) as subsection (3A) with the substitution for the reference to section 839 of the Taxes Act 1988 of a reference to section 533 of the Taxes Act 1970.
- (3) The amendment made by subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and the amendment made by subsection (2) above shall have effect for the year 1987-88.

Marginal Citations

M5 1975 c. 45.

49 Entertainment of directors and higher-paid employees.

- (1) At the end of section 155 of the Taxes Act 1988 (benefits in kind for persons in director’s or higher-paid employment: exceptions from the general charge) there shall be added—
 - “(7) Section 154 does not apply to a benefit consisting in the provision of entertainment (including hospitality of any kind) for the employee, or for members of his family or household, if—
 - (a) the person providing the benefit is neither his employer nor a person connected with his employer;
 - (b) neither his employer nor a person connected with his employer has directly or indirectly procured its provision; and
 - (c) it is not provided either in recognition of particular services which have been performed by the employee in the course of his employment or in anticipation of particular services which are to be so performed by him;
 and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.”
- (2) The provision set out in subsection (1) above shall be added at the end of section 62 of the ^{M6}Finance Act 1976 as subsection (9) with the substitution—
 - (a) for the reference to section 154 of the Taxes Act 1988 of a reference to section 61 of the 1976 Act; and
 - (b) for the reference to section 839 of the Taxes Act 1988 of a reference to section 533 of the Taxes Act 1970.
- (3) The amendment made by subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and the amendment made by subsection (2) above shall have effect for the year 1987-88.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Marginal Citations

M6 1976 c. 40.

Business expansion scheme

^{F9}50

Textual Amendments

F9 S. 50 repealed (3.5.1994 with effect on 1.1.1994 as mentioned in Sch. 26 Pt. V(17) of the repealing Act) by 1994 c. 9, s. 258, Sch. 26 Pt. V(17), note

51 Restriction of relief.

- (1) The Taxes Act 1988 shall have effect, and be deemed always to have had effect, with the following amendments, namely—
 - (a) in section 289(12)(b), the substitution of the words “sections 290A, 293” for the words “ sections 293 ”; and
 - (b) the insertion after section 290 of the following section—

“290A Restriction of relief where amounts raised exceed permitted maximum.

- (1) Where—
 - (a) a company raises any amount through the issue of eligible shares after 15th March 1988; and
 - (b) the aggregate of that amount and of all other amounts (if any) so raised within the period mentioned in subsection (2) below exceeds £500,000,the relief shall not be given in respect of the excess.
- (2) The period referred to in subsection (1) above is—
 - (a) the period of 6 months ending with the date of the issue of the shares; or
 - (b) the period beginning with the preceding 6th April and ending with the date of that issue,whichever is the longer.
- (3) In determining the aggregate mentioned in subsection (1) above, no account shall be taken of any amount—
 - (a) which is subscribed by a person other than an individual who qualifies for relief; or
 - (b) as respects which relief is precluded by section 290 or this section.
- (4) Where—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) at any time within the relevant period, the company in question or any of its subsidiaries carries on any trade or part of a trade in partnership, or as a party to a joint venture, with one or more other persons; and
- (b) that other person, or at least one of those other persons, is a company,

the reference to £500,000 in subsection (1) above shall have effect as if it were a reference to—

$$\frac{\pounds 500,000}{1+A},$$

where A is the total number of companies (apart from the company in question or any of its subsidiaries) which, during the relevant period, are members of any such partnership or parties to any such joint venture.

- (5) Where this section precludes the giving of relief on claims in respect of shares issued to two or more individuals, the available relief shall be divided between them in proportion to the amounts which have been respectively subscribed by them for the shares to which their claims relate and which would, apart from this section, be eligible for relief.

- (6) Where—

- (a) in the case of a company falling within subsection (2)(a) of section 293, the qualifying trade or each of the qualifying trades is a trade to which subsection (7) below applies;
- (b) in the case of a company falling within subsection (2)(b)(i) of that section, the subsidiary or each of the subsidiaries is a dormant subsidiary or exists wholly, or substantially wholly, for the purpose of carrying on one or more qualifying trades which or each of which is a trade to which subsection (7) below applies; or
- (c) in the case of a company falling within subsection (2)(b)(ii) of that section, the requirements mentioned in each of paragraphs (a) and (b) above are satisfied,

subsections (1) and (4) above shall have effect as if for the amount there specified there were substituted £5 million.

- (7) This subsection applies to a trade if it consists, wholly or substantially wholly, of operating or letting ships, other than oil rigs or pleasure craft, and—

- (a) every ship operated or let by the company carrying on the trade is beneficially owned by the company;
- (b) every ship beneficially owned by the company is registered in the United Kingdom;
- (c) throughout the relevant period the company is solely responsible for arranging the marketing of the services of its ships; and
- (d) the conditions mentioned in section 297(7) are satisfied in relation to every letting by the company.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

(8) Where—

- (a) any of the requirements mentioned in paragraphs (a) to (c) of subsection (7) above are not satisfied in relation to any ships;
or
- (b) any of the conditions referred to in paragraph (d) of that subsection are not satisfied in relation to any lettings,

the trade shall not thereby be precluded from being a trade to which that subsection applies if the operation or letting of those ships, or, as the case may be, those lettings do not amount to a substantial part of the trade.

(9) The Treasury may by order amend any of the foregoing provisions of this section by substituting a different amount for the amount for the time being specified there.

(10) Where—

- (a) the issue of the eligible shares is made in pursuance of a prospectus published, or an offer in writing made, before 15th March 1988;
- (b) the shares are issued after that date and before 6th April 1988;
and
- (c) subsection (6) above does not apply,

subsections (1) and (4) above shall have effect as if for the amount there specified there were substituted £1 million.

(11) In this section—

“let” means let on charter and “letting” shall be construed accordingly;

“oil rig” and “pleasure craft” have the same meanings as in section 297;

“prospectus” has the meaning given by section 744 of the Companies Act 1985 or Article 2(3) of the Companies (Northern Ireland) Order 1986.”

(2) Schedule 5 to the ^{M7}Finance Act 1983 shall be deemed always to have had effect as if—

- (a) in paragraph 2(7), for the words “paragraphs 5” there had been substituted the words “ paragraphs 3A, 5 ”; and
- (b) the provisions set out in subsection (1)(b) above had been inserted, with any necessary modifications, after paragraph 3 as paragraph 3A.

Marginal Citations

M7 1983 c. 28.

52 Valuation of interests in land.

(1) In section 294 of the Taxes Act 1988 (companies with interests in land), after subsection (5) there shall be inserted—

“(5A) For the purposes of this section, the value of an interest in any building or other land shall be adjusted by deducting the market value of any machinery

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

or plant which is so installed or otherwise fixed in or to the building or other land as to become, in law, part of it.”

- (2) This section shall have effect in relation to valuations which fall to be made after the passing of this Act.

53 Approved investment funds.

- (1) For subsection (3) of section 311 of the Taxes Act 1988 there shall be substituted—

“(2A) Subsection (2B) below applies where an individual claims relief in respect of eligible shares in a company and—

- (a) the shares have been issued to the managers of an approved fund as nominee for the individual;
- (b) the fund has closed, that is to say, no further investments in the fund are to be accepted; and
- (c) the amounts which the managers have, as nominee for the individual, subscribed for eligible shares issued within six months after the closing of the fund represent not less than 90 per cent. of his investment in the fund;

and in this section “the managers of an approved fund” means the person or persons having the management of an investment fund approved for the purposes of this section by the Board.

- (2B) In any case where this subsection applies, subsections (5) to (7) of section 289 and subsections (1) to (3) and (6) of section 304 shall have effect as if—

- (a) any reference to the year of assessment or other period in which the shares are issued were a reference to the year of assessment or other period in which the fund closes; and
- (b) any reference to the time of the issue of the shares, or the time of the subscription for the shares, were a reference to the time of the closing of the fund.

- (3) Section 290(1) shall not apply where the amount is subscribed as nominee for an individual by the managers of an approved fund.”

- (2) This section shall have effect in relation to approved funds closing after 15th March 1988.

Pensions etc.

54 Personal pension schemes: commencement.

- (1) In section 56(1) of the ^{M8}Finance (No. 2) Act 1987 and section 655(4) of the Taxes Act 1988 (personal pension schemes not to be approved with effect from date earlier than 4th January 1988) for “4th January” there shall be substituted “ 1st July ”.

- (2) In consequence of the amendment made by subsection (1) above—

- (a) the same amendment shall be made in—
 - (i) section 54(1) of the Act of 1987 and section 618(1) of the Act of 1988 (no retirement annuity relief for contracts made or trust schemes established on or after 4th January 1988);

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (ii) section 54(3) of the Act of 1987 and section 618(2) of the Act of 1988 (limit on lump sums under contracts made or schemes established before 4th January 1988); and
 - (iii) section 20(3) of the Act of 1987 and section 632(3) of the Act of 1988 (removal of restriction from certain schemes established before 4th January 1988);
 - (b) in section 55 of the Act of 1987 and section 655 of the Act of 1988 (transitional provisions: carry back and carry forward)—
 - (i) in subsection (2), for “1984-85, 1985-86 or 1986-87” there shall be substituted “ 1985-86, 1986-87 or 1987-88 ”; and
 - (ii) in subsection (3), for “1987-88” there shall be substituted “ 1988-89 ”; and
 - (c) in section 56(2) of the Act of 1987 and section 655(5) of the Act of 1988 (provisional approval where application made before 1st August 1989) for “August 1989” there shall be substituted “ February 1990 ”.
- (3) The amendments made by this section shall be deemed always to have had effect.

Marginal Citations

M8 1987 c. 51.

55 Personal pension schemes: other amendments.

- (1) At the end of section 630 of the Taxes Act 1988 (interpretation of Chapter IV of Part XIV) there shall be inserted— “ and references to an employee or to an employer include references to the holder of an office or to the person under whom an office is held. ”
- (2) In section 638 of that Act, for subsection (7) (personal pension schemes which permit acceptance of certain contributions not to be approved) there shall be substituted—
 - “(7) The Board shall not approve a personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (6)(c) above in respect of an individual’s service as director of a company, if his emoluments as such are within section 644(5).
 - (8) A personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (6)(c) above in respect of an individual’s service in an office or employment to which section 645 applies may be approved by the Board only if—
 - (a) the scheme does not permit the acceptance of contributions from the individual or from the person who is his employer in relation to that office or employment; or
 - (b) at the time when the minimum contributions are paid the individual is not serving in an office or employment to which section 645 applies.”
- (3) In section 686(2) of that Act (income arising to trustees which is chargeable to income tax at the additional rate), for paragraph (c) there shall be substituted—
 - “(c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (i) for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; or
- (ii) for the purposes of a personal pension scheme (within the meaning of section 630) which makes provision only for benefits such as are mentioned in section 633; and”

- (4) The amendments made by this section shall be deemed to have come into force on 1st July 1988.

56 Occupational pension schemes.

In Schedule 23 to the Taxes Act 1988 (which alters the rules of schemes approved before 23rd July 1987) the following sub-paragraphs shall be substituted for sub-paragraph (2) of paragraph 1—

“(2) The Board may by regulations provide that, in circumstances prescribed in the regulations, this Schedule or any provision of it shall not apply or shall apply with such modifications as may be so prescribed.

