



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IX

#### ANNUAL PAYMENTS AND INTEREST

##### *Annual payments*

##### [<sup>F1</sup>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 <sup>F2</sup>. . . ;
  - (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.
- (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 of tax under Case III had it arisen in the United Kingdom; and

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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) [<sup>F3</sup>, 68(1)(b) or 192(3)] 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.
- [<sup>F4</sup>(7) In subsection (2)(b) above “a covenanted payment to charity” means a payment made under a covenant made otherwise than for consideration in money or money’s worth in favour of a body of persons or trust established for charitable purposes only whereby the like annual payments (of which the payment in question is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.
- (8) For the purposes of subsection (7) above the bodies mentioned in section 507 shall each be treated as a body of persons established for charitable purposes only.]

#### Textual Amendments

- F1** Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), s. 36(1)(3)-(5)
- F2** Words in s. 347A(2)(b) repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(8)
- F3** Words in s. 347A(5) 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.
- F4** S. 347A(7)(8) inserted (with effect and application in accordance with s. 74 of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 4(2)

#### Modifications etc. (not altering text)

- C1** S. 347A applied (with effect in accordance with s. 36(8) of the affecting Act) by Finance Act 1999 (c. 16), s. 36(7)
- C2** S. 347A applied (29.4.1996) by Finance Act 1996 (c. 8), 149
- C3** S. 347A applied (with effect and application in accordance with s. 74 of the affecting Act) by Finance Act 1995 (c. 4), Sch. 17 para. 4(1)
- C4** S. 347A applied (with modifications) by Finance Act 1994 (c. 9), s. 79(1)(2)

#### [<sup>F5</sup>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 [<sup>F6</sup>in a member State]], or under a written agreement the [<sup>F7</sup>law applicable to] which is the law of [<sup>F6</sup>a member State or of a part of a member State]
- (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

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- (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) <sup>F8</sup> . . . subject to subsections (3) and (4) below, a person making a claim for the purpose shall be entitled, [<sup>F9</sup> for a year of assessment to an income tax reduction calculated by reference to] an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.
- (3) [<sup>F10</sup> The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to] the amount [<sup>F11</sup> specified in section 257A(1) for the year].
- (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 [<sup>F12</sup> by virtue of section 36(3) of the Finance Act 1988 but otherwise than in accordance with section 38(2)(a) of that Act] to make a deduction in computing his income for the year.
- [<sup>F13</sup>(5A) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to the amount determined in accordance with subsections (2) to (5) above (“the relevant amount”), the amount of that person’s liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—
  - (a) the amount equal to [<sup>F14</sup> 10 per cent.] of the relevant amount; and
  - (b) the amount which reduces his liability to nil;

<sup>F15</sup> . . .

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- (5B) In determining for the purposes of subsection (5A) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—
- (a) any income tax reduction under Chapter I of Part VII;
  - (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
  - (c) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.]
- (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*<sup>F16</sup>.
- (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.
- [<sup>F17</sup>(8) In subsections (1)(a) and (5)(a) above, the reference to an order made by a court in the United Kingdom includes a reference to a maintenance assessment.
- (9) Where—
- (a) any periodical payment is made under a maintenance assessment by one of the parties to a marriage (including a marriage which has been dissolved or annulled),
  - (b) the other party to the marriage is, for the purposes of the Child Support Act 1991 or (as the case may be) the Child Support (Northern Ireland) Order 1991, a parent of the child or children with respect to whom the assessment has effect,
  - (c) the assessment was not made under section 7 of the Child Support Act 1991 (right of child in Scotland to apply for maintenance assessment), and
  - (d) any of the conditions mentioned in subsection (10) below is satisfied,
- this section shall have effect as if the payment had been made to the other party for the maintenance by that other party of that child or (as the case may be) those children.
- (10) The conditions are that—
- (a) the payment is made to the Secretary of State in accordance with regulations made under section 29 of the Child Support Act 1991, by virtue of subsection (3)(a)(ii) of that section;
  - (b) the payment is made to the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 29 of the Child Support (Northern Ireland) Order 1991, by virtue of paragraph (3)(a)(ii) of that Article;
  - (c) the payment is retained by the Secretary of State in accordance with regulations made under section 41 of that Act;

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- (d) the payment is retained by the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 38 of that Order.
- (11) In this section “maintenance assessment” means a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.
- (12) Where any periodical payment is made to the Secretary of State or to the Department of Health and Social Services for Northern Ireland—
- (a) by one of the parties to a marriage (including a marriage which has been dissolved or annulled), and
- [<sup>F18</sup>(b) under an order—
- (i) made under section 106 of the Social Security Administration Act 1992 or section 101 of the Social Security Administration (Northern Ireland) Act 1992 (recovery of expenditure on benefit from person liable for maintenance) in respect of income support claimed by the other party to the marriage; or
- (ii) made by virtue of section 23 of the Jobseekers Act 1995 (recovery of sums in respect of maintenance), or any corresponding enactment in Northern Ireland, in respect of an income-based jobseeker’s allowance claimed by the other party to the marriage,]
- this section shall have effect as if the payment had been made to the other party to the marriage to or for the benefit, and for the maintenance, of that other party or (as the case may be) to that other party for the maintenance of the child or children concerned.]
- [<sup>F19</sup>(13) In subsection (12) above, “income-based jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995 or, for Northern Ireland, the same meaning as in any corresponding enactment in Northern Ireland.]

#### Textual Amendments

- F5** Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), s. 36(1)(3)-(5)
- F6** Words in s. 347B(1)(a) substituted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 61.
- F7** Words in s. 347B(1)(a) substituted (1.4.1991) by Contracts (Applicable Law) Act 1990 (c. 36, SIF 30), s. 5, Sch. 4 para. 6; S.I. 1991/707, art. 2
- F8** Words in s. 347B(2) repealed (with effect in accordance with s. 79(1), Sch. 26 Pt. 5(1) Note of the repealing Act) by Finance Act 1994 (c. 9), s. 79(3)(a), Sch. 26 Pt. 5(1)
- F9** Words in s. 347B(2) substituted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), s. 79(3)(b)
- F10** Words in s. 347B(3) substituted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), s. 79(4)
- F11** 1988(F) s.35 and Sch.3 para.13 for 1990-91 and subsequent years. Previously “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”.
- F12** Words in s. 347B(5) substituted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), s. 79(5)
- F13** S. 347B(5A)(5B) inserted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), s. 79(6)
- F14** Words in s. 347B(5A)(a) substituted (with effect in accordance with s. 27(1) of the amending Act) by Finance Act 1998 (c. 36), s. 27(1)(b)

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- F15** Words in s. 347B(5A) repealed (with effect in accordance with Sch. 27 Pt. 3(1) Note of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. 3\(1\)](#)
- F16** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.
- F17** S. 347B(8)-(12) inserted (6.4.1993) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), [s. 62\(1\)](#); S.I. 1992/2642, [art.2](#).
- F18** S. 347B(12)(b) substituted (7.10.1996) by [Jobseekers Act 1995 \(c. 18\)](#), s. 41(2), [Sch. 2 para. 15\(2\)](#); SI 1996/2208, art. 2(b)
- F19** S. 347B(13) inserted (7.10.1996) by [Jobseekers Act 1995 \(c. 18\)](#), s. 41(2), [Sch. 2 para. 15\(3\)](#); SI 1996/2208, art. 2(b)

**Modifications etc. (not altering text)**

- C5** S. 347B modified (with effect in accordance with s. 79(1) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 79\(3\)-\(6\)](#)

**348 Payments out of profits or gains brought into charge to income tax: deduction of tax.**

- (1)<sup>M1</sup> Subject to any provision to the contrary in the Income Tax Acts, where any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest, is payable wholly out of profits or gains brought into charge to income tax—
- (a) the whole of the profits or gains shall be assessed and charged with income tax on the person liable to the annuity or other annual payment, without distinguishing the annuity or other annual payment; and
  - (b) the person liable to make the payment, whether out of the profits or gains charged with income tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of income tax thereon; and
  - (c) the person to whom the payment is made shall allow the deduction on receipt of the residue of the payment, and the person making the deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid; and
  - (d) the deduction shall be treated as income tax paid by the person to whom the payment is made.
- (2) Subject to any provision to the contrary in the Income Tax Acts, where—
- (a) any royalty or other sum paid in respect of the user of a patent; <sup>F20</sup> . . .
  - (b) <sup>F20</sup> . . . . .
- is paid wholly out of profits or gains brought into charge to income tax, the person making the payment shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of the income tax thereon.
- (3)<sup>M2</sup> This section does not apply to a *small maintenance payment within the meaning of section 351* or to <sup>F21</sup> any payment to which section 687 applies [<sup>F22</sup> or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV].

**Textual Amendments**

- F20** S. 348(2)(b) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 18 Pt. 6\(2\)](#)
- F21** Words repealed by 1988(F) Sch.14 Part IV—in respect of payments made on or after 6 April 1989.