(2A) Regulations under sub-paragraph (2) above—

- (a) may include provision authorising the Board to direct that this Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate;
- (b) may take effect (and may authorise any direction given under them to take effect) as from 17th March 1987 or any later date;
- (c) may make such supplementary provision as appears to the Board to be necessary or expedient.”

57 Lump sum benefits paid otherwise than on retirement.

- (1) In section 14 of the ^{M9}Finance Act 1973 and section 189 of the Taxes Act 1988 (lump sum benefits paid on retirement not chargeable to income tax under Schedule E), for the words “on his retirement from an office or employment” there shall be substituted the words “(whether on his retirement from an office or employment or otherwise)”.

- (2) The amendments made by this section shall be deemed always to have had effect.

Marginal Citations

M9 1973 c. 51.

Underwriters

58 Assessment and collection.

- (1) For subsection (2) of section 450 of the Taxes Act 1988 (underwriters) there shall be substituted—

“(2) The aggregate for any year of assessment of—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) the profits or gains arising to a member from his underwriting business; and
- (b) the profits or gains arising to him from assets forming part of a premiums trust fund,

shall be chargeable to tax under Case I of Schedule D; but nothing in this subsection shall affect the manner in which the amount of those profits or gains is to be computed.

(2A) Schedule 19A shall have effect with respect to the assessment and collection of tax charged under Case I of Schedule D in accordance with this section.”

(2) Section 39 of the ^{M10}Finance Act 1973 shall be renumbered as subsection (1) of that section and after that provision as so renumbered there shall be inserted—

“(2) Schedule 16A to this Act shall have effect with respect to the assessment and collection of tax charged under Case I of Schedule D in accordance with Schedule 16 to this Act.”

(3) In Schedule 16 to that Act (underwriters)—

- (a) the subsection (2) set out in subsection (1) above shall be inserted after paragraph 2 as paragraph 2A; and
- (b) paragraph 16 (assessment on agent) shall cease to have effect.

(4) The provisions set out in Schedule 5 to this Act shall be inserted—

- (a) after Schedule 19 to the Taxes Act 1988 as Schedule 19A; and
- (b) after Schedule 16 to the Finance Act 1973 as Schedule 16A.

(5) Subsections (1) and (4)(a) above shall have effect for the year 1988-89 and subsequent years of assessment; and subsections (2), (3) and (4)(b) above shall have effect for the years 1986-87 and 1987-88.

Marginal Citations

M10 1973 c. 51.

59 Reinsurance: general.

(1) In subsection (4) of section 450 of the Taxes Act 1988 (underwriters), for paragraph (b) there shall be substituted—

“(b) any insurance money payable to him under that insurance in respect of a loss shall be taken into account as a trading receipt in computing those profits or gains for the year of assessment which corresponds to the underwriting year in which the loss arose;”

(2) The amendment set out in subsection (1) above shall also be made in paragraph 4 of Schedule 16 to the Finance Act 1973 (underwriters).

(3) Subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and subsection (2) above shall have effect for the years 1985-86, 1986-87 and 1987-88.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

60 Reinsurance to close.

(1) For subsection (5) of section 450 of the Taxes Act 1988 (underwriters) there shall be substituted—

“(5) Subsection (5A) below applies where—

- (a) in accordance with the rules or practice of Lloyd’s and in consideration of the payment of a premium, one member agrees with another to meet liabilities arising from the latter’s business for an underwriting year so that the accounts of the business for that year may be closed; and
- (b) the member by whom the premium is payable is a continuing member, that is, a member not only of the syndicate as a member of which he is liable to pay the premium (“the reinsured syndicate”) but also of the syndicate as a member of which the other member is entitled to receive it (“the reinsurer syndicate”).

(5A) In any case where this subsection applies—

- (a) in computing for the purposes of income tax the profits or gains of the continuing member’s business as a member of the reinsured syndicate, the amount of the premium shall be deductible as an expense of his only to the extent that it is shown not to exceed a fair and reasonable assessment of the value of the liabilities in respect of which it is payable; and
- (b) in computing for those purposes the profits or gains of his business as a member of the reinsurer syndicate, those profits or gains shall be reduced by an amount equal to any part of a premium which, by virtue of paragraph (a) above, is not deductible as an expense of his as a member of the reinsured syndicate;

and the assessment referred to above shall be taken to be fair and reasonable only if it is arrived at with a view to producing the result that a profit does not accrue to the member to whom the premium is payable but that he does not suffer a loss.”

(2) The provisions set out in subsection (1) above, but renumbered as subsections (1) and (2) and with the substitution, in the provision renumbered as subsection (1), of the words “subsection (2)” for the words “subsection (5A)”, shall also be substituted for subsections (1) to (4) of section 70 of the ^{M11}Finance (No. 2) Act 1987 (underwriters); and in subsection (5) of that section, for the word “underwriter” there shall be substituted the word “member”.

(3) In this section—

- (a) subsection (1) shall have effect in relation to premiums payable in connection with the closing of accounts of a member’s business for an underwriting year ending in the year 1988-89 or any subsequent year of assessment; and
- (b) subsection (2) shall have effect in relation to premiums payable in connection with the closing of accounts of a member’s business for an underwriting year ending in the year 1985-86, 1986-87 or 1987-88.

Marginal Citations

M11 1987 c. 51.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

61 Minor and consequential amendments.

- (1) In the Taxes Act 1988—
- (a) in section 20, at the beginning of subsection (2) there shall be inserted the words “ Except as provided by section 450 (underwriters) ”;
 - (b) in section 451, in subsection (1), for paragraph (a) there shall be substituted—
 - “(a) for the assessment and collection of tax charged in accordance with section 450 (so far as not provided for by Schedule 19A);
 - (aa) for making, in the event of any changes in the rules or practice of Lloyd’s, such amendments of that Schedule as appear to the Board to be expedient having regard to those changes;”
 - (c) after that subsection there shall be inserted—
 - “(1A) Regulations under subsection (1) above may make provision with respect to the year of assessment next but one preceding the year of assessment in which they are made.”; and
 - (d) in section 452(8), for the words “Case I of Schedule D” there shall be substituted the words “ in accordance with section 450 ” and the words “the investments forming part of the premiums trust fund of the underwriter” shall cease to have effect.
- (2) In Schedule 10 to the Taxes Act 1970, in paragraph 7(3), for the words “Case I of Schedule D” there shall be substituted the words “ in accordance with Schedule 16 to ^{M12}Finance Act 1973 ” and the words “the investments forming part of the premiums trust fund of the underwriter” shall cease to have effect.
- (3) In section 87 of the ^{M13}Finance Act 1972, at the beginning of subsection (3) there shall be inserted the words “ Except as provided by Schedule 16 to Finance Act 1973 (underwriters) ”.
- (4) In Schedule 16 to the ^{M14}Finance Act 1973—
- (a) in sub-paragraph (1) of paragraph 17, for paragraph (a) there shall be substituted—
 - “(a) for the assessment and collection of tax charged in accordance with the preceding provisions of this Schedule (so far as not provided for by Schedule 16A to this Act);
 - (aa) for making, in the event of any changes in the rules or practice of Lloyd’s, such amendments of that Schedule as appear to the Board to be expedient having regard to those changes;”
 - (b) after that sub-paragraph, there shall be inserted—
 - “(1A) Regulations under this paragraph may make provision with respect to the year of assessment next but one preceding the year of assessment in which they are made.”
- (5) Subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and subsections (2) to (4) above shall have effect for the years 1986-87 and 1987-88.

Marginal Citations

M12 1973 c. 51.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

M13 1972 c. 41.

M14 1973 c. 51.

Oil licences

^{F10}**62**

Textual Amendments

F10 S. 62 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 101(1), 201(3), 290, [Sch. 11](#) paras. 22, 26(2), 27)

^{F11}**63**

Textual Amendments

F11 S. 63 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 101(1), 201(3), 290, [Sch. 11](#) paras. 22, 26(2), 27)

^{F12}**64**

Textual Amendments

F12 S. 64 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 101(1), 201(3), 290, [Sch. 11](#) paras. 22, 26(2), 27)

Miscellaneous

65 Commercial woodlands.

Schedule 6 to this Act (which abolishes the charge to tax under Schedule B and makes other provision with respect to the occupation of commercial woodlands) shall have effect.

66 Company residence.

(1) Subject to the provisions of Schedule 7 to this Act, a company which is incorporated in the United Kingdom shall be regarded for the purposes of the Taxes Acts as resident there; and accordingly, if a different place of residence is given by any rule of law, that place shall no longer be taken into account for those purposes.

(2) For the purposes of the Taxes Acts, a company which—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) is no longer carrying on any business; or
- (b) is being wound up outside the United Kingdom,

shall be regarded as continuing to be resident in the United Kingdom if it was so regarded for those purposes immediately before it ceased to carry on business or, as the case may be, before any of its activities came under the control of a person exercising functions which, in the United Kingdom, would be exercisable by a liquidator.

- (3) In this section “the Taxes Acts” has the same meaning as in the ^{M15}Taxes Management Act 1970.
- (4) This section and Schedule 7 to this Act shall be deemed to have come into force on 15th March 1988.

Modifications etc. (not altering text)

C5 S. 66 excluded (27.7.1999) by 1999 c. 20, s. 20, **Sch. 3 para. 3(1)(2)** (with s. 15)

Marginal Citations

M15 1970 c. 9.

^{F13}**67**

Textual Amendments

F13 S. 67 repealed (31.7.1998 with effect as mentioned in Sch. 27 Pt. III(11) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(11)** note

68 Priority share allocations for employees etc.

(1) Where—

- (a) there is [^{F14}a bona fide offer] to the public of shares in a company ^{F15} . . .
- (b) ^{F15} . . . , and
- (c) the conditions set out in subsection (2) below are satisfied,

any benefit derived by the director or employee from his entitlement shall not be treated as an emolument of his office or employment.

[^{F16}(1ZA) A case falls within this subsection if—

- (a) there is a bona fide offer to the public of a combination of shares in two or more companies at a fixed price or by tender (“the public offer”);
- (b) there is at the same time an offer (“the employee offer”) of shares, or of a combination of shares, in any one or more, but not all, of those companies—
 - (i) to directors or employees, or
 - (ii) to directors or employees and to other persons,
 (whether the directors or employees are directors or employees of any of those companies, or of any other company or person); and
- (c) any of those directors or employees is entitled, by reason of his office or employment, to an allocation of shares under the employee offer in priority to any allocation to members of the public under the public offer.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

(1ZB) In any case falling within subsection (1ZA) above—

- (a) the public offer and the employee offer shall be regarded for the purposes of subsection (1) above as together constituting a single offer of shares to the public, notwithstanding the difference in the shares to which each offer relates;
- (b) the reference to “the shares” in paragraph (b) of that subsection shall be taken as a reference to any of the shares which, in consequence of paragraph (a) above, are to be regarded as subject to that single offer; and
- (c) in the following provisions of this section references to the offer or to shares subject to the offer shall be construed accordingly.]

[^{F17}(1A) Where, disregarding the amount or value of any registrant discount made to the director or employee in respect of the shares of the company (or, in a case falling within subsection (1ZA) above, of the company in question), the price payable by him for the shares of that company which are allocated to him under the offer—

- (a) in a case not falling within subsection (1ZA) above, is less than the fixed price or the lowest price successfully tendered, or
- (b) in a case falling within that subsection, is not the same as, or as near as reasonably practicable to, the appropriate notional price for the shares of that company,

subsection (1) above shall not apply to the benefit (if any) represented by the difference in price.]

(2) The conditions referred to in subsection (1) above are—

- [^{F18}(a) that the aggregate number of shares subject to the offer that may be allocated as mentioned in subsection (1)(b) above does not exceed the limit specified in subsection (2A) below or, as the case may be, either of the limits specified in subsection (2B) below]
- (b) that all the persons entitled to such an allocation are entitled to it on similar terms;
- (c) that those persons are not restricted wholly or mainly to persons who are directors or whose remuneration exceeds a particular level.

[^{F19}(2A) Except where subsection (2B) below applies, the limit relevant for the purposes of subsection (2)(a) above is 10 per cent. of the shares subject to the offer (including the shares that may be allocated as mentioned in subsection (1)(b) above).

(2B) Where the offer is part of arrangements which include one or more other offers to the public of shares of the same class, the limits relevant for the purposes of subsection (2)

(a) above are—

- (a) 40 per cent. of the shares subject to the offer (including the shares that may be allocated as mentioned in subsection (1)(b) above), and
- (b) 10 per cent. of all the shares of the class in question (including the shares that may be so allocated) that are subject to any of the offers forming part of the arrangements.]

[^{F20}(2C) In a case falling within subsection (1ZA) above, the condition in paragraph (a) of subsection (2) above shall be taken to be satisfied in relation to the offer if, and only if, it is separately satisfied with respect to the shares in each one of the companies which are subject to that offer; and for this purpose only, any reference in that paragraph or in subsection (2A) or (2B) above to shares is a reference to shares in the particular company in question.]

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (3) For the purposes of subsection (2)(b) above the fact that different provision is made for persons according to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they are not entitled to an allocation on similar terms.
- [^{F21}(3A) The fact that the allocations of shares in the company [^{F22}(or, in a case falling within subsection (1ZA) above, any one or more of the companies to which the offer relates)] to which persons who are not directors or employees of the company are entitled are smaller than those to which directors or employees of the company are entitled shall not be regarded for the purposes of subsection (2)(b) above as meaning that they are not entitled on similar terms if—
- (a) each of the first-mentioned persons is also entitled, by reason of his office or employment and in priority to members of the public, to an allocation of shares in another company or companies which are offered to the public (at a fixed price or by tender) at the same time as the shares in the company, and
 - (b) in the case of each of those persons the aggregate value (measured by reference to the fixed price or the lowest price successfully tendered) of all the shares included in the allocations to which he is entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable director or employee of the company.]
- (4) Section [^{F23}17(1) of the Taxation of Chargeable Gains Act 1992] (assets deemed to be acquired at market value) shall not apply to any acquisition in relation to which subsection (1) above applies.
- (5) In this section “director” includes a person who is to be, or has ceased to be, a director and “employee” includes a person who is to be, or has ceased to be, an employee
- [^{F24}“the public offer” and “the employee offer” have the meaning given by paragraphs (a) and (b) of subsection (1ZA) above.].
- [^{F25}(5A) For the purposes of this section, there is a “registrant discount” in respect of the shares of a company in any case where—
- (a) in connection with the offer, members of the public who comply with such requirements as may be imposed in that behalf are, or may become, entitled to a discount in respect of the whole or some part of the shares of that company which are allocated to them; and
 - (b) at least 40 per cent. of the shares of that company which are allocated to members of the public other than employees and directors are allocated to individuals who are or become entitled either to that discount or to some other benefit of similar value for which they may elect as an alternative to the discount; and
 - (c) directors or employees who either—
 - (i) subscribe for shares under the offer (or, in a case falling within subsection (1ZA) above, under the public offer) as members of the public, or
 - (ii) subscribe for shares under the employee offer, as directors or employees,and who comply (or, in the case of a requirement to register, are taken under the terms of the offer to comply) with the same requirements as are mentioned in paragraph (a) above, are, or may become, entitled to the same discount in

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

respect of the shares of the company as any other members of the public to whom shares of that company are allocated under the offer;

and any reference in this section to the amount or value of the registrant discount made to a director or employee is a reference to the amount of any such discount made to him as is mentioned in paragraph (c) above or, as the case may be, the value of any such other benefit as is mentioned in paragraph (b) above which is conferred upon him as an alternative to the discount.

(5B) For the purposes of this section, in a case falling within subsection (1ZA) above “the appropriate notional price” for the shares of any of the companies subject to the offer is such price as—

- (a) had the shares of that company, and of each of the other companies, instead of being subject to the offer, been subject to separate offers to the public in respect of each company at fixed prices, and
- (b) had those separate offers been made at the time at which the public offer was in fact made,

might reasonably have been expected to be the fixed price for the shares of that company under the separate offer of those shares; but where subsection (5C) below applies, the amount determined in accordance with this subsection as the notional price for the shares of any company shall be varied in accordance with that subsection.

(5C) If the amounts determined in accordance with subsection (5B) above as the appropriate notional prices for the shares of each of the companies subject to the public offer are such that, had the price for the combination of shares subject to the public offer been determined by aggregating the appropriate notional price (as so determined) for each one of the shares comprised in the combination, the price for the combination would have been different from the actual fixed price or (as the case may be) lowest successfully tendered price, then those amounts shall each be varied by multiplying them by the fraction of which—

- (a) the numerator is the actual fixed or lowest successfully tendered price for the combination of shares subject to the public offer; and
- (b) the denominator is the different price mentioned above;

and those amounts, as so varied, shall be the appropriate notional prices for the purposes of this section.]

(6) This section shall apply to offers made on or after 23rd September 1987.

Textual Amendments

- F14** Words in s. 68(1)(a) substituted(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(2)(with s. 44(1))
- F15** Words in s. 68(1) repealed(*for offers made on or after 11.10.1988*) by Finance Act 1989 (c. 26, SIF 63:1), ss. 66(2), 187(1), Sch. 17 Pt. IV Note 7.
- F16** S. 68(1ZA)(1ZB) inserted(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(3)(with s. 44(1))
- F17** S. 68(1A) substituted(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(4)(with s. 44(1))
- F18** S. 68(2)(a) substituted(*for offers made on or after 11.10.1988*) by Finance Act 1989 (c. 26, SIF 63:1), s. 66(4).
- F19** S. 68(2A)(2B) inserted(*for offers made on or after 11.10.1988*) by Finance Act 1989 (c. 26, SIF 63:1), s. 66(5).

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- F20** S. 68(2C) inserted(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(5)(with s. 44(1))
- F21** S. 68(3A) inserted(*for offers made on or after 26.07.1990*) by Finance Act 1990 (c. 29, SIF 63:1), s. 79.
- F22** Words in s. 68(3A) inserted(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(6)(with s. 44(1))
- F23** Words in s. 68(4) substituted (6.3.1992 with effect as mentioned in s. 289 of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 16(3) (with ss. 60, 101(1), 201(3))
- F24** Words in 68(5) added(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(7)(with s. 44(1))
- F25** S. 68(5A)-(5C) inserted(*retrospectively in relation to offers made on or after 16.01.1991*) by Finance Act 1991 (c. 31, SIF 63:1), s. 44(8)(with s. 44(1))

69 Share options: loans.

- (1) Paragraph 13 of Schedule 9 to the Taxes Act 1988 (approved share option schemes: cases where scheme shares are subject to restrictions) shall have effect, and shall be deemed always to have had effect, with the addition of the following sub-paragraph after sub-paragraph (2)—

“(3) In the case of schemes other than savings-related share option schemes, sub-paragraph (1) above does not apply in relation to any terms of a loan making provision about how it is to be repaid or the security to be given for it.”

- (2) Paragraph 10 of Schedule 10 to the ^{M16}Finance Act 1984 (approved share option schemes: cases where scheme shares are subject to restrictions) shall be deemed always to have had effect with the addition of the following sub-paragraph after sub-paragraph (2)—

“(3) Sub-paragraph (1) above does not apply in relation to any terms of a loan making provision about how it is to be repaid or the security to be given for it.”

Marginal Citations

M16 1984 c. 43.

70 Charities: payroll deduction scheme.

- (1) In section 202(7) of the Taxes Act 1988 (which limits to £120 the deductions attracting relief) for “£120” there shall be substituted “£240”.
- (2) This section shall have effect for the year 1988-89 and subsequent years of assessment.

71 Unit trusts: relief on certain payments.

Section 469 of the Taxes Act 1988 (taxation of unauthorised and certain other unit trusts) shall have effect, and shall be deemed always to have had effect, with the insertion of the following subsections after subsection (5)—

“(5A) Subsection (5B) below applies where for any year of assessment—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) the trustees are (or, apart from this subsection, would be) chargeable under section 350 with tax on payments treated as made by them under subsection (3) above, and
 - (b) there is an uncredited surplus in the case of the scheme.
- (5B) Where this subsection applies, the amount on which the trustees would otherwise be so chargeable shall be reduced—
- (a) if the surplus is greater than that amount, to nil, or
 - (b) if it is not, by an amount equal to the surplus.
- (5C) For the purposes of subsections (5A) and (5B) above whether there is an uncredited surplus for a year of assessment in the case of a scheme (and, if so, its amount) shall be ascertained by—
- (a) determining, for each earlier year of assessment in which the income on which the trustees were chargeable to tax by virtue of subsection (2) above exceeded the amount treated by subsection (3) above as annual payments received by the unit holders, the amount of the excess,
 - (b) aggregating the amounts determined in the case of the scheme under paragraph (a) above, and
 - (c) deducting from that aggregate the total of any reductions made in the case of the scheme under subsection (5B) above for earlier years of assessment.
- (5D) The references in subsection (5C)(a) above to subsections (2) and (3) above include references to subsections (2) and (3) of section 354A of the 1970 Act.”

72 Entertainment of overseas customers.

- (1) Subsection (2) of section 577 of the Taxes Act 1988 (which excepts the entertainment of overseas customers from the general rule that entertainment expenses are not deductible for tax purposes) shall not have effect in relation to entertainment provided on or after 15th March 1988.
- (2) Subsection (1) above shall not apply where the expenses incurred or the assets used in providing the entertainment were incurred or used under a contract entered into before 15th March 1988.