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**F22** Words in s. 348(3) inserted (29.4.1996) by Finance Act 1996 (c. 8), Sch. 29 para. 5(1)

**Modifications etc. (not altering text)**

**C6** See also 1970(M) s.90—*interest on unpaid tax*. 1970(M) s.106—*avoidance of agreements for payment without deduction of tax*. 1989 s.94 and Sch.11 para.18—*deep gain securities*. S.I. 1970 No.448 (in Part III Vol.5) regns. 2-11—*procedure for payment without deduction of tax of income exempt under double taxation arrangements*.

**Marginal Citations**

**M1** Source-1970 s.52; 1971 Sch.6 20(c); 1973 s.17(1)

**M2** Source-1970 s.65(2)

**349 Payments not out of profits or gains brought into charge to income tax, and annual interest.**

(1) <sup>M3</sup>Where—

- (a) any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest; or
- (b) any royalty or other sum paid in respect of the user of a patent,<sup>F23</sup> . . .
- (c) <sup>F23</sup> . . . . .

is not payable or not wholly payable out of profits or gains brought into charge to income tax, the person by or through whom any payment thereof is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon .

This subsection does not apply to any payment to which section 687 applies [<sup>F24</sup> or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV] .

(2) <sup>M4</sup>Subject to subsection (3) below and to any other provision to the contrary in the Income Tax Acts, where any yearly interest of money chargeable to tax under Case III of Schedule D is [<sup>F25</sup> (as that Schedule has effect apart from the modification made for the purposes of corporation tax by section 18(3A))] is paid—

- (a) otherwise than in a fiduciary or representative capacity, by a company [<sup>F26</sup> (other than a building society)] or local authority; or
- (b) by or on behalf of a partnership of which a company is a member; or
- (c) by any person to another person whose usual place of abode is outside the United Kingdom;

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3) Subsection (2) above does not apply—

- (a) to interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business [<sup>F27</sup> on an advance from a bank, if at the time when the interest is paid the person beneficially entitled to the interest is within the charge to corporation tax as respects the interest]; or
- (b) to interest paid by [<sup>F28</sup> a bank in the ordinary course of its] business; or
- <sup>F29</sup>(ba) to interest paid on deposits with the National Savings Bank; or
- (c) to any payment to which section 124 applies; or
- (d) to any payment to which section 369 or 479(1) <sup>F30</sup> applies; [<sup>F31</sup> or

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- <sup>F32</sup>(e) . . . . .
- [ to any payment which is a relevant payment for the purposes of Chapter VIIA
- <sup>F33</sup>(e) of Part IV; or]
- (f) to any payment in respect of which a liability to deduct income tax is imposed by section 480A(1); or
- (g) to any payment in respect of which a liability to deduct income tax would be imposed by section 480A(1) if conditions prescribed by regulations under section 480B were not fulfilled. [<sup>F34</sup>or]]
- [<sup>F35</sup>(h) to any payment in respect of which a liability to deduct income tax would, but for section 481(5)(k), be imposed by section 480A(1).]
- and subsection (1) above does not apply to any small maintenance payment within the meaning of section 351* <sup>F36</sup>.

[<sup>F37</sup>(3AA) In this section “bank” has the meaning given by section 840A.]

[<sup>F38</sup>(3AB) An order under section 840A(1)(d) designating an organisation as a bank for the purposes of paragraph (a) of subsection (3) above may provide that that paragraph shall apply to the organisation as if the words from “if” to the end were omitted.]

[<sup>F39</sup>(3A) Subject to subsection (3B) below and to any other provision to the contrary in the Income Tax Acts, where—

- (a) any dividend or interest is paid in respect of a security issued by a building society other than a qualifying certificate of deposit [<sup>F40</sup>and other than a qualifying deposit right]], and
- (b) the security was [<sup>F41</sup>listed], or capable of being [<sup>F41</sup>listed], on a recognised stock exchange at the time the dividend or interest became payable,

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3B) Subsection (3A) above does not apply to any payment to which section 124 applies.

[<sup>F42</sup>(4) In [<sup>F43</sup>this section]] —

“dividend” has the same meaning as in section 477A,

[<sup>F43</sup>“qualifying certificate of deposit” means a certificate of deposit, as defined in section 56(5), under which—

- (a) the amount payable by the issuing society, exclusive of interest, is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made), and
- (b) the obligation of the society to pay that amount arises after a period of not more than five years beginning with the date on which the deposit is made; and

[<sup>F44</sup>“qualifying deposit right” means a right to receive an amount (with or without interest) in pursuance of a deposit of money, where—

- (a) the right subsists under an arrangement falling within section 56A,
- (b) no certificate of deposit, as defined in section 56(5), has been issued in respect of the right at the time the dividend or interest concerned is paid, and
- (c) the conditions set out in paragraphs (a) and (b) in the definition of “qualifying certificate of deposit” apply; and]



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“security” includes share.]

### Textual Amendments

- F23** S. 349(1)(c) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by [Finance Act 1997 \(c. 16\)](#), **Sch. 18 Pt. 6(2)**
- F24** Words in s. 349(1) inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **Sch. 29 para. 5(1)**
- F25** Words in s. 349 inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 14 para. 18** (with Sch. 15)
- F26** Words in s. 349(2)(a) inserted (25.7.1991) by [Finance Act 1991 \(c. 31\)](#), s. 52(1), **Sch. 11 para. 1(2)**
- F27** Words in s. 349(3)(a) substituted (with application in accordance with Sch. 37 para. 8(1)-(6) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 37 para. 3(a)**
- F28** Words in s. 349(3)(b) substituted (with application in accordance with Sch. 37 para. 8(7)(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 37 para. 3(b)**
- F29** S. 349(3)(ba) inserted (with application in accordance with s. 78(2) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **s. 78(1)**
- F30** *Words*  
“or 479(1)”  
*repealed by 1990 s.132 and Sch.19 Part.IV.*
- F31** S. 349(3)(e)-(g) and the word "or" inserted (26.7.1990) by [Finance Act 1990 \(c. 29\)](#), s. 30, **Sch. 5 para. 10(2)(4)** (for payments made on or after 6th April 1991).
- F32** S. 349(3)(e) (which was inserted 26.7.1990 by [Finance Act 1990 \(c. 29\)](#), s. 30, **Sch. 5 para. 10(2)(4)**) repealed (25.7.1991) by [Finance Act 1991 \(c. 31\)](#), SIF 63:1, ss. 52(1), 123, Sch. 11 para. 1(3), **Sch. 19 Pt. V**
- F33** S. 349(3)(e) inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **Sch. 29 para. 5(2)**
- F34** Word in s. 349(3), at the end of para. (g), inserted (27.7.1993) by 1993 c. 34, **s.59**
- F35** S. 349(3)(h) inserted (27.7.1993) by 1993 c. 34, **s. 59**
- F36** *Words repealed by 1988(F) s.148 and Sch.14 Part IV for payments made on or after 6 April 1989.*
- F37** S. 349(3AA) inserted (with application in accordance with Sch. 37 para. 8 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 37 para. 2(1)(2)(b)**
- F38** S. 349(3AB) inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **Sch. 37 para. 4**
- F39** S. 349(3A)(3B) inserted (25.7.1991) by [Finance Act 1991 \(c. 31\)](#), s. 52(1), **Sch. 11 para. 1(4)**.
- F40** Words in s. 349(3A)(a) inserted (with application in relation to arrangements made after 16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 34, Sch. 8 paras. 2(2), 6.
- F41** Word in s. 349(3A)(b) substituted (with effect in accordance with Sch. 38 para. 6(7) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 38 para. 6(1)(2)(e)**
- F42** S. 349(4) inserted (26.7.1990) by [Finance Act 1990 \(c. 29\)](#), s. 30, **Sch. 5 para. 10(3)(4)** (for payments made on or after 6th April 1991).
- F43** S. 349(4): definitions of "qualifying certificate of deposit" and "security" substituted for words in s. 349(4) (25.7.1991) by [Finance Act 1991 \(c. 31\)](#), s. 52(1), **Sch. 11 para. 1(5)**
- F44** S. 349(4): definition of "qualifying deposit right" inserted (with application in relation to arrangements made after 16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 34, Sch. 8 paras. 2(3), 6

### Modifications etc. (not altering text)

- C7** S. 349 excluded (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **s. 174**
- C8** See S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of s.349(1) for the purposes of S.I. 1986 No.482 (Building Society Regulations).*
- C9** See S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of s.349(1) for the purposes of S.I. 1986 No.482 (Building Society Regulations).*
- C10** S. 349(3)(a) applied (with modifications) (29.4.1996) by [The European Investment Bank \(Designated International Organisation\) Order 1996 \(S.I. 1996/1179\)](#), **art. 4**

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**C11** See—1970(M) s.106—avoidance of agreements for payment without deduction of tax, etc.1989 s.94and Sch.11 para.18—deep gain securities.1989 s.116—certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after 1April 1989.