73 Consideration for certain restrictive undertakings.

- (1) For subsections (1) to (5) of section 313 of the Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) there shall be substituted—
 - “(1) Where an individual who holds, has held, or is about to hold, an office or employment gives in connection with his holding that office or employment an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict him as to his conduct or activities, any sum to which this section applies shall be treated as an emolument of the office or employment, and accordingly shall be chargeable to tax under Schedule E, for the year of assessment in which it is paid.
 - (2) This section applies to any sum which—
 - (a) is paid, in respect of the giving of the undertaking or its total or partial fulfilment, either to the individual or to any other person; and

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (b) would not, apart from this section, fall to be treated as an emolument of the office or employment.
- (3) Where the individual has died before the payment of any sum to which this section applies, subsections (1) and (2) above shall have effect as if that sum had been paid immediately before his death.
- (4) Where valuable consideration otherwise than in the form of money is given in respect of the giving of the undertaking or its total or partial fulfilment, subsections (1) to (3) above shall have effect as if a sum had instead been paid equal to the value of that consideration.”
- (2) Notwithstanding anything in section 74 of the Taxes Act 1988, any sum to which section 313 of that Act applies, and which is paid or treated as paid by a person carrying on a trade, profession or vocation, may be deducted as an expense in computing the profits or gains of the trade, profession or vocation for the purposes of tax.
- (3) Any sum to which section 313 of the Taxes Act 1988 applies, and which is paid or treated as paid by an investment company, shall for the purposes of section 75 of that Act be treated as an expense of management.
- (4) This section has effect in relation to sums paid or treated as paid in respect of the giving of, or the total or partial fulfilment of, undertakings given on or after 9th June 1988.

Modifications etc. (not altering text)

- C6** s. 73(2) applied (31.7.1998 with effect as mentioned in s. 38 of 1998 c. 36) by 1988 c. 1, s. 21A (as substituted by 1998 c. 36, s. 138(1), Sch. 5 Pt. I paras. 4, 73, 76)
- C7** S. 73(2) modified (31.7.1998) by 1998 c. 36, s. 46(3), Sch. 7 para. 2

F26⁷⁴

Textual Amendments

- F26** S. 74 repealed (31.7.1998 with effect on 6.4.1998 as mentioned in s. 58(4) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(9) note

75 Premiums for leases etc.

Sections 39(3) and 780(5) of, and Schedule 2 to, the Taxes Act 1988 (top-slicing relief where premiums for leases etc. chargeable to income tax) shall not have effect for the year 1988-89 or any subsequent year of assessment.

F27⁷⁶

Textual Amendments

- F27** S. 76 repealed (29.4.1996 with effect as mentioned in Sch. 41 Pt. V(2) of the repealing Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(2) notes, Pt. V(19)

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
 for the Finance Act 1988, Part III. (See end of Document for details)*

CHAPTER II

UNAPPROVED EMPLOYEE SHARE SCHEMES

Modifications etc. (not altering text)

- C8** Pt. III Ch. II (ss. 77-89) applied (6.3.1992 with effect as mentioned in s. 289 of the applying Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), **ss. 120(1), 289**, (with ss. 60, 101(1), 171, 201(3))

Preliminary

77 **Scope of Chapter.**

- (1) [^{F28}Subject to [^{F29}section 140A of the Taxes Act 1988 and] subsections (2) to (4) below], this Chapter shall apply where, on or after 26th October 1987, a person acquires shares or an interest in shares in a company in pursuance of a right conferred on him or an opportunity offered to him by reason of his office as a director of, or his employment by, that or any other company.
- (2) This Chapter shall not apply in relation to an acquisition by a person who is not chargeable to tax under Case I of Schedule E in respect of the office or employment in question.
- (3) This Chapter shall not apply where the acquisition is made in pursuance of an offer to the public.
- [^{F30}(4) Where, in a case falling within subsection (1ZA) of section 68 above, subsection (1) of that section—
 - (a) applies or applied in relation to such a benefit as is there mentioned, or
 - (b) would so apply or have applied, had there been any such benefit,
 any acquisition made on or after 16th January 1991 in pursuance of any of the offers which, in that case, fall to be regarded by virtue of subsection (1ZB) of that section as together constituting a single offer of shares to the public for the purposes of subsection (1) of that section shall be regarded for the purposes of subsection (3) above as an acquisition made in pursuance of an offer to the public.]

Textual Amendments

- F28** Words in s. 77(1) substituted (*retrospective to 16.1.1991*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), **s. 44(9)** (with s. 44(10))
- F29** Words in s. 77(1) inserted (with application in accordance with s. 50(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 50(2)**
- F30** S. 77(4) added (*retrospective to 16.1.1991*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), **s. 44(9)** (with s. 44(10))

Charges to tax

78 **Charge where restrictions removed etc.**

- (1) The person acquiring the shares or interest in shares shall be chargeable to tax if—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) a chargeable event occurs in relation to the shares at a time when he has not ceased to have a beneficial interest in them, and
 - (b) the shares are shares in a company which was not a dependent subsidiary at the time of the acquisition and is not a dependent subsidiary at the time of the chargeable event.
- (2) Subject to subsections (4) and (5) below, any of the following events is a chargeable event in relation to shares in a company for the purposes of this section if it increases, or but for the occurrence of some other event would increase, the value of the shares —
- (a) the removal or variation of a restriction to which the shares are subject;
 - (b) the creation or variation of a right relating to the shares;
 - (c) the imposition of a restriction on other shares in the company or the variation of a restriction to which such other shares are subject;
 - (d) the removal or variation of a right relating to other shares in the company.
- (3) A charge by virtue of this section shall be a charge under Schedule E, for the year of assessment in which the chargeable event occurs, on the amount by which the value of the shares is increased by the chargeable event or the amount by which it would be increased but for the occurrence of some other event (or, if the interest of the person chargeable is less than full beneficial ownership, on an appropriate part of that amount).
- (4) An event is not a chargeable event in relation to shares in a company for the purposes of this section unless the person who acquired the shares or interest has been a director or employee of —
- (a) that company, or
 - (b) (if it is different) the company as a director or employee of which he acquired the shares or interest, or
 - (c) an associated company of a company within paragraph (a) or (b) above,
- at some time during the period of seven years ending with the date on which the event occurs.
- (5) An event is not a chargeable event for the purposes of this section if it consists of—
- (a) the removal of a restriction to which all shares of a class are subject from all those shares,
 - (b) the variation of such a restriction in the case of all those shares,
 - (c) the creation of a right relating to all shares of a class,
 - (d) the variation of such a right in the case of all those shares,
 - (e) the imposition of a restriction on all shares of a class, or
 - (f) the removal of a right relating to all shares of a class from all those shares,
- and any of the conditions in subsection (6) below is satisfied.
- (6) The conditions referred to in subsection (5) above are—
- (a) that at the time of the event the majority of the company's shares of the same class as those which, or an interest in which, the person acquired are held otherwise than by or for the benefit of—
 - (i) directors or employees of the company,
 - (ii) an associated company of the company, or
 - (iii) directors or employees of any such associated company;
 - (b) that at the time of the event the company is employee-controlled by virtue of holdings of shares of that class;

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
 for the Finance Act 1988, Part III. (See end of Document for details)*

- (c) that at the time of the event the company is a subsidiary which is not a dependent subsidiary and its shares are of a single class.
- (7) References in this section to restrictions to which shares are subject, or to rights relating to shares, include references to restrictions imposed or rights conferred by any contract or arrangement or in any other way.

Modifications etc. (not altering text)

C9 S. 78 excluded (28.7.2000) by 2000 c. 17, s. 47, Sch. 8 Pt. X para. 80(1)(b)(2)

79 Charge for shares in dependent subsidiaries.

- (1) The person acquiring the shares or interest in shares shall be chargeable to tax if the shares are shares in a company which—
- (a) was a dependent subsidiary at the time of the acquisition, or
 - (b) was not a dependent subsidiary at that time but becomes a dependent subsidiary before the person making the acquisition ceases to have any beneficial interest in the shares,
- and there is a chargeable increase in the value of the shares.
- (2) There is a chargeable increase in the value of shares in a case within subsection (1)(a) above if the value of the shares at the earlier of—
- (a) the expiration of seven years from the time of the acquisition, and
 - (b) the time when the person making the acquisition ceases to have any beneficial interest in the shares,
- exceeds their value at the time of the acquisition.
- (3) Subject to subsection (7) below, there is a chargeable increase in the value of shares in a case within subsection (1)(b) above if the value of the shares at the earlier or earliest of—
- (a) the expiration of seven years from the time when the company becomes a dependent subsidiary, and
 - (b) the time when the person making the acquisition ceases to have any beneficial interest in the shares, and
 - (c) if the company ceases to be a dependent subsidiary, the time when it does so, exceeds their value at the time when the company becomes a dependent subsidiary.
- (4) A charge by virtue of this section shall be a charge under Schedule E, for the year of assessment which includes the end of the period for which the chargeable increase is determined, on an amount equal to that increase (or, if the interest of the person chargeable is less than full beneficial ownership, on an appropriate part of that amount).
- (5) Where, in accordance with the terms on which the acquisition was made, the consideration for the acquisition is subsequently increased, the amount chargeable to tax by virtue of this section shall be reduced by an amount equal to the increase in the consideration.
- (6) Where, in accordance with those terms, the person making the acquisition subsequently ceases to have a beneficial interest in the shares by a disposal made for a consideration which is less than the value of the shares or his interest in them at the

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

time of the disposal, the amount on which tax is chargeable by virtue of this section shall be reduced so as to be equal to the excess of that consideration over the value of the shares or interest at the time of the acquisition.

[^{F31}(6A) If, before the time by reference to which the chargeable increase is determined, an event occurs by virtue of which the person making the acquisition becomes chargeable to tax under section 140A(4) of the Taxes Act 1988 (employee's interest in shares ceasing to be only conditional) on any amount ("the charged amount") in respect of the shares, the amount on which tax is chargeable by virtue of this section shall be reduced by the charged amount.]

[^{F32}(6B) If, before the time by reference to which the chargeable increase is determined, an event occurs by virtue of which the person making the acquisition becomes chargeable to tax under section 140D(3) of the Taxes Act 1988 (charge on conversion of convertible shares) on any amount ("the charged amount") in respect of the shares, the amount on which tax is chargeable by virtue of this section shall be reduced by the charged amount.]

- (7) In a case within subsection (1)(b) above there is no chargeable increase in the value of shares in a company unless the person who acquired the shares or interest has been a director or employee of—
- (a) that company, or
 - (b) (if it is different) the company as a director or employee of which he acquired the shares or interest, or
 - (c) an associated company of a company within paragraph (a) or (b) above,
- at some time during the period of seven years ending with the time when the company becomes a dependent subsidiary.

Textual Amendments

F31 S. 79(6A) inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), s. 50(3)

F32 S. 79(6B) inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), s. 51(2)

Modifications etc. (not altering text)

C10 S. 79 excluded (28.7.2000) by 2000 c. 17, s. 47, Sch. 8 Pt. X para. 80(3)

80 Charge on special benefits.

- (1) Subject to subsections (5) and (6) below, the person acquiring the shares or interest in shares shall be chargeable to tax if he receives a special benefit by virtue of his ownership of or interest in the shares.

[^{F33}(1A) If when a benefit is received the company is a dependent subsidiary and its shares are of a single class, the benefit is a special benefit for the purposes of subsection (1) above.

- (2) A benefit which does not fall within subsection (1A) above is a special benefit for the purposes of subsection (1) above unless—

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
 for the Finance Act 1988, Part III. (See end of Document for details)*

- (a) when it becomes available it is available to at least ninety per cent. of the persons who then hold shares of the same class as those which, or an interest in which, the person acquired, and
 - (b) any of the conditions in subsection (3) below is satisfied.]
- (3) The conditions referred to in subsection (2) above are—
- (a) that when the benefit is received the majority of the company's shares [^{F34}in respect of which the benefit is received] are held otherwise than by or for the benefit of—
 - (i) directors or employees of the company,
 - (ii) an associated company of the company, or
 - (iii) directors or employees of any such associated company;
 - (b) that when the benefit is received the company is employee-controlled by virtue of holdings of shares of the class concerned;
 - (c) that when the benefit is received the company is a subsidiary which is not a dependent subsidiary and [^{F35}the majority of its shares in respect of which the benefit is received are held otherwise than by or for the benefit of—
 - (i) directors or employees of the company,
 - (ii) a company which is an associated company of the company but is not its parent company, or
 - (iii) directors or employees of a company which is an associated company of the company]
- [^{F36}(3A) For the purposes of subsection (3)(c)(ii) above a company is another company's parent company if the second company is a subsidiary of the first.]
- (4) A charge by virtue of this section shall be a charge under Schedule E, for the year of assessment in which the benefit is received, on an amount equal to the value of the benefit.
 - (5) Subsection (1) above shall apply only if the person receiving the benefit has been a director or employee of—
 - (a) the company referred to in that subsection, or
 - (b) (if it is different) the company as a director or employee of which he acquired the shares or interest, or
 - (c) an associated company of a company within paragraph (a) or (b) above, at some time during the period of seven years ending with the date on which the benefit is received.
 - (6) A benefit shall not be chargeable by virtue of this section if it is chargeable to income tax apart from this section.

Textual Amendments

- F33** S. 80(1A)(2) substituted (16.7.1992) for subsection (2) by Finance (No. 2) Act 1992 (c. 48), s. 37(2)(6)
- F34** Words in s. 80(3)(a) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 37(3)(6)
- F35** Words in s. 80(3)(c) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 37(4)(6)
- F36** S. 80(3A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 37(5)(6)

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Miscellaneous

81 Changes in interest.

Where a person's interest in shares is increased or reduced he shall be treated for the purposes of this Chapter as acquiring or disposing of a separate interest proportionate to the increase or reduction.

82 Company reorganisations etc.

(1) Subsection (2) below applies where—

- (a) a person has acquired shares or an interest in shares as mentioned in section 77 above (those shares being referred to in subsection (2) below as “the originally-acquired shares”); and
- (b) by virtue of his holding of those shares or the interest in them he acquires (whether or not for consideration) additional shares or an interest in additional shares (those shares being referred to in subsection (2) below as “the additional shares”).

(2) Where this subsection applies—

- (a) the additional shares or the interest in them shall be treated for the purposes of this Chapter as having been acquired as mentioned in section 77 above and as having been acquired at the same time as the originally-acquired shares or the interest in them;
- (b) for the purposes of section 79 above, the additional shares and the originally-acquired shares shall be treated as one holding of shares and the value of the shares comprised in that holding at any time shall be determined accordingly (the value of the originally-acquired shares at the time of acquisition being attributed proportionately to all the shares in the holding); and
- (c) for the purposes of that section, any consideration given for the acquisition of the additional shares or the interest in them shall be taken to be an increase falling within subsection (5) of that section in the consideration for the original acquisition.

(3) If, on a person ceasing to have a beneficial interest in any shares, he acquires other shares or an interest in other shares and the circumstances are such that, for the purposes of sections [F³⁷127 to 130 of the Taxation of Chargeable Gains Act 1992] (reorganisations etc.) the shares in which he ceases to have a beneficial interest constitute “original shares” and the other shares constitute a “new holding”—

- (a) section [F³⁷127] of that Act (which equates the original shares and the new holding) shall apply for the purposes of this Chapter; and
- (b) if any such consideration is given for the new holding as is mentioned in section [F³⁷128(1) and (2)] of that Act, it shall be treated for the purposes of this Chapter as an increase falling within section 79(5) above in the consideration for the shares; and
- (c) if any such consideration is received for the disposal of the original shares as is mentioned in section [F³⁷128(3)] of that Act, the consideration shall be apportioned among the shares comprised in the new holding and the amount which, apart from this paragraph, would at any subsequent time be the value of any of those shares shall be taken to be increased by the amount of the consideration apportioned to them.

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
 for the Finance Act 1988, Part III. (See end of Document for details)*

Textual Amendments

F37 Words in s. 82(3) substituted (6.3.1992 with effect as mentioned in s. 289 of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 16(4)(a)(b)** (with ss. 60, 101(1), 201(3))

83 Connected persons etc.

- (1) For the purposes of this Chapter, where a person acquires shares or an interest in shares in a company in pursuance of a right conferred on him or opportunity offered to him as a person connected with a director or employee of that or any other company, the shares or interest shall be deemed to be acquired by the director or employee.
- (2) For the purposes of this Chapter, where a person who acquires shares or an interest in shares disposes of the shares or interest otherwise than by a bargain at arm's length with a person who is not connected with him, he shall be deemed to continue to have a beneficial interest in the shares until there is a disposal of the shares or interest by such a bargain.
- (3) Subsection (2) above shall not apply where shares, or an interest in shares, in a company are disposed of to the company in accordance with the terms on which the acquisition was made.
- (4) Where a person who has made an acquisition as mentioned in subsection (1) above receives a benefit in the circumstances described in section 80 above, the benefit shall be treated for the purposes of that section as received by the person deemed by that subsection to have made the acquisition; and where at a time when a person is deemed by subsection (2) above to continue to have a beneficial interest in shares another person receives a benefit in such circumstances, the benefit shall be treated for those purposes as received by him.

84 Capital gains tax.

Where an amount is chargeable to tax under this Chapter on a person who acquires shares or an interest in shares, then on the first disposal of the shares (whether by him or another person) after his acquisition, section [F3838(1)(a) of the Taxation of Chargeable Gains Tax Act 1992] (expenditure allowable in computation of chargeable gains) shall apply as if a sum equal to the amount chargeable had formed part of the consideration given by the person making the disposal for his acquisition of the shares; and this section shall apply with the appropriate modifications in a case to which section 83 above applies.

Textual Amendments

F38 Words in s. 84 substituted (6.3.1992 with effect as mentioned in s. 289 of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 16(5)** (with s. 60(1), 101(1), 201(3))

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

85 Information.

- (1) Where in any year of assessment a person acquires shares, or an interest in shares, in a company in the circumstances described in section 77(1) above, that company and (if it is different) the company as a director or employee of which he acquires the shares or interest shall give written particulars of the acquisition to the inspector within 30 days of the end of the year.
- (2) Where—
 - (a) there occurs in relation to shares in a company an event which is a chargeable event for the purposes of section 78 above, or
 - (b) a person receives a special benefit (within the meaning given for the purposes of section 80(1) above) in respect of shares, or an interest in shares, in a company,the company, and (if it is different) the company as a director or employee of which the person who acquired the shares or an interest in the shares made the acquisition, shall within 60 days give to the inspector written particulars of the event or benefit and of the shares concerned.
- (3) In the second column in the Table in section 98 of the ^{M17}Taxes Management Act 1970 (penalty for failure to furnish information, etc.) there shall be added at the end— “ Section 85(1) and (2) of the Finance Act 1988 ”.

Marginal Citations

M17 1970 c. 9.

Supplementary

86 Meaning of “dependent subsidiary”.

- (1) For the purposes of this Chapter a company which is a subsidiary is a dependent subsidiary throughout a period of account of the company unless—
 - (a) the whole or substantially the whole of the company’s business during the period of account (taken as a whole) is business carried on with persons who are not members of the same group as the company,
 - (b) during the period of account either there is no increase in the value of the company as a result of intra-group transactions, or any such increase in value does not exceed 5 per cent. of the value of the company at the beginning of the period (or a proportionately greater or smaller percentage in the case of a period which is longer or shorter than a year),
 - (c) the directors of the principal company of the group give to the inspector, not later than two years after the end of the period of account, a certificate that in their opinion the conditions mentioned in paragraphs (a) and (b) above are satisfied in relation to the period of account, and
 - (d) there is attached to the certificate a report addressed to those directors by the auditors of the subsidiary that the auditors—
 - (i) have enquired into the state of affairs of the company with particular reference to the conditions mentioned in paragraphs (a) and (b) above, and

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (ii) are not aware of anything to indicate that the opinion expressed by the directors in their certificate is unreasonable in all the circumstances.
- (2) For the purposes of subsection (1)(a) above business carried on with any subsidiary of the company concerned shall be treated as carried on with a person who is not a member of the same group as the company unless the whole or substantially the whole of the business of that or any other subsidiary of the company during the company's period of account (taken as a whole) is carried on with members of the group other than the company and its subsidiaries.
- (3) In this section—
- “group” means a principal company and all its subsidiaries;
- “intra-group transactions” means transactions between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm's length (other than any payment for group relief, within the meaning given in section 402(6) of the Taxes Act 1988);
- “period of account”, in relation to a company, means the period for which it makes up its accounts;
- “principal company” means a company of which another company is a subsidiary and which is not itself a subsidiary of another company.

87 Other interpretation provisions.

- (1) In this Chapter, except where the context otherwise requires,—
- “associated company” has the same meaning as, by virtue of section 416 of the Taxes Act 1988, it has for the purposes of Part XI of that Act;
- “director” includes a person who is to be, or who has ceased to be, a director;
- “employee” includes a person who is to be, or who has ceased to be, an employee;
- “shares” includes stock and also includes securities as defined in section 254(1) of the Taxes Act 1988;
- “subsidiary” means 51 per cent. subsidiary;
- “value”, in relation to shares or a benefit, means the amount which the person holding the shares or receiving the benefit might reasonably expect to obtain from a sale in the open market;
- and references to an interest in any shares include references to an interest in the proceeds of sale of part of the shares.
- (2) For the purposes of this Chapter a company is “employee-controlled” by virtue of shares of a class if—
- (a) the majority of the company's shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees or directors of the company or a company controlled by the company, and
- (b) those directors and employees are together able as holders of the shares to control the company.
- (3) Sections 839 (connected persons) and 840 (control) of the Taxes Act 1988 shall apply for the purposes of this Chapter.

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

- (4) Where a right to acquire shares or an interest in shares in a company is assigned to a person and the right was conferred on some other person by reason of the assignee's office as a director of, or his employment by, that or any other company, the assignee shall be treated for the purposes of this Chapter as acquiring the shares or interest in pursuance of a right conferred on him by reason of that office or employment.

88 Transitional provisions.

- (1) Section 138 of the Taxes Act 1988 and section 79 of the ^{M18}Finance Act 1972 shall not apply to an acquisition of shares, or of an interest in shares, made on or after 26th October 1987.