**C12** S. 349(3)(b)(3AA) modified (29.4.1996) by Finance Act 1996 (c. 8), Sch. 37 para. 8(8)

#### Marginal Citations

**M3** Source-1970 s.53(1); 1973 s.17(1); 1971 Sch.6 21

**M4** Source-1970 s.54(1), (2); 1971 Sch.6 22; 1982 s.26(1); 1984 ss.27(2), 35(1); 1970 s.65(2)

VALID FROM 06/04/2005

#### <sup>F45</sup> **349ZA Extension of section 349: proceeds of sale of UK patent rights**

- (1) Subsection (2) applies if—
  - (a) a person who is a non-UK resident is chargeable to tax under section 587 of ITTOIA 2005 on profits from the sale of the whole or part of any patent rights, and
  - (b) the net proceeds of the sale consist wholly or partly of a capital sum.
- (2) Subsection (1) of section 349 of this Act applies to any payment of the net proceeds of sale, or of an instalment of them, as if the net proceeds or instalment were, so far as consisting of the capital sum—
  - (a) an annual sum to which paragraph (a) of that subsection applies, and
  - (b) payable otherwise than out of profits or gains charged to income tax.
- (3) For the purposes of this section the net proceeds of the sale is the amount of the proceeds net of any incidental expenses of the sale which are deducted before payment.
- (4) Sections 597 to 599 of ITTOIA 2005 (licences connected with patents etc.) apply for the purposes of this section as they apply for the purposes of sections 587 to 596 of that Act.
- (5) Section 4 of the Capital Allowances Act 2001 (meaning of “capital sums” etc.) applies in relation to this section as it applies in relation to Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property).
- (6) In this section “a non-UK resident” means a person who is not resident in the United Kingdom.]

#### Textual Amendments

**F45** S. 349ZA inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 149 (with Sch. 2)

**Status:** Point in time view as at 01/11/1998. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 01/05/2001

### **[<sup>F46</sup>349A] Exceptions to section 349 for payments between companies etc**

- (1) The provisions specified in subsection (3) below (which require tax to be deducted on making certain payments) do not apply to a payment made by a company if, at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied.
- (2) Subsection (1) above has effect subject to any directions under section 349C.
- (3) The provisions are—
  - section 349(1) (certain annuities and other annual payments, and royalties and other sums paid for use of UK patents),
  - section 349(2)(a) and (b) (UK interest),
  - section 349(3A) (dividend or interest on securities issued by building societies), and
  - section 524(3)(b) (which provides for section 349(1) to apply to proceeds of sale of UK patent rights).
- (4) References in subsection (3) above to any provision of section 349 do not include that provision as applied—
  - (a) under section 777(9) (directions applying section 349(1) to certain payments to non-residents), or
  - (b) by paragraph 4(2) of Schedule 23A (manufactured overseas dividends to be treated as annual payments within section 349).
- (5) References in this section to the company by which a payment is made do not include a company acting as trustee or agent for another person.
- (6) For the purposes of this section, a payment by a partnership is treated as made by a company if any member of the partnership is a company.]

#### **Textual Amendments**

**F46** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

VALID FROM 01/05/2001

### **[<sup>F46</sup>349B] The conditions mentioned in section 349A(1)**

- (1) The first of the conditions mentioned in section 349A(1) is that the person beneficially entitled to the income in respect of which the payment is made is—
  - (a) a company resident in the United Kingdom, or
  - (b) a partnership each member of which is a company resident in the United Kingdom.
- (2) The second of those conditions is that—

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- (a) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom (“the non-resident company”),
- (b) the non-resident company carries on a trade in the United Kingdom through a branch or agency, and
- (c) the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company.]

#### Textual Amendments

**F46** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

VALID FROM 01/05/2001

#### [<sup>F46</sup>349C] Directions disapplying section 349A(1)

- (1) The Board may give a direction to a company directing that section 349A(1) is not to apply in relation to any payment that—
  - (a) is made by the company after the giving of the direction, and
  - (b) is specified in the direction or is of a description so specified.
- (2) Such a direction shall not be given unless the Board have reasonable grounds for believing as respects each payment to which the direction relates that it is likely that neither of the conditions specified in section 349B will be satisfied in relation to the payment at the time the payment is made.
- (3) A direction under this section may be varied or revoked by a subsequent such direction.
- (4) In this section “company” includes a partnership of which any member is a company.]

#### Textual Amendments

**F46** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

VALID FROM 01/05/2001

#### [<sup>F46</sup>349D] Section 349A(1): consequences of reasonable but incorrect belief

- (1) Where—
  - (a) a payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
  - (b) at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied,

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- (c) if the company did not so believe, tax would be deductible from the payment under section 349, and
  - (d) neither of the conditions specified in section 349B is satisfied at the time the payment is made,
- section 350 applies as if the payment were within section 349 (and Schedule 16 applies as if tax were deductible from the payment under section 349).
- (2) In this section “company” includes a partnership of which any member is a company.]

#### Textual Amendments

**F46** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

VALID FROM 24/07/2002

#### [<sup>F47</sup>349E Deductions under section 349(1): payment of royalties overseas

- (1) Where—
- (a) a company makes a payment of a royalty to which section 349(1) applies, and
  - (b) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under any arrangements under section 788 (double taxation relief),
- the company may, if it thinks fit, calculate the sum to be deducted from the payment under section 349(1) by reference to the rate of income tax appropriate to the payee pursuant to the arrangements.
- (2) But, where the payee is not at that time entitled to such relief, section 350 and Schedule 16 shall have effect as if subsection (1) above never applied in relation to the payment.
- (3) Where the Board are not satisfied that the payee will be entitled to such relief in respect of one or more payments to be made by a company, they may direct the company that subsection (1) above is not to apply to the payment or payments.
- (4) A direction under subsection (3) above may be varied or revoked by a subsequent such direction.
- (5) In this section—
- “payee”, in relation to a payment, means the person beneficially entitled to the income in respect of which the payment is made; and
  - “royalty” includes—
    - (a) any payment received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design, process or information, or
    - (b) any proceeds of sale of all or any part of any patent rights.
- (6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to this section.

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- (7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6) above, has effect as if—
- (a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3000, and
  - (b) sub-paragraphs (2) and (3) were omitted.]

#### Textual Amendments

**F47** S. 349E inserted (with application in accordance with s. 96(4) of the amending Act) by Finance Act 2002 (c. 23), s. 96(1)

### 350 Charge to tax where payments made under section 349.

- (1) <sup>M5</sup>Where any payment within section 349 is made by or through any person, that person shall forthwith deliver to the inspector an account of the payment, and shall be assessable and chargeable with income tax at the [<sup>F48</sup>applicable rate] on the payment, or on so much thereof as is not made out of profits or gains brought into charge to income tax.

[<sup>F49</sup>(1A) In subsection (1) above “the applicable rate” means the rate which is applicable to the payment under section 4.]

- (2) <sup>M6</sup>In section 349(1) any reference to a payment or sum as being not payable, or not wholly payable, out of profits or gains brought into charge to income tax shall be construed as a reference to it as being payable wholly or in part out of a source other than profits or gains brought into charge; and any such reference elsewhere in the Tax Acts shall be construed accordingly.
- (3) <sup>M7</sup>All the provisions of the Income Tax Acts relating to persons who are to be chargeable with income tax, to income tax assessments, and to the collection and recovery of income tax, shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this section.
- (4) <sup>M8</sup>Section 349 and this section have effect subject to the provisions of Schedule 16 which has effect for the purpose of regulating the time and manner in which companies resident in the United Kingdom—
- (a) are to account for and pay income tax in respect of payments from which tax is deductible under section 349, and
  - (b) are to be repaid income tax in respect of payments received by them;
- and for that purpose the Board may by regulations modify, supplement or replace any of the provisions of Schedule 16; and references in this Act and in any other enactment to any of those provisions shall be construed as including references to any such regulations.
- (5) <sup>M9</sup>Without prejudice to the generality of subsection (4) above, regulations under that subsection may, in relation to income tax for which a company is liable to account, modify any provision of Parts II to VI of the Management Act or apply any such provision with or without modifications.
- (6) Regulations under this section may—



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- (a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects income tax for which a company is liable to account or the repayment of income tax borne by a company;
  - (b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.
- (7) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

#### Textual Amendments

- F48** Words in s. 350(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 8**
- F49** S. 350(1A) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 8**

#### Modifications etc. (not altering text)

- C13** See 1970(M) s.98—*penalties for non-compliance*.
- C14** S. 350(1) excluded (22.3.1992) by S.I. 1992/569, **reg. 13(2)(d)**.
- C15** See 1970(M) Parts IV-VI—*principal provisions as to assessment, appeals and collection*.
- C16** See 1988(F) s.130(7)(b)—*payment of outstanding tax by migrating companies*.
- C17** S. 350(4) amended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(1)(2)**
- C18** S. 350(4) extended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(3)**
- C19** (See 1970(M) Parts IV-VI—*principal provisions as to assessment, appeals and collection*.)and also:—  
1970(M) s.31(3)*appeals under s.349(1)and 350to go to Special Commissioners*.
- C20** See 1989 s.94and Sch.11 para.18—*deep gain securities*.