- (2) Where—

- (a) tax is chargeable by virtue of section 138(1)(a) of the Taxes Act 1988 or section 79(4) of the Finance Act 1972 by reference to the market value, after 26th October 1987, of shares in a company which is not a dependent subsidiary on that date, and
- (b) that market value is greater than the market value of the shares on 26th October 1987,

the amount on which tax is chargeable (and the question whether any tax is chargeable) shall be determined by reference to the market value on 26th October 1987 (and for this purpose “market value” has the same meaning as in section 138 of the Taxes Act 1988).

- (3) Subject to subsection (4) below, this Chapter, with the omission of sections 79 and 80, shall have effect where shares, or an interest in shares, in a company which is not a dependent subsidiary on 26th October 1987 have been acquired before that date as it has effect (apart from this section) where shares or an interest in shares are acquired on or after that date.
- (4) In relation to shares which were, or an interest in which was, acquired before 26th October 1987 the removal or variation of a restriction to which the shares are subject shall not be a chargeable event for the purposes of section 78 above if, because of paragraph 7 of Schedule 8 to the ^{M19}Finance Act 1973, the restriction would not have been regarded as one to which the shares were subject for the purposes of section 79(2) (c) of the ^{M20}Finance Act 1972.

Marginal Citations

M18 1972 c. 41.

M19 1973 c. 51.

M20 1972 c. 41.

89 Consequential amendments.

In relation to acquisitions of shares or interests in shares on or after 26th October 1987—

- (a) for the words from “section 138(1)(a)” to “value of the shares” in section 185(3)(a) (approved share option schemes) and section 186(2)(b) (approved profit sharing schemes) of the Taxes Act 1988, and
- (b) for the words from “section 79(4)” to “value of the shares” in—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (i) section 53(3)(b) of the ^{M21}Finance Act 1978 (approved profit sharing schemes),
- (ii) section 47(1)(b) of the ^{M22}Finance Act 1980 (savings-related share option schemes), and
- (iii) section 38(3)(a) of the ^{M23}Finance Act 1984 (approved share option schemes),

there shall be substituted the words “ section 78 or 79 of the Finance Act 1988 in respect of the shares ”.

Marginal Citations

- M21** 1978 c. 42.
- M22** 1980 c. 48.
- M23** 1984 c. 43.

CHAPTER III

CAPITAL ALLOWANCES

F3990

Textual Amendments

- F39** S. 90 repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), **Sch. 2**.

F4091

Textual Amendments

- F40** S. 91 repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), **Sch. 2**.

F4192

Textual Amendments

- F41** S. 92 repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), **Sch. 2**.

F4293

Textual Amendments

- F42** S. 93 repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), **Sch. 2**.

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

F⁴³94

Textual Amendments

F43 S. 94 repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), [Sch. 2](#).

F⁴⁴95

Textual Amendments

F44 S. 95 repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), [Sch. 2](#).

CHAPTER IV

CAPITAL GAINS

Re-basing to 1982

F⁴⁵96

Textual Amendments

F45 S. 96 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 101(1), 201(3), 290, [Sch. 11](#) paras. 22, 26(2), 27)

F⁴⁶97

Textual Amendments

F46 S. 97 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 101(1), 201(3), 290, [Sch. 11](#) paras. 22, 26(2), 27)

Unification of rates of tax on income and capital gains

F⁴⁷98

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Textual Amendments

F47 S. 98 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F48⁹⁹

Textual Amendments

F48 S. 99 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F49¹⁰⁰

Textual Amendments

F49 S. 100 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F50¹⁰¹

Textual Amendments

F50 S. 101 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F51¹⁰²

Textual Amendments

F51 S. 102 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F52¹⁰³

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Textual Amendments

F52 S. 103 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

Married couples

F53 **104**

Textual Amendments

F53 S. 104 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

Company migration

105 Deemed disposal of assets on company ceasing to be resident in U.K.

- F54**(1)
- F54**(2)
- F54**(3)
- F54**(4)
- F54**(5)

(6) In section 765 of the Taxes Act 1988 and section 482 of the Taxes Act 1970, in subsection (1), paragraphs (a) and (b) shall cease to have effect and in paragraph (c) for the words “so resident” there shall be substituted the words “resident in the United Kingdom”; but nothing in this subsection shall affect the operation of either section in relation to—

- (a) an application for a Treasury consent made before the date of the coming into force of this section; or
- (b) such a consent granted on an application so made.

(7) This section and sections 106 and 107 below shall be deemed to have come into force on 15th March 1988.

Textual Amendments

F54 S. 105(1)-(5) repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

F55 **106**

Textual Amendments

F55 S. 106 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F56 **107**

Textual Amendments

F56 S. 107 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

Miscellaneous

F57 **108**

Textual Amendments

F57 S. 108 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F58 **109**

Textual Amendments

F58 S. 109 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F59 **110**

Textual Amendments

F59 S. 110 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

Status: Point in time view as at 31/07/1998.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1988, Part III. (See end of Document for details)*

F60 **111**

Textual Amendments

F60 S. 111 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F61 **112**

Textual Amendments

F61 S. 112 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F62 **113**

Textual Amendments

F62 S. 113 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F63 **114**

Textual Amendments

F63 S. 114 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F64 **115**

Textual Amendments

F64 S. 115 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

F65 **116**

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Textual Amendments

F65 S. 116 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 101(1), 201(3), 290, [Sch. 11 paras. 22, 26\(2\), 27](#))

117 Definition of “investment trust”.

- (1) In section 842 of the Taxes Act 1988 (definition of “investment trust”)—
- (a) before paragraph (a) of subsection (1) there shall be inserted—
 - “(aa) that the company is resident in the United Kingdom; and”
 - (b) for paragraph (c) of that subsection there shall be substituted—
 - “(c) that the shares making up the company’s ordinary share capital (or, if there are such shares of more than one class, those of each class) are quoted on the Stock Exchange; and”;
 - and
 - (c) after that subsection there shall be inserted—
 - “(1A) For the purposes of paragraph (b) of subsection (1) above and the other provisions of this section having effect in relation to that paragraph—
 - (a) holdings in companies which are members of a group (whether or not including the investing company) and are not excluded from that paragraph shall be treated as holdings in a single company; and
 - (b) where the investing company is a member of a group, money owed to it by another member of the group shall be treated as a security of the latter held by the investing company and accordingly as, or as part of, the holding of the investing company in the company owing the money;
 and for the purposes of this subsection “group” means a company and all companies which are its 51 per cent. subsidiaries.”
- (2) The repeal by the ^{M24}Finance (No. 2) Act 1987 of section 93 of the ^{M25}Finance Act 1972 shall be treated as not having extended to subsection (6) of that section (amendment of definition of “investment trust” in section 359 of the Taxes Act 1970).
- (3) For section 266(4) of the ^{M26}Companies Act 1985 there shall be substituted—
- “(4) Subsections (1A) to (3) of section 842 of the Income and Corporation Taxes Act 1988 apply for the purposes of subsection (2)(b) above as for those of subsection (1)(b) of that section.”; and for Article 274(4) of the ^{M27}Companies (Northern Ireland) Order 1986 there shall be substituted—
 - “(4) Subsections (1A) to (3) of section 842 of the Income and Corporation Taxes Act 1988 apply for the purposes of paragraph (2)(b) as for those of subsection (1)(b) of that section.”
- (4) Subsections (1) and (3) above shall have effect for companies’ accounting periods ending after 5th April 1988 and subsection (2) above shall have effect for companies’ accounting periods ending on or before that date.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Marginal Citations

- M24 1987 c. 51.
- M25 1972 c. 41.
- M26 1985 c. 6.
- M27 S.I. 1986/1032 (N.I. 6).

^{F66} 118

Textual Amendments

- F66 S. 118 repealed (6.3.1992 with effect as mentioned in s. 289 of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch.12 (with ss. 101(1), 201(3), 290, Sch. 11 paras. 22, 26(2), 27)

CHAPTER V

MANAGEMENT

Assessment

119 Current year assessments.

- (1) Section 29 of the ^{M28}Taxes Management Act 1970 (assessment procedure) shall have effect subject to the following amendments.
- (2) In subsection (1), after paragraph (b) there shall be added—
 - “(c) where income tax is charged for a year of assessment in respect of income arising in that year, the inspector may make an assessment during that year to the best of his judgment, by reference to actual income or estimated income (whether from any particular source or generally) or partly by reference to one and partly by reference to the other.”
- (3) After subsection (1) there shall be inserted—
 - “(1A) Where an assessment is made by virtue of subsection (1)(c) above, any necessary adjustments shall be made after the end of the year (whether by way of assessment, repayment of tax or otherwise) to secure that tax is charged in respect of income actually arising in the year.”

Marginal Citations

- M28 1970 c. 9.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Returns of income and gains

120 Notice of liability to income tax.

(1) For section 7 of the Taxes Management Act 1970 there shall be substituted—

“7 Notice of liability to income tax.

- (1) Every person who is chargeable to income tax for any year of assessment and has neither—
 - (a) delivered a return of his profits or gains or his total income for that year, nor
 - (b) received a notice under section 8 of this Act requiring such a return, shall, subject to subsections (2) to (5) below, within twelve months from the end of that year, give notice to the inspector that he is so chargeable, specifying each separate source of income.
- (2) A source of income is excluded for the purposes of subsection (1) above in relation to any year of assessment if—
 - (a) all payments of, or on account of, income from it during that year, and
 - (b) all income from it for that year which does not consist of payments, have or has been taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (3) A source of income is excluded for the purposes of subsection (1) above in relation to any person and any year of assessment if all income from it for that year has been assessed or has been taken into account—
 - (a) in determining that person’s liability to tax, or
 - (b) in the making of deductions or repayments of tax under section 203 of the principal Act.
- (4) A source of income is excluded for the purposes of subsection (1) above in relation to any person and any year of assessment if all income from it for that year is—
 - (a) income from which income tax has been deducted;
 - (b) income from or on which income tax is treated as having been deducted or paid (not being income consisting of a payment to which section 559 of the principal Act applies); or
 - (c) income chargeable under Schedule F,
 and that person is not for that year liable to tax at a rate other than basic rate.
- (5) A person shall not be required to give notice under subsection (1) above in respect of a year of assessment if and to the extent that his total income for that year consists of income from sources—
 - (a) which are excluded under subsections (2) to (4) above, or
 - (b) in respect of income from which he could not become liable to tax under assessments made more than twelve months after the end of that year.
- (6) If any person, for any year of assessment, fails to comply with subsection (1) above as respects any source of income, he shall be liable to a penalty not exceeding the amount of the tax for which he is liable, in respect of income

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

from that source for that year, under assessments made more than twelve months after the end of that year.

(7) In the case of a partner, the reference in subsection (6) above to the tax for which he is liable in respect of income from any source does not include a reference to tax assessable in the name of the partnership on so much of the income from that source as falls to be included in the total income of any other person.”

(2) This section has effect with respect to notices required to be given for the year 1988-89 or any subsequent year of assessment.

^{F67} 121

Textual Amendments

F67 S. 121 repealed (31.7.1998 with effect as mentioned in s. 117 of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28), note

122 Notice of liability to capital gains tax.

(1) Immediately before section 12 of the ^{M29}Taxes Management Act 1970 there shall be inserted—

“11A Notice of liability to capital gains tax.

(1) Every person who is chargeable to capital gains tax for any year of assessment and has neither—

- (a) delivered a return of his chargeable gains for that year, nor
- (b) received a notice under section 8 of this Act requiring such a return,

shall, within twelve months from the end of that year, give notice to the inspector that he is so chargeable; but a person all of whose chargeable gains for a year of assessment have been assessed shall not be required to give notice under this subsection in respect of that year.

(2) If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of the tax for which he is liable, in respect of his chargeable gains for that year, under assessments made more than twelve months after the end of that year.

(3) In this section references to a person’s chargeable gains for a year of assessment include, if section 45(1) of the Capital Gains Tax Act 1979 applies in relation to him and his wife in that year, her chargeable gains for that year.”

(2) For subsection (1) of section 12 of that Act (information about chargeable gains) there shall be substituted—

“(1) Section 8 of this Act shall apply in relation to capital gains tax as it applies in relation to income tax, and subject to any necessary modifications.”

(3) This section has effect with respect to notices required to be given for the year 1988-89 or any subsequent year of assessment.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Marginal Citations

M29 1970 c. 9.

Other returns and information

123 Three year time limit.

- (1) At the end of section 13 of the ^{M30}Taxes Management Act 1970 (returns by persons in receipt of taxable income belonging to others) there shall be added—

“(3) A notice under this section shall not require information as to any money, value, profits or gains received in a year of assessment ending more than three years before the date of the giving of the notice.”

- (2) In section 17(1) of that Act (interest paid or credited by banks etc. without deduction of income tax) after the words “during a year” there shall be inserted the words “ of assessment ”.

- (3) In section 18 of that Act (particulars of interest paid without deduction of income tax) after subsection (3) there shall be inserted—

“(3A) A notice under this section shall not require information with respect to interest paid in a year of assessment ending more than three years before the date of the giving of the notice.”

- (4) At the end of section 19 of that Act (information for the purposes of Schedule A etc.) there shall be added—

“(4) A notice under this section shall not require information with respect to—

- (a) the terms applying to the lease, occupation or use of the land, or
- (b) consideration given, or
- (c) payments arising,

in a year of assessment ending more than three years before the date of the giving of the notice.”

- (5) This section has effect with respect to notices given after the passing of this Act.

Marginal Citations

M30 1970 c. 9.

124 Returns of fees, commissions etc.

- (1) At the end of section 16 of the Taxes Management Act 1970 (fees, commissions etc.) there shall be added—

“(8) In subsection (2) above references to a body of persons include references to any department of the Crown, any public or local authority and any other public body.”

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (2) This section has effect with respect to payments made in the year 1988-89 or any subsequent year of assessment.

125 Other payments and licences etc.

After section 18 of the Taxes Management Act 1970 there shall be inserted—

“18A Other payments and licences etc.

- (1) Any person by whom any payment out of public funds is made by way of grant or subsidy shall, on being so required by a notice given to him by an inspector, furnish to the inspector, within the time limited by the notice—
- (a) the name and address of the person to whom the payment has been made or on whose behalf the payment has been received, and
 - (b) the amount of the payment so made or received,
- and any person who receives any such payment on behalf of another person shall on being so required furnish to the inspector the name and address of the person on whose behalf the payment has been received, and its amount.
- (2) Any person by whom licences or approvals are issued or a register is maintained shall, on being so required by a notice given to him by an inspector, furnish to the inspector, within the time limited by the notice—
- (a) the name and address of any person who is or has been the holder of a licence or approval issued by the first-mentioned person, or to whom an entry in that register relates or related; and
 - (b) particulars of the licence or entry.
- (3) The persons to whom this section applies include any department of the Crown, any public or local authority and any other public body.
- (4) A notice is not to be given under this section unless (in the inspector’s reasonable opinion) the information required is or may be relevant to any tax liability to which a person is or may be subject, or the amount of any such liability.
- (5) A notice under this section shall not require information with respect to a payment which was made, or to a licence, approval or entry which ceased to subsist—
- (a) before 6th April 1988; or
 - (b) in a year of assessment ending more than three years before the date of the giving of the notice.
- (6) For the purposes of this section a payment is a payment out of public funds if it is provided directly or indirectly by the Crown, by any Government, public or local authority whether in the United Kingdom or elsewhere or by any Community institution.”

Production of accounts, books etc.

126 Production of documents relating to a person’s tax liability.

^{F68}(1)

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (2) In subsection (7) of that section, for the words “this section”, in the first place where they occur, there shall be substituted the words “ subsection (1) or (3) above ”.
- (3) After subsection (8) of that section there shall be inserted—
- “(8A) If, on an application made by an inspector and authorised by order of the Board, a Special Commissioner gives his consent, the inspector may give such a notice as is mentioned in subsection (3) above but without naming the taxpayer to whom the notice relates; but such a consent shall not be given unless the Special Commissioner is satisfied—
- (a) that the notice relates to a taxpayer whose identity is not known to the inspector or to a class of taxpayers whose individual identities are not so known;
 - (b) that there are reasonable grounds for believing that the taxpayer or any of the class of taxpayers to whom the notice relates may have failed or may fail to comply with any provision of the Taxes Acts;
 - (c) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax; and
 - (d) that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.
- (8B) A person to whom there is given a notice under subsection (8A) above may, by notice in writing given to the inspector within thirty days after the date of the notice under that subsection, object to that notice on the ground that it would be onerous for him to comply with it; and if the matter is not resolved by agreement, it shall be referred to the Special Commissioners, who may confirm, vary or cancel that notice.”
- (4) In section 20B of that Act—
- (a) in subsection (1), for the words “section 20(1) or (3)” there shall be substituted the words “ section 20(1), (3) or (8A) ” and for the words “section 20(7)” there shall be substituted the words “ section 20(7) or (8A) ”; and
 - (b) in subsections (2), (4), (8) ^{F69} . . . , after the words “section 20(3)”, in each place where they occur, there shall be inserted the words “ or (8A) ”.
- (5) In consequence of the amendment made by subsection (1) above, at the end of section 12(3) of the ^{M31}National Savings Bank Act 1971 (provisions which override prohibition on disclosure of information) there shall be added the words “ and of section 20(4)(b) of that Act (persons who may be required to produce documents relating to liability of taxpayer arising from business) ”.
- (6) The amendments made by this section have effect with respect to notices given after the passing of this Act.

Textual Amendments

F68 S. 126(1) repealed(*with respect to notices given, or warrants issued on or after 27.07.1989*) by Finance Act 1989 (c. 26, SIF 63:1), s. 187(1), **Sch. 17 Pt. VIII** Note 2.

F69 Words in s. 126(4)(b) repealed(*with respect to notices given, or warrants issued on or after 27.07.1989*) by Finance Act 1989 (c. 26, SIF 63:1), s. 187(1), **Sch. 17 Pt. VIII** Note 2.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Marginal Citations

M31 1971 c. 29.

127 Production of computer records etc.

- (1) Any provision made by or under the Taxes Acts which requires a person—
- (a) to produce, furnish or deliver any document or cause any document to be produced, furnished or delivered; or
 - (b) to permit the Board, or an inspector or other officer of the Board—
 - (i) to inspect any document, or
 - (ii) to make or take extracts from or copies of or remove any document,shall have effect as if any reference in that provision to a document [^{F70}were a reference to anything in which information of any description is recorded and any reference to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly].
- (2) In connection with tax, a person authorised by the Board to exercise the powers conferred by this subsection—
- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with any document to which this subsection applies; and
 - (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been so used, or
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus, or material,to afford him such reasonable assistance as he may require for the purposes of paragraph (a) above.
- (3) Subsection (2) above applies to any document [^{F71}, within the meaning given by subsection (1) above,] which a person is or may be required by or under any provision of the Taxes Acts—
- (a) to produce, furnish or deliver, or cause to be produced, furnished or delivered; or
 - (b) to permit the Board, or an inspector or other officer of the Board, to inspect, make or take extracts from or copies of or remove.
- (4) Any person who—
- (a) obstructs a person authorised under subsection (2) above in the exercise of his powers under paragraph (a) of that subsection, or
 - (b) fails to comply within a reasonable time with a requirement under paragraph (b) of that subsection,
- shall be liable to a penalty not exceeding £500.
- ^{F72}(5)
- (6) This section shall be construed as if it were contained in the ^{M32}Taxes Management Act 1970.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Textual Amendments

- F70** Words in s. 127(1) substituted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 13(2)** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**
- F71** Words in s. 127(3) substituted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 13(3)** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**
- F72** S. 127(5) repealed (31.1.1997) by 1995 c. 38, s. 15, Sch. 1 para. 13(4), **Sch. 2** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

Marginal Citations

- M32** 1970 c. 9.

Interest and penalties

128 Interest on overdue or overpaid PAYE.

- (1) In subsection (2) of section 203 of the Taxes Act 1988 (pay as you earn), for paragraph (d) there shall be substituted—

- “(d) for requiring the payment of interest on sums due to the Board which are not paid by the due date, for determining the date (being not less than 14 days after the end of the year of assessment in respect of which the sums are due) from which such interest is to be calculated and for enabling the repayment or remission of such interest;
- (dd) for requiring the payment of interest on sums due from the Board and for determining the date (being not less than one year after the end of the year of assessment in respect of which the sums are due) from which such interest is to be calculated;”

- (2) At the end of that section there shall be added—

- “(9) Interest required to be paid by regulations under subsection (2) above shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.”

129 Two or more tax-geared penalties in respect of same tax.

- (1) After section 97 of the Taxes Management Act 1970 there shall be inserted—

“97A Two or more tax-geared penalties in respect of same tax.

Where two or more penalties—

- (a) are incurred by any person and fall to be determined by reference to any income tax or capital gains tax with which he is chargeable for a year of assessment; or
- (b) are incurred by any company and fall to be determined by reference to any corporation tax with which it is chargeable for an accounting period,

each penalty after the first shall be so reduced that the aggregate amount of the penalties, so far as determined by reference to any particular part of the

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

tax, does not exceed whichever is or, but for this section, would be the greater or greatest of them, so far as so determined.”

- (2) Section 97A(a) of that Act has effect with respect to the year 1988-89 or any subsequent year of assessment; and section 97A(b) has effect with respect to accounting periods ending after 31st March 1989.