#### Marginal Citations

- M5** Source-1970 ss.53(2), 54(3); 1971 Sch.6 21
- M6** Source-1970 s.56
- M7** Source-1970 s.53(3), 54(3)
- M8** Source-1970 s.53(4), 54(3); 1972 s.104, 108(1), Sch.24 16
- M9** Source-1972 s.108(2)-(4)

VALID FROM 28/07/2000

#### [<sup>F50</sup>350AUK public revenue dividends: deduction of tax.

- (1) The Board may by regulations—
- (a) make provision as to the time and manner in which persons who under section 349(3C) deduct sums representing income tax out of payments of UK public revenue dividends are to account for and pay those sums; and
  - (b) otherwise modify the provisions of sections 349 and 350 in their application to such dividends;
- and in this section “UK public revenue dividend” has the same meaning as in section 349.
- (2) Regulations under this section may—

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- (a) make different provision for different descriptions of UK public revenue dividend and for different circumstances;
  - (b) make special provision for UK public revenue dividends which—
    - (i) are payable to the Bank of Ireland out of the public revenue of the United Kingdom, or
    - (ii) are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast;
  - (c) include such transitional and other supplementary provisions as appear to the Board to be necessary or expedient.
- (3) No regulations under this section shall be made unless a draft of them has been laid before and approved by a resolution of the House of Commons.]

#### Textual Amendments

**F50** S. 350A inserted (with application in accordance with s. 112(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 112(4)

#### <sup>F51</sup> 351 Small maintenance payments.

.....

#### Textual Amendments

**F51** S. 351 repealed by [Finance Act 1988 \(c. 39\)](#) s. 36(6), Sch.14 Part IV, Note 5 (with s. 36(3))

#### 352 Certificates of deduction of tax.

<sup>M10</sup>(1) A person making any payment which is subject to deduction of income tax by virtue of section 339, 348, 349 or 687 shall, if the recipient so requests in writing, furnish him with a statement in writing showing the gross amount of the payment, the amount of tax deducted, and the actual amount paid.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the statement.

#### Modifications etc. (not altering text)

**C21** S. 352 excluded (22.3.1992) by [S.I. 1992/569](#), [reg.21](#).  
 S. 352 modified (22.3.1992) by [S.I. 1992/569](#), [reg.23](#).

**C22** See s.30 and Sch.5 para.11—*words*  
 “or 687”  
*replaced by*  
 “, 480A or 687 or by virtue of regulations under section 477A(1)”  
*as regards a payment made on or after 6 April 1991.*

#### Marginal Citations

**M10** Source-1970 s.55; 1973 s.17(4), 1986 s.29(3)



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*Relief for payments of interest (excluding MIRAS)*

**353 General provision.**

[<sup>F52</sup>(1) Where a person pays interest in any year of assessment, that person, if he makes a claim to the relief, shall for that year of assessment be entitled (subject to sections 354 to 368) to relief in accordance with this section in respect of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of sections 354 to 365.]

[<sup>F53</sup>(1A) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

- (a) is eligible for that relief by virtue of section 354 or 365, <sup>F54</sup> . . .
- (b) <sup>F54</sup> . . . . .

that relief shall consist in an income tax reduction for that year calculated by reference to that amount.

(1B) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

- (a) is eligible for that relief otherwise than by virtue of section 354 or 365, <sup>F55</sup> . . .
- (b) <sup>F55</sup> . . . . .

that relief shall consist (subject to [<sup>F56</sup>section 237(5)(b)]) in a deduction or set-off of that amount from or against that person's income for that year.

(1C) <sup>F57</sup> . . . . .

(1D) <sup>F57</sup> . . . . .

(1E) Where any person is entitled for any year of assessment to relief under this section in respect of any amount of interest as is eligible for that relief partly as mentioned in subsection (1A) above and partly as mentioned in subsection (1B) above, that amount of interest shall be apportioned between the cases to which each of those subsections applies without regard to what parts of the total amount borrowed remain outstanding but according to <sup>F58</sup> . . . —

- (a) the proportions of the total amount borrowed which were applied for different purposes; <sup>F58</sup> . . .
- (b) <sup>F58</sup> . . . . .

and subsection (1A) or (1B) above shall apply accordingly in relation to the interest apportioned to the case to which that subsection applies.

(1F) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to an amount of interest, the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

- (a) the amount equal to the applicable percentage of that amount of interest; and
- (b) the amount which reduces his liability to nil.

(1G) In subsection (1F) above “the applicable percentage”—

[<sup>F59</sup>(a) in relation to so much of any interest as is eligible for relief under this section by virtue of section 354, means 10 per cent; and]

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- (b) in relation to so much of any interest as is eligible for relief under this section by virtue of section 365, means the percentage which is the basic rate for the year of assessment in question.

**F60** .....

(1H) In determining for the purposes of subsection (1F) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

- (a) any income tax reduction under Chapter I of Part VII or section 347B;
- (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
- (c) any tax at the basic rate on so much of that person’s income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.]

(2) <sup>M11</sup>This section does not apply to a payment of relevant loan interest to which section 369 applies.

(3) <sup>M12</sup>Relief under this section shall not be given in respect of—

- (a) interest on a debt incurred by overdrawing an account or by debiting the account of any person as the holder of a credit card or under similar arrangements; or
- (b) where interest is paid at a rate in excess of a reasonable commercial rate, so much of the interest as represents the excess.

(4) <sup>F61</sup> .....

(5) <sup>F61</sup> .....

**Textual Amendments**

- F52** S. 353(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(1)
- F53** S. 353(1A)-(1H) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(2)
- F54** S. 353(1A)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note
- F55** S. 353(1B)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note
- F56** Words in s. 353(1B) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(a)
- F57** S. 353(1C)(1D) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note
- F58** S. 353(1E)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note
- F59** S. 353(1G)(a) substituted (with effect in accordance with s. 15(3) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 15(1)
- F60** Words in s. 353(1G) repealed (with effect in accordance with Sch. 8 Pt. 2(1) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 8 Pt. 2(1)
- F61** S. 353(4)(5) repealed (with effect in accordance with s. 81(6) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 9 para. 3, Sch. 26 Pt. 5(2), Note

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**Modifications etc. (not altering text)**

- C23** See—1988 s.117—limited partners.1988 s.280—transfer of reliefs between spouses.1988(F) Sch.6 para.3(3)—disallowance of interest relief in respect of occupation of commercial woodlands.
- C24** S. 353 restricted (1.5.1995) by Finance Act 1995 (c. 4), s. 123, Sch. 22 para. 2

**Marginal Citations**

- M11** Source-1986 s.26(1)
- M12** Source-1972 s.75(1A), (2); 1974 s.19(1)(b)

**354 Loans to buy land etc.**

- (1) <sup>M13</sup>Subject to sections 355 to 358 and subsections (2) [<sup>F62</sup>to (4)] below, interest is eligible for relief under section 353 if it is paid by a person for the time being owning an estate or interest in land, or the property in a caravan or house-boat, in the United Kingdom or the Republic of Ireland on a loan to defray money applied—
  - (a) in purchasing that estate, interest or property, or another estate, interest or property absorbed into, or given up to obtain, that estate, interest or property; or
  - (b) in improving or developing the land, or buildings on the land; or
  - (c) in paying off another loan, if interest on that other loan would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest) or would have been so eligible apart from section 353(2).
- (2) In this section and section 355—
  - (a) <sup>M14</sup>references to money applied in improving or developing land or buildings include references to payments in respect of maintenance or repairs incurred by reason of dilapidation attributable to a period before the estate or interest was acquired, but otherwise do not include references to payments in respect of maintenance or repairs, <sup>F63</sup>. . . ; and
  - (b) <sup>M15</sup>references to money applied in improving or developing land include references to expenditure incurred or defrayed directly or indirectly in respect of street works, other than works of maintenance or repair, for any highway or road, or in Scotland any right of way, adjoining or serving the land.
- <sup>F64</sup>(3) . . . . .
- (4) <sup>F65</sup> . . . . .
- <sup>F66</sup>(5) . . . . .
- <sup>F66</sup>(6) . . . . .
- (7) <sup>M16</sup>Where interest is payable by the tenant occupier of any property to the landlord in pursuance of arrangements whereby money advanced at interest by the landlord is applied by the tenant in purchasing the landlord's estate or interest, or in the case of a caravan or house-boat the property in the caravan or house-boat, but that estate or interest or property is not to pass to the tenant until some time after the interest begins to be payable, this section and section 355(5) shall have effect in relation to the tenant as if he were the owner of the landlord's estate, interest or property.

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### Textual Amendments

- F62** Words in s. 354(1) substituted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, s. 57(4)(a)(5)
- F63** Words in s. 354(2)(a) repealed (with effect in accordance with s. 39(4)(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2)
- F64** S. 354(3) repealed (1991-92 and subsequent years) by Finance Act 1991 (c. 31, SIF 63:1), ss. 28, 123, Sch. 19 Pt. V, Note 6
- F65** S. 354(4) repealed (with effect in accordance with s. 42(3)-(5), Sch. 29 Pt. 8(2) Note of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2)
- F66** S. 354(5)(6) repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, ss. 57(5), 213, Sch. 23 Pt. III

### Modifications etc. (not altering text)

- C25** S. 354 restricted (27.7.1999) by Finance Act 1999 (c. 16), s. 38(1)

### Marginal Citations

- M13** Source-1972 Sch.9 1, 5, 5A; 1974 Sch.1 1-3; 1983 s.17(5)
- M14** Source-1972 Sch.9 3
- M15** Source-1972 Sch.9 4
- M16** Source-1972 Sch.9 7

## 355 Matters excluded from section 354.

(1) <sup>M17</sup> Subject to the following provisions of this section and sections 356 to 358, section 354 shall not apply unless the land, caravan or house-boat in question—

(a) is at the time the interest is paid used as the only or main residence of the person by whom it is paid (“the borrower”) <sup>F67</sup> *or of a dependent relative or former or separated spouse of his.* . . .

(b) <sup>F68</sup> . . . . .

<sup>F68</sup> . . . . .

<sup>F69</sup>(1A) Where, in the case of any loan—

(a) the condition specified in <sup>F70</sup> subsection (1) above] would not (apart from this subsection) be fulfilled with respect to any land, caravan or house-boat by reason of its having ceased at any time to be used by a particular person as his only or main residence; and

(b) the borrower’s intention at that time was to take steps, before the end of the period of 12 months after the day on which it ceased to be so used, with a view to the disposal of that land, caravan or house-boat,

that condition shall be treated in relation to interest on that loan as continuing to be fulfilled with respect to that land, caravan or house-boat (as well as with respect to any other land, caravan or house-boat with respect to which it is in fact fulfilled) from that time until the end of that period or (if sooner) the abandonment by the borrower of his intention to dispose of the land, caravan or house-boat in question.

(1B) Where—

(a) subsection (1A) above has effect in the case of any loan (“the first loan”) so that the condition specified in <sup>F70</sup> subsection (1) above] is treated in relation to any person as fulfilled with respect to any land, caravan or house-boat, and

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- (b) there is another loan raised by the borrower to defray money to be applied as mentioned in section 354(1) with a view to the use of any other land, caravan or house-boat as the borrower's only or main residence,  
interest on the other loan shall be treated as eligible for relief to the same extent (if any) as if no interest were payable on the first loan.]
  - (2) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1) [<sup>F71</sup>or (1A)] above shall have effect as if for the references to 12 months there were substituted references to such longer period as meets the circumstances of that case.
  - [<sup>F72</sup>(2A) Section 354 shall not apply by virtue of [<sup>F70</sup>subsection (1) 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].
  - (3) *The land, caravan or house-boat does not fall within subsection (1)(a) above by reason of its being used as the only or main residence of a dependent relative of the borrower unless it is provided rent-free and without any other consideration*<sup>F73</sup>.
  - (4) <sup>F74</sup> .....
  - (5) <sup>M18</sup>Subsection (1)(a) of section 354 shall not apply—
    - (a) where the seller and purchaser are husband and wife and either sells to the other, or
    - (b) where the purchaser, or the wife or husband of the purchaser, has since 15th April 1969 disposed of an estate or interest in the land, or the property in the caravan or house-boat, in question, and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan, or
    - (c) where the purchasers are the trustees of a settlement, and the seller is the settlor, or the wife or husband of the settlor, and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan, or
    - (d) where the purchaser is directly or indirectly purchasing from a person who is connected with him, and the price substantially exceeds<sup>F73</sup> the value of what is acquired;and subsection (1)(b) of that section shall not apply where the person spending the money is connected with the person who directly or indirectly receives the money, and the money substantially exceeds the value of the work done.
- For the purposes of this subsection—
- (i) references to a husband and wife are references to a husband and his wife living with him; and

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- (ii) one person is connected with another if he is so connected within the terms of section 839.

#### Textual Amendments

- F67** Words which cease to have effect in relation to payments of interest made on or after 6 April 1988—see 1988(F) s.44(1)(2).
- F68** S. 355(1)(b), the preceding word and the words following it repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by virtue of Finance Act 1995 (c. 4), s. 42(1), Sch. 29 Pt. 8(2), Note
- F69** s. 355(1A)(1B) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, s. 57(1)(5)(6)
- F70** Words in s. 355 substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(b)
- F71** Words in s. 355(2) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, s. 57(2)(5)
- F72** 1988(F) s.43 in relation to payments on or after 6 April 1988.
- F73** Repealed by 1988(F) ss.44 and 148 and Sch. 14 Part IV.
- F74** S. 355(4) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note

#### Modifications etc. (not altering text)

- C26** S. 355(1A) modified (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, s. 57(5)(6)
- C27** See reference to home improvement loans in 1988(F) s.43(3).

#### Marginal Citations

- M17** Source-1974 Sch.1 4(1)-(3)
- M18** Source-1972 Sch.9 8

### 356 Job-related accommodation.

- (1) [<sup>F75</sup>Section [<sup>F76</sup>355(1)]] shall not prevent relief being given under section 353 in a case where the land, caravan or house-boat in question—
- is, at the time the interest is paid, used by the borrower as a residence or, if it is paid less than 12 months after the date on which the loan is made, is so used by him within 12 months after that date; or
  - is intended at that time to be used in due course as his only or main residence; and at that time he resides in living accommodation which is for him job-related.
- [<sup>F77</sup>(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 before 6th April 1988; and section 355(2C) shall have effect for the purposes of this subsection as for those of section 355(2A).]
- A borrower for whom there are two or more properties falling within subsection (1) above may not by virtue of this section claim relief for any period under section 353 in respect of more than one of them.
  - Subject to subsections (4) and (5) below, living accommodation is job-related for a person if—
    - it is provided for him by reason of his employment, or for his spouse by reason of her employment, in any of the following cases—

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- (i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;
  - (ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;
  - (iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements; or
- (b) <sup>M19</sup>under a contract entered into at arm's length and requiring him or his spouse to carry on a particular trade, profession or vocation, he or his spouse is bound—
  - (i) to carry on that trade, profession or vocation on premises or other land provided by another person (whether under a tenancy or otherwise); and
  - (ii) to live either on those premises or on other premises provided by that other person.
- (4) <sup>M20</sup>If the living accommodation is provided by a company and the employee is a director of that or an associated company, subsection (3)(a)(i) or (ii) above shall not apply unless—
  - (a) the company of which the employee is a director is one in which he or she has no material interest; and
  - (b) either—
    - (i) the employment is as a full-time working director, or
    - (ii) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property, or
    - (iii) the company is established for charitable purposes only.
- (5) <sup>M21</sup>Subsection (3)(b) above does not apply if the living accommodation concerned is in whole or in part provided by—
  - (a) a company in which the borrower or his spouse has a material interest; or
  - (b) any person or persons together with whom the borrower or his spouse carries on a trade or business in partnership.
- (6) <sup>M22</sup>For the purposes of this section—
  - (a) a company is an associated company of another if one of them has control of the other or both are under the control of the same person; and
  - (b) “employment”, “director”, “full-time working director”, “material interest” and “control”, in relation to a body corporate, have the same meanings as they have for the purposes of Chapter II of Part V.

#### Textual Amendments

- F75** Words in s. 356(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), Sch. 9 para 5
- F76** Words in s. 356(1) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(c)
- F77** 1988(F) s.43 in relation to payments on or after 6 April 1988.



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#### **Modifications etc. (not altering text)**

**C28** S. 356(3)(b)(5) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 222(9), 289 (with ss. 60, 101(1), 171, 201(3)).

#### **Marginal Citations**

**M19** Source-1974 Sch.1 4A(3A); 1984 s.25

**M20** Source-1974 Sch.1 4A(4), (5); 1977 s.36(1)

**M21** Source-1974 Sch.1 4A(3B); 1984 s.25

**M22** Source-1974 Sch.1 4A(6)

### [<sup>F78</sup> **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 <sup>F79</sup> . . . payable for the period in relation to the residence.
- (4) Subsection (5) below applies where—
  - (a) 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
  - (b) 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.
- (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.



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- (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.]

#### Textual Amendments

**F78** Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), s.42(1)(4)

**F79** Words in s. 356A(3) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note

#### [<sup>F80</sup>356B Residence basis: married couples.

- (1) A husband and wife who are not separated may jointly elect—
- (a) that qualifying interest payable or paid by one of them for a year of assessment (or a period within a year), or such part of that interest as may be specified in the election, shall be treated for the purposes of sections 353 to 356A and 369 to 379 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.
- (2) An election under subsection (1) above—
- (a) shall be made [<sup>F81</sup> on or before—
    - (i) the first anniversary of the 31st January next following the first year of assessment for which it is made, or
    - (ii) such later date as the Board may in any particular case allow,]
    - (b) shall, subject to subsection (4) below, have effect not only for the year of assessment for which it is made but also for subsequent years of assessment, and
    - (c) shall be in such form, and be made in such manner, as the Board may prescribe.
- (3) Where a husband and wife have made an election under subsection (1) above for any year of assessment either of them may give, for any subsequent year, a notice to withdraw that election; and, if he or she does so, the election shall not have effect (in relation to either of them) for the year for which the notice is given or any subsequent year.
- (4) A notice of withdrawal under subsection (3) above—
- (a) shall be in such form, and be given in such manner, as the Board may prescribe,
  - (b) shall not be given after—
    - [<sup>F82</sup>(i) the first anniversary of the 31st January next following the year of assessment for which it is given, or
    - (ii) such later date as the Board may in any particular case allow, and]
  - (c) shall not prejudice the making of a fresh election for any subsequent year.
- (5) Where—
- (a) a husband and wife are not separated,

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- (b) the husband pays interest in relation to a residence used or to be used as his only or main residence, and
- (c) the 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 [F83 355(1)] 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.]