Company migration

130 Provisions for securing payment by company of outstanding tax.

- (1) The requirements of subsections (2) and (3) below must be satisfied before a company ceases to be resident in the United Kingdom otherwise than in pursuance of a Treasury consent.
- (2) The requirements of this subsection are satisfied if the company gives to the Board—
- (a) notice of its intention to cease to be resident in the United Kingdom, specifying the time (“the relevant time”) when it intends so to cease;
 - (b) a statement of the amount which, in its opinion, is the amount of the tax which is or will be payable by it in respect of periods beginning before that time; and
 - (c) particulars of the arrangements which it proposes to make for securing the payment of that tax.
- (3) The requirements of this subsection are satisfied if—
- (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the relevant time; and
 - (b) those arrangements as so made are approved by the Board for the purposes of this subsection.
- (4) If any question arises as to the amount which should be regarded for the purposes of subsection (3) above as the amount of the tax which is or will be payable by the company in respect of periods beginning before the relevant time, that question shall be referred to the Special Commissioners, whose decision shall be final.
- (5) If any information furnished by the company for the purpose of securing the approval of the Board under subsection (3) above does not fully and accurately disclose all facts and considerations material for the decision of the Board under that subsection, any resulting approval of the Board shall be void.
- (6) In this section “Treasury consent” means a consent under section 765 of the Taxes Act 1988 (restrictions on the migration etc. of companies) given for the purposes of subsection (1)(a) of that section.
- (7) In this section and sections 131 and 132 below any reference to the tax payable by a company includes a reference to—
- (a) any amount of tax which it is liable to pay under regulations made under section 203 of the Taxes Act 1988 (PAYE);
 - (b) any income tax which it is liable to pay in respect of payments to which section 350(4)(a) of that Act (company payments which are not distributions) applies;
 - (c) any amount representing income tax which it is liable to pay under—
 - (i) regulations made under section 476(1) of that Act (building societies);

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (ii) section 479 of that Act (interest paid on deposits with banks etc.); or
 - (iii) section 555 of that Act (entertainers and sportsmen);
 - (d) any amount which it is liable to pay under section 559(4) of that Act (sub-contractors in the construction industry); and
 - (e) any amount which it is liable to pay under paragraph 4 of Schedule 15 to ^{M33}Finance Act 1973 (territorial extension of charge of tax).
- (8) In this section and section 132 below any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest on the tax so payable, or on tax paid by it in respect of such periods, which it is liable to pay in respect of periods beginning before or after that time.
- (9) In this section and sections 131 and 132 below any reference to a provision of the Taxes Act 1988 shall be construed, in relation to any time before 6th April 1988, as a reference to the corresponding enactment repealed by that Act.
- (10) This section and sections 131 and 132 below shall be deemed to have come into force on 15th March 1988.

Modifications etc. (not altering text)

- C11** S. 130(1)-(6) excluded (3.5.1994 with application as mentioned in s. 249(5) of the amending Act) by 1994 c. 9, ss. 249, 250(1)

Marginal Citations

- M33** 1973 c. 51.

131 Penalties for failure to comply with section 130.

- (1) If a company fails to comply with section 130 above at any time, it shall be liable to a penalty not exceeding the amount of tax which is or will be payable by it in respect of periods beginning before that time and which has not been paid at that time.
- (2) If, in relation to a company (“the migrating company”), any person does or is party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company failing to comply with section 130 above at any time and either—
- (a) that person is a person to whom subsection (3) below applies; or
 - (b) the act in question is a direction or instruction given (otherwise than by way of advice given by a person acting in a professional capacity) to persons to whom that subsection applies,
- that person shall be liable to a penalty not exceeding the amount of tax which is or will be payable by the migrating company in respect of periods beginning before that time and which has not been paid at that time.
- (3) This subsection applies to the following persons, namely—
- (a) any company which has control of the migrating company; and
 - (b) any person who is a director of the migrating company or of a company which has control of the migrating company.
- (4) In any proceedings against any person to whom subsection (3) above applies for the recovery of a penalty under subsection (2) above—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) it shall be presumed that he was party to every act of the migrating company unless he proves that it was done without his consent or connivance; and
 - (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company failing to comply with section 130 above was to his knowledge such an act.
- (5) References in this section to a company failing to comply with section 130 above are references to the requirements of subsections (2) and (3) of that section not being satisfied before the company ceases to be resident in the United Kingdom otherwise than in pursuance of a Treasury consent; and in this subsection “Treasury consent” has the same meaning as in that section.
- (6) In this section and section 132 below “director”, in relation to a company—
- (a) has the meaning given by subsection (8) of section 168 of the Taxes Act 1988 (read with subsection (9) of that section); and
 - (b) includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);
- and any reference to a person having control of a company shall be construed in accordance with section 416 of that Act.

Modifications etc. (not altering text)

C12 S. 131(1)-(5) excluded (3.5.1994 with application as mentioned in s. 249 of the amending Act) by 1994 c. 9, ss. 249, 250(1)

132 Liability of other persons for unpaid tax.

- (1) This section applies where—
- (a) a company (“the migrating company”) ceases to be resident in the United Kingdom at any time; and
 - (b) any tax which is payable by the migrating company in respect of periods beginning before that time is not paid within six months from the time when it becomes payable.
- (2) The Board may, at any time before the end of the period of three years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—
- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable; and
 - (b) requiring that person to pay that amount within thirty days of the service of the notice.
- (3) This subsection applies to the following persons, namely—
- (a) any company which is, or within the relevant period was, a member of the same group as the migrating company; and
 - (b) any person who is, or within the relevant period was, a controlling director of the migrating company or of a company which has, or within that period had, control over the migrating company.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating company.
- (5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (6) In this section—
- “controlling director”, in relation to a company, means a director of the company who has control of it;
- “group” has the meaning which would be given by section [F73 170 of the Taxation of Chargeable Gains Act 1992] if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries;
- “the relevant period” means—
- (a) where the time when the migrating company ceases to be resident in the United Kingdom is less than twelve months after 15th March 1988, the period beginning with that date and ending with that time;
- (b) in any other case, the period of twelve months ending with that time.

Textual Amendments

- F73** Words in s. 132(6) substituted (6.3.1992 with effect as mentioned in s. 289 of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 16(6)** (with ss. 60, 101(1), 171, 201(3))

Appeals etc.

133 Jurisdiction of General Commissioners.

^{F74}(1)

(2) For subsection (2) of that section there shall be substituted—

“(2) Where—

- (a) the parties to any proceedings under the Taxes Acts which are to be heard by any General Commissioners have agreed, whether before or after the institution of the proceedings, that the proceedings shall be brought before the General Commissioners for a division specified in the agreement; and
- (b) in the case of an agreement made before the time of the institution of the proceedings, neither party has determined that agreement by a notice served on the other party before that time,

the proceedings shall be brought before the General Commissioners for the division so specified, notwithstanding the said rules and any direction under subsection (1A) above.”

(3) The amendment made by subsection (1) above shall have effect in relation to proceedings instituted on or after 1st January 1989; and the amendment made by subsection (2) above shall have effect in relation to proceedings instituted after the passing of this Act.

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Textual Amendments

F74 S. 133(1) repealed (29.4.1996 with effect as mentioned in Sch. 41 Pt. V(12) of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(12)**, note

134 General Commissioners for Northern Ireland.

- (1) In section 2 of the ^{M34}Taxes Management Act 1970 (General Commissioners)—
- (a) in subsection (1), after the words “who shall act for the same separate areas in Great Britain as heretofore” there shall be inserted the words “or for the separate areas in Northern Ireland defined by an order made by the Lord Chancellor”, and
 - (b) in subsection (2), after the words “England and Wales” there shall be inserted the words “or Northern Ireland”.
- (2) Section 58(1) of that Act (references in Taxes Acts to General Commissioners to be taken in relation to proceedings in Northern Ireland as references to Special Commissioners or, where section 59 applies, a county court) and section 59 of that Act (right in Northern Ireland to bring before a county court certain proceedings which in Great Britain may be brought before General Commissioners) shall cease to have effect.
- (3) In sections 260(3) and 281(4) of the Taxes Act 1988 (and the corresponding enactments repealed by that Act) and in section 11(4) of the Taxes Act 1970 (Special Commissioners to act instead of General Commissioners where taxpayers not resident in Great Britain) for the words “Great Britain” there shall be substituted the words “the United Kingdom”.
- (4) This section and section 135 below shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.
- (5) Subject to the following provisions of this section, the preceding provisions of this section and section 135(2) below shall not affect any proceedings instituted before the day appointed under subsection (4) above.
- (6) Subject to subsection (8) below, where—
- (a) before the day appointed under subsection (4) above proceedings in Northern Ireland have been instituted before the Special Commissioners but not determined by them, and
 - (b) the proceedings might have been instituted before the General Commissioners if they had been proceedings in Great Britain,
- they shall be transferred to the General Commissioners; and subsection (3) of section 58 of the ^{M35}Taxes Management Act 1970 shall apply for the purposes of this subsection as for those of that section (the reference to proceedings in Great Britain being construed accordingly).
- (7) Section 44 of that Act shall apply in relation to proceedings transferred to the General Commissioners under subsection (6) above as it applies to proceedings instituted before them; and in the case of an appeal so transferred a notice of election under rule 3 or 5 of Schedule 3 to that Act may be given at any time before the end of the period of thirty days beginning with the day appointed under subsection (4) above.
- (8) Subsection (6) above shall not apply in relation to proceedings if—

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

- (a) before the end of that period an election that the proceedings be not transferred is made by any of the parties to the proceedings and written notice of the election is given to the other parties to the proceedings, or
- (b) they are proceedings under section 100 of the Taxes Management Act 1970 (recovery of penalties);

but subsections (5A) to (5E) of section 31 of that Act shall apply in relation to an election under paragraph (a) of this subsection in respect of an appeal against an assessment or the decision of an inspector on a claim as they apply in relation to an election under subsection (4) of that section.

- (9) The Lord Chancellor may by order made by statutory instrument make provision supplementing or modifying the effect of subsections (5) to (8) above; and an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Subordinate Legislation Made

P1 S. 134(4) power fully exercised: 03.04.1989 appointed by [S.I. 1989/473](#), **art. 2**.

Commencement Information

II S. 134 wholly in force at 03.04.1989 see [s. 134\(4\)](#) and [S.I. 1989/473](#), **art. 2**.

Marginal Citations

M34 1970 c. 9.

M35 1970 c. 9.

135 Cases stated in Northern Ireland.

^{F75}(1)

(2) For subsection (3) of that section there shall be substituted—

“(3) For the purposes of this section—

- (a) “proceedings in Northern Ireland” means proceedings as respects which the place given by the rules in Schedule 3 to this Act is in Northern Ireland;
- (b) proceedings under section 102, 113(5), 260(3), 281(4), 343(10) or 783(9) of the principal Act (or the corresponding enactments repealed by that Act), section 11 of or paragraph 22 of Schedule 7 to the Income and Corporation Taxes Act 1970 or section 81 of the Capital Allowances Act 1968 (proceedings to which more than one taxpayer is a party) shall be proceedings in Northern Ireland if the place given by the rules in Schedule 3 to this Act in relation to each of the parties concerned in the proceedings is in Northern Ireland,

and sections 21 and 22 of the Interpretation Act (Northern Ireland) 1954 shall apply as if references in those provisions to any enactment included a reference to this section.”

Textual Amendments

F75 S. 135(1) repealed (1.9.1994) by [S.I. 1994/1813](#), **reg. 2(2)**, **Sch. 2 Pt. I**

Status: Point in time view as at 31/07/1998.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, Part III. (See end of Document for details)

Commencement Information

I2 S. 135 wholly in force at 03.04.1989 see s. 134(4) and S.I. 1989/473, **art. 2.**

Status:

Point in time view as at 31/07/1998.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1988, Part III.