### Textual Amendments

**F80** 1988(F) s.35 and Sch.3 para.14 for 1990-91 and subsequent years. *Previously*  
“356B.—(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 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 (and subsequently modified by [S.I. 1992/511, reg. 9, Sch.2.](#)”

**F81** Words in [s. 356B\(2\)\(a\)](#) substituted (with effect in accordance with [s. 135\(2\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 21 para. 8\(2\)](#)

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**F82** Words in s. 356B(4)(b) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 8(3)**

**F83** Words in s. 356B(5) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4) s. 42(2)(c)

**Modifications etc. (not altering text)**

**C29** S. 356B(2)(4) applied (with modifications) (23.3.1993 ) by S.I. 1993/415, reg. 9, **Sch. 2**

**C30** S. 356B(2)(4) modified (5.4.1994 with effect in accordance with reg. 1(1)(2) of the modifying Regulations) by **The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728)**, reg. 9, **Sch. 2**

**C31** S. 356B(2)(4) modified (9.3.1995 with effect in accordance with regs. 14(2), 15(2) of the modifying Regulations) by **The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352)**, **regs. 1(1) 14(1), 15(1)**, Sch.

**[<sup>F84</sup>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,
  - (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

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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—
- <sup>F85</sup>(a) shall be made on or before the first anniversary of the 31st January next following the year of assessment in which falls the first period for which it is made and shall have effect for that period 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.
- (8) In this section references to a spouse do not include references to a separated spouse.]

#### Textual Amendments

**F84** Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), s.42(1)(4)

**F85** S. 356C(6)(a) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 21 para. 9

#### 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 <sup>F86F87</sup> . . . eligible for relief under section 353 by virtue of section 354].
- (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.

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- (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 <sup>F88</sup>so that, in determining what (if any) part of the amount on which qualifying interest is payable is the part exceeding the limit, interest on a later loan shall be eligible for relief only to the extent that the whole amount of the limit has not been used in relation to any earlier loan or loans.]
- (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.
- (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.
- <sup>F89</sup>(9) .....
- (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.

#### Textual Amendments

- F86** Words in s. 356D(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 7(1)**
- F87** Words in s. 356D(1) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note
- F88** Words in s. 356D(6) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 3**
- F89** S. 356D(9) repealed (27.7.1993 in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, ss. 57, 213, **Sch. 23 Pt.III**

### 357 Limit on amount of loan eligible for relief by virtue of section 354.

- (1) <sup>F90M23</sup>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] on a loan (“the limited loan”) which (apart from this subsection) is <sup>F91F92</sup>... eligible for relief under section 353 by virtue of section 354] <sup>F90</sup>the payment of interest] shall be so eligible for relief only to the extent that the amount on which it is payable does not exceed the following limit, that is to say, the qualifying maximum for the year of assessment reduced by the amount on which interest is payable by the borrower under any earlier loans so eligible for relief, so that—

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- (a) if the amount on which interest is payable under the limited loan exceeds the limit, so much only of that interest is eligible for relief as bears to the whole of that interest the same proportion as that part of that amount which does not exceed the limit bears to the whole of that amount; and
- (b) if the amount on which interest is payable under any earlier loans is equal to or exceeds the qualifying maximum for the year of assessment, none of the interest on the limited loan is eligible for relief.

[<sup>F93</sup>(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.]

(2) <sup>M24</sup>Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person, not being the borrower’s husband or wife, then, if—

- (a) the land, caravan or house-boat concerned is used as the main or only residence of that other person, *or of a dependent relative or former or separated spouse of his*<sup>F94</sup>, and
  - (i) that other person owns an estate or interest in the land or the property in the caravan or house-boat, and
  - (ii) that other person pays part of the interest payable on the loan; or
- (b) that other person falls within sub-paragraphs (i) and (ii) of paragraph (a) above and is by virtue of section 356 entitled to claim relief under section 353 in respect of that part of the interest,

the amount on which interest is payable under the loan shall be treated for the purposes of this section as being such part only of that amount as bears to the whole thereof the same proportion as the amount of interest paid by the borrower bears to the whole of the interest paid on the loan.

(3) <sup>M25</sup>For the purposes of this section—

- (a) any interest payable on a loan made to the borrower’s husband or wife shall be treated as payable on a loan made to the borrower; and
- (b) where interest is payable on more than one loan made or treated as made to the borrower and the loans were made simultaneously it shall be treated as payable on one loan.

<sup>F95</sup>(4) .....

(5) <sup>M26</sup>References in this section to the borrower’s husband or wife do not include references to a separated husband or wife.

(6) <sup>M27</sup>In determining whether the amount on which interest is payable under a loan exceeds the limit in subsection (1) above, no account shall be taken of so much (if



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any) of that amount as consists of interest which has been added to capital and does not exceed £1000.

#### Textual Amendments

- F90** 1988(F) s.42(2)(a), (4) *on and after 1 August 1988. Previously*  
“Interest”  
*in first place.*
- F91** Words in s. 357(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 7(1)**
- F92** Words in s. 357(1) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note
- F93** 1988(F) s.42(2)(b), (4) *on and after 1 August 1988.*
- F94** *Words which cease to have effect in relation to payments of interest made on or after 6 April 1988—see 1988(F) s.44(1), (2).*
- F95** **S. 357(4)** repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, ss. 57(4)(b)(5), 213, **Sch. 23 Pt. III**

#### Modifications etc. (not altering text)

- C32** *See s.338—companies.*

#### Marginal Citations

- M23** Source-1974 Sch.1 5(1), (2)(a); 1977 Sch.8 8(2); 1984 s.22(1)(a), (b)
- M24** Source-1974 Sch.1 5(3); 1977 Sch.8 8(3)
- M25** Source-1974 Sch.1 5(4)
- M26** Source-1974 Sch.1 5(5)
- M27** Source-1974 Sch.1 5(6); 1982 s.25(2)

#### [<sup>F96</sup>357A] Substitution of security.

- (1) Subject to subsection (9) below, this section applies where—
- (a) on or after 16th March 1993 a person purchases an estate or interest in land or the property in a caravan or house-boat (the new estate, interest or property), and
  - (b) a security substitution arrangement takes effect on or after that date in connection with the purchase.
- (2) Subsection (3) below applies where—
- (a) the arrangement mentioned in subsection (1) above relates to one existing loan only, and
  - (b) no other security substitution arrangement takes effect at the same time in connection with the purchase of the new estate, interest or property.
- (3) As regards interest paid on the loan after the time the new estate, interest or property became security for the loan, the loan shall be treated for the purposes of sections 353 to 379 (other than this section and sections 357B and 357C) as if—
- (a) it had been made at that time, and
  - (b) so much of it as was then outstanding and did not exceed the relevant amount had been used at that time to defray money applied in purchasing the new estate, interest or property.
- (4) Subsection (5) below applies where either—

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- (a) the arrangement mentioned in subsection (1) above relates to two or more existing loans, or
  - (b) two or more security substitution arrangements take effect at the same time in connection with the purchase of the new estate, interest or property.
- (5) As regards interest paid on the loans after the time the new estate, interest or property became security for the loans, the loans shall be treated for the purposes of sections 353 to 379 (other than this section and sections 357B and 357C) as if—
- (a) they had been made at that time, and
  - (b) they had been used at that time to defray money applied in purchasing the new estate, interest or property;
- but in any case where at that time the aggregate of the amounts of the loans outstanding exceeded the relevant amount, the loans shall be treated as mentioned in paragraph (b) above only to the extent that the aggregate did not exceed the relevant amount.
- (6) For the purposes of this section the relevant amount is—
- (a) where there is no loan falling within subsection (7) below, an amount equal to the purchase price of the new estate, interest or property;
  - (b) where there is one loan falling within that subsection, an amount equal to the difference between the purchase price of the new estate, interest or property and the amount of that loan;
  - (c) where there are two or more loans falling within that subsection, an amount equal to the difference between the purchase price of the new estate, interest or property and the total of the amounts of those loans.
- (7) A loan falls within this subsection if—
- (a) it is at the relevant time, or was before the relevant time, actually used to any extent to defray money applied in purchasing the new estate, interest or property, or
  - (b) by virtue of an earlier security substitution arrangement, it is treated to any extent as if before the relevant time it had been used to defray money so applied;
- but a loan does not fall within this subsection unless interest on the loan is eligible for relief under section 353 [<sup>F97</sup>by virtue of section 354].
- (8) For the purposes of subsection (7) above the relevant time is the time when under the arrangement mentioned in subsection (1) above the new estate, interest or property becomes security for the existing loan or loans.
- (9) This section does not apply in relation to a security substitution arrangement if, as regards the new estate, interest or property—
- (a) there is at least one loan falling within subsection (7) above, and
  - (b) the amount of that loan or (if there is more than one) the total of the amounts of those loans is the same as the purchase price of the new estate, interest or property.
- (10) For the purposes of subsections (6) and (9) above the amount of a loan is its amount when made, except that where—
- (a) a loan falls within subsection (7) above by virtue of the fact that it is or was partly used to defray money applied in purchasing the new estate, interest or property, or



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- (b) a loan falls within that subsection by virtue of the fact that it is treated as if it had been partly so used,  
the amount of the loan shall be taken for the purposes of subsections (6) and (9) above to be the amount of the part so used or (as the case may be) treated as so used.]

#### Textual Amendments

**F96** Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 56

**F97** Words in s. 357A(7) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(d)

### 357B <sup>F98</sup>Treatment of loans following security substitution.

- (1) This section applies where—
- by virtue of section 357A a loan is treated to any extent as having been used at a particular time to defray money applied in purchasing the new estate, interest or property,
  - after that time a loan (a new loan) is actually used to any extent to defray money applied in purchasing the new estate, interest or property, and
  - interest on the new loan is (or would be apart from this section) eligible for relief under section 353 [<sup>F99</sup>by virtue of section 354].
- (2) Subject to subsection (4) below, as regards interest paid on the new loan after the time it is used as mentioned in subsection (1)(b) above (the material time), such part of the loan as was actually used to defray money applied in purchasing the new estate, interest or property shall be treated for the purposes of sections 353 to 379 as having been so used only to the extent that the amount of that part does not exceed the applicable amount.
- (3) Subsection (4) below applies in a case where—
- two or more new loans are simultaneously used to any extent as mentioned in subsection (1)(b) above, and
  - interest on each of them is or would be eligible for relief as mentioned in subsection (1)(c) above.
- (4) As regards interest paid on the new loans after the material time, such parts of the loans as were actually used to defray money applied in purchasing the new estate, interest or property shall be treated for the purposes of sections 353 to 379 as having been so used only to the extent that the aggregate of the amounts of those parts does not exceed the applicable amount.
- (5) For the purposes of this section the applicable amount is the difference between—
- the purchase price of the new estate, interest or property, and
  - the amount of any relevant loan or, if there is more than one, the total amounts of the relevant loans.
- (6) For the purposes of subsection (5) above a relevant loan is a loan which—
- before the material time was actually used to any extent to defray money applied in purchasing the new estate, interest or property, or
  - by virtue of section 357A, is treated to any extent as if before the material time it had been used to defray money so applied;

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but a loan is not a relevant loan unless interest on it is eligible for relief under section 353 [<sup>F99</sup>by virtue of section 354].

(7) For the purposes of subsection (5) above the amount of a relevant loan is its amount when made, except that where—

- (a) a loan is a relevant loan by virtue of the fact that it was partly used to defray money applied in purchasing the new estate, interest or property, or
- (b) a loan is a relevant loan by virtue of the fact that it is treated as if it had been partly so used,

the amount of the loan shall be taken for the purposes of that subsection to be the amount of the part so used or (as the case may be) treated as so used.

#### **Textual Amendments**

**F98** SS. 357A-357C inserted (27.7.1993) by 1993 c. 34, s. 56

**F99** Words in s. 357B(1)(c)(6) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(d)

#### **357C** <sup>F100</sup>**Substitution of security: supplemental.**

(1) An arrangement is a security substitution arrangement for the purposes of section 357A if—

- (a) under the arrangement the new estate, interest or property becomes security for an existing loan or existing loans,
- (b) under the arrangement an estate or interest in land, or the property in a caravan or house-boat, ceases to be security for the loan or loans,
- (c) the estate, interest or property mentioned in paragraph (b) above was not absorbed into, or given up to obtain, the new estate, interest or property,
- (d) the loan or (as the case may be) at least one of the loans is a qualifying loan, and
- (e) the circumstances are such that, had the loan or loans been used to defray money applied in purchasing the new estate, interest or property, interest on the loan or (as the case may be) on each of the loans would have been eligible for relief under section 353 [<sup>F101</sup>by virtue of section 354] .

(2) For the purposes of subsection (1) above a loan is a qualifying loan if, immediately before the arrangement took effect, interest on the loan was eligible for relief under section 353 [<sup>F102</sup>by virtue of section 354] .

(3) In a case where—

- (a) paragraphs (a) to (d) of subsection (1) above apply in relation to an arrangement,
- (b) the arrangement relates to two or more loans, and
- (c) one or more of the loans is not a qualifying loan for the purposes of subsection (1) above,

any loan which is not a qualifying loan shall be ignored in applying subsection (1) (e) above.

(4) Where a security substitution arrangement relates to two or more loans and one or more of them is not a qualifying loan for the purposes of subsection (1) above, any loan which is not a qualifying loan—

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- (a) shall be left out of account in determining for the purposes of section 357A the number of existing loans to which the arrangement relates;
  - (b) shall not be treated as mentioned in section 357A(3) or (5);
  - (c) shall be left out of account in calculating for the purposes of section 357A(5) the aggregate of the amounts of the loans outstanding at the time the new estate, interest or property became security for them.
- (5) Subsection (6) below applies where—
- (a) the purchase mentioned in subsection (1) of section 357A is made jointly by the person mentioned in that subsection (the relevant person) and another person or other persons, and
  - (b) any of the money applied in the purchase is attributable to the relevant person and not to the other person or, as the case may be, attributable to the relevant person and not to all the other persons.
- (6) In relation to the relevant person—
- (a) the references in sections 357A and 357B to the new estate, interest or property shall be treated as references to his share of the new estate, interest or property, and
  - (b) the references in sections 357A and 357B to the purchase price of the new estate, interest or property shall be treated as references to so much of the money applied in purchasing the estate, interest or property as is attributable to him.
- (7) In determining for the purposes of this section and sections 357A and 357B whether interest is, was or would have been eligible for relief under section 353, section 353(2) shall be disregarded.

#### Textual Amendments

**F100** Ss. 357A-357C inserted (27.7.1993) by 1993 c. 34, s.56

**F101** Words in s. 357C(1)(e) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(e)(i)

**F102** Words in s. 357C(2) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), s. 42(2)(e)(ii)

### 358 Relief where borrower deceased.

- <sup>M28</sup>(1) Where any interest paid by persons as the personal representatives of a deceased person or as the trustees of a settlement made by his will would, on the assumptions required by this section, be eligible for relief under section 353 by virtue of section 354 above and, in a case where subsection (3) below applies, one of the conditions in subsection (4) below is satisfied, that interest shall be so eligible notwithstanding sections 354 to 357.
- (2) For the purposes of subsection (1) above it shall be assumed that the deceased would have survived and been the borrower.
- (3) If, at his death,—
- (a) the land, caravan or house-boat concerned was used as his only or main residence, or

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- (b) it was used by him as a residence or was intended to be used in due course as his only or main residence and, in either case, he resided in job-related living accommodation;

that shall be assumed for the purposes of subsection (1) above to have continued to be the case.

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

- (a) that, at the time the interest is paid, the land, caravan or house-boat concerned is used as the only or main residence of the deceased's widow or widower <sup>F103</sup>or of any dependent relative of the deceased];
- (b) that, at that time, it is used by the deceased's widow or widower as a residence or is intended to be used in due course as his or her only or main residence and, in either case, he or she resides in job-related living accommodation.

- (4A) <sup>F104</sup> .....

- (5) In this section “personal representatives” has the meaning given by section 701; and subsections (3) to (6) of section 356 apply in relation to this section as they apply in relation to that.

#### Textual Amendments

**F103** *Words which cease to have effect in relation to certain payments of interest made on or after 6 April 1988—see 1988(F) s.44(4).*

**F104** *S. 358(4A) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note*

#### Marginal Citations

**M28** *Source-1974 Sch.1 8; 1977 Sch.8 10*

### 359 Loan to buy machinery or plant.

- (1) <sup>M29</sup>Where an individual is a member of a partnership which, under section 44 of the 1968 Act, is entitled to a capital allowance or liable to a balancing charge for any year of assessment in respect of machinery or plant belonging to the individual, any interest paid by him in the basis period (as defined in section 72 of that Act) for that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant is eligible for relief under section 353, except interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.
- (2) <sup>M30</sup>Where the machinery or plant is in use partly for the purposes of the trade, profession or vocation carried on by the partnership and partly for other purposes, such part only of the interest is eligible for relief under section 353 as is just and reasonable to attribute to the purposes of the trade, profession or vocation, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.
- (3) <sup>M31</sup>Where the holder of an office or employment—
- (a) is under <sup>F105</sup>Part II of the 1990 Act] entitled to a capital allowance or liable to a balancing charge, (or would be so entitled or liable but for some contribution made by the employer), for any year of assessment in respect of machinery or

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plant belonging to him and in use for the purposes of the office or employment;  
and

- (b) pays interest in that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant;

the interest so paid is eligible for relief under section 353 unless it is interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.

- (4) <sup>M32</sup>Where the machinery or plant is in use partly for the purposes of the office or employment and partly for other purposes, such part only of the interest is eligible for relief under section 353 as it is just and reasonable to attribute to the purposes of the office or employment, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.

#### Textual Amendments

**F105** 1990(C) s.164 and Sch.1 para.8(12). *Previously*

“Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971”.

#### Marginal Citations

**M29** Source-1972 Sch.9 10; 1974 Sch.1 1

**M30** Source-1972 Sch.9 11; 1974 Sch.1 1

**M31** Source-1972 Sch.9 12; 1974 Sch.1 1

**M32** Source-1972 Sch.9 13; 1974 Sch.1 1

### 360 Loan to buy interest in close company.

- (1) <sup>M33</sup>Subject to the following provisions of this section and sections 361 to 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in acquiring any part of the ordinary share capital of a close company [<sup>F106</sup>complying with section 13A(2)]; or
- (b) in lending money to such a close company which is used wholly and exclusively for the purposes of the business of the company or of any associated company of it which is a close company satisfying any of those conditions; or
- (c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and either the conditions stated in subsection (2) below or those stated in subsection (3) below are satisfied.

- (2) <sup>M34</sup>The conditions first referred to in subsection (1) above are—
- (a) that, when the interest is paid, the company continues to [<sup>F106</sup>comply with section 13A(2)] and the individual has a material interest in the company; and
- (b) that he shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1); and
- (c) that, if the company exists wholly or mainly for the purpose of holding investments or other property, no property held by the company is used as a residence by the individual;

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but the condition in paragraph (c) above shall not apply in a case where the individual has worked for the greater part of his time in the actual management or conduct of the business of the company, or of an associated company of the company.

- (3)<sup>M35</sup>The conditions secondly referred to in subsection (1) above are—
- (a) that, when the interest is paid, the company continues to [<sup>F107</sup>comply with section 13A(2)] and the individual holds any part of the ordinary share capital of the company; and
  - (b) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his time in the actual management or conduct of the company or of an associated company of the company; and
  - (c) that he shows in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).

[<sup>F108</sup>(3A) Interest shall not be eligible for relief under section 353 by virtue of paragraph (a) of subsection (1) above in respect of shares acquired on or after 14th March 1989 if at any time the person by whom they are acquired, or that person's husband or wife, makes a claim for relief in respect of them under Chapter III of Part VII [<sup>F109</sup>or makes a claim in respect of them under Schedule 5B to the 1992 Act].]

[<sup>F110</sup>(4) Subject to section 360A, in this section expressions to which a meaning is assigned by Part XI have that meaning.]

#### Textual Amendments

**F106** 1989 s.107 and Sch.12 para.12—in relation to interest paid on or after 27 July 1989. 1988 s.424(4) continues to have effect for purposes of s.360 in relation to interest paid before 27 July 1989. *Previously* “satisfying any of the conditions of section 424(4)” in subs.1(a) and “satisfy any of the conditions of section 424(4)” in subs.2(a).

**F107** 1989 s.107 and Sch.12 para.12—in relation to interest paid on or after 27 July 1989. 1988 s.424(4) continues to have effect for purposes of s.360 in relation to interest paid before 27 July 1989. *Previously* “satisfy any of the conditions of section 424(4)”.

**F108** 1989 s.47.

**F109** Words in s. 360(3A) inserted (with effect in accordance with s. 79(2) of the amending Act) by Finance Act 1998 (c. 36), s. 79(1)

**F110** 1989 s.48(1). *Previously* “(4) In this section expressions to which a meaning is assigned by Part XI have that meaning, but— (a) in relation to any loan made after 5th April 1987, paragraph 39 of Schedule 9 shall have effect for determining whether the interest on the loan is eligible for relief under section 353 by virtue of this section; and (b) in relation to any loan made before 14th November 1986, section 417 shall have effect subject to the following modifications—(i) in subsection (3)(c) for the words following “deceased person” there shall be substituted the words “subject to subsection (3A) below, any other person interested therein”; and (ii) after subsection (3) there shall be added— “(3A) Subsection (3)(c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives),

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and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company; and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.””.

**Modifications etc. (not altering text)**

**C33** See 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

**Marginal Citations**

**M33** Source-1974 Sch.1 9(1); 1982 s.49(2)

**M34** Source-1974 Sch.1 10(1); 1980 s.28(1)(b), (c); 1982 s.49(3)

**M35** Source-1974 Sch.1 10(2); 1982 s.49(3)

**[<sup>F111</sup>360A Meaning of “material interest” in section 360.**

- (1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest [<sup>F112</sup>in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
  - (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company, or
  - (b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participants.]
- (2) Subject to the following provisions of this section, in subsection (1) above “associate”, in relation to an individual, means—
  - (a) any relative or partner of the individual;
  - (b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor (“settlement” and “settlor” having the same meaning as in [<sup>F113</sup>Chapter IA of Part XV (see section 660G(1) and (2))]); and
  - (c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.
- (3) In relation to any loan made after 5th April 1987, there shall be disregarded for the purposes of subsection (2)(c) above—
  - (a) the interest of the trustees of an approved profit sharing scheme (within the meaning of section 187) in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and
  - (b) any rights exercisable by those trustees by virtue of that interest.
- (4) In relation to any loan made on or after the day on which the Finance Act 1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.



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- (5) In subsection (4) above “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.
- (6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—
- (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,
- has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company.
- (7) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of subsection (6) above in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.
- (8) In relation to any loan made before 14th November 1986, where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, subsection (2)(c) above shall have effect as if for the reference to the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased there were substituted a reference to any person (other than the individual) interested in the settlement or estate, but subject to subsection (9) below.
- (9) Subsection (8) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—
- (a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or
  - (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;
- and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.
- (10) In this section [F114“participator” has the meaning given by section 417(1) and]“relative” means husband or wife, parent or remoter forebear, child or remoter issue or brother or sister.]

#### Textual Amendments

**F111** S. 360A inserted by Finance Act 1989 (c. 26), s. 48(2)

**F112** 1989 s.107 and Sch.12 para.13(2) in relation to accounting periods beginning after 31 March 1989. For accounting periods beginning on or before 31 March 1989, the following wording applies:

“in a company—(a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or (b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income,



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more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.”

**F113** Words in s. 360A(2)(b) substituted (with effect and application in accordance with s. 74 of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 5

**F114** 1989 s.107 and Sch.12 para.13(3) in relation to accounting periods beginning after 31 March 1989.

**Modifications etc. (not altering text)**

**C34** 27 July 1989.

**C35** 27 July 1989.

**361 Loan to buy interest in co-operative or employee-controlled company.**

(1) <sup>M36</sup> Subject to the following provisions of this section and sections 363 and 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in acquiring a share or shares in a body which is a co-operative as defined by section 363(5); or
- (b) in lending money to any such body which is used wholly and exclusively for the purposes of the business of that body or of a subsidiary of that body; or
- (c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions in subsection (2) below are satisfied.

(2) <sup>M37</sup> The conditions referred to in subsection (1) above are—

- (a) that the loan was made after 10th March 1981;
- (b) that, when the interest is paid, the body continues to be a co-operative; and
- (c) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his time as an employee of the body or of a subsidiary of the body; and
- (d) that he shows that in that period he has not recovered any capital from the body apart from any taken into account under section 363(1).

(3) <sup>M38</sup> Subject to sections 362 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in acquiring any part of the ordinary share capital of an employee-controlled company; or
- (b) in paying off another loan, interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions stated in subsection (4) below are satisfied.

(4) <sup>M39</sup> The conditions referred to in subsection (3) above are that—

- (a) the company is, throughout the period beginning with the date on which the shares are acquired and ending with the date on which the interest is paid—
  - (i) an unquoted company resident in the United Kingdom and not resident elsewhere; and
  - (ii) a trading company or the holding company of a trading group;
- (b) the shares are acquired before, or not later than 12 months after, the date on which the company first becomes an employee-controlled company;

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- (c) during the year of assessment in which the interest is paid the company either—
    - (i) first becomes an employee-controlled company; or
    - (ii) is such a company throughout a period of at least nine months;
  - (d) the individual or his spouse is a full-time employee of the company throughout the period beginning with the date on which the proceeds of the loan are applied and ending with the date on which the interest is paid or, if at that date he has ceased to be such an employee, ending with whichever is the later of—
    - (i) the date on which he ceased to be such an employee;
    - (ii) the date 12 months before the payment of the interest; and
  - (e) the individual shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).
- (5) For the purposes of this section a company is employee-controlled at any time when more than 50 per cent.—
- (a) of the issued ordinary share capital of the company, and
  - (b) of the voting power in the company,
- is beneficially owned by persons who, or whose spouses, are full-time employees of the company.
- (6) Where an individual owns beneficially, or he and his spouse together own beneficially, more than 10 per cent. of the issued ordinary share capital of, or voting power in, a company, the excess shall be treated for the purposes of subsection (5) above as being owned by an individual who is neither a full-time employee of the company nor the spouse of such an employee.
- (7) <sup>M40</sup>Where an individual and his spouse are both full-time employees of the company, subsection (6) above shall apply in relation to them with the omission of the words “or he and his spouse together own beneficially”.
- (8) <sup>M41</sup>In this section—
- “full-time employee”, in relation to a company, means a person who works for the greater part of his time as an employee or director of the company or of a 51 per cent. subsidiary of the company;
  - “holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;
  - “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades;
  - “trading group” means a group the business of whose members taken together consists wholly or mainly of the carrying on of a trade or trades, and for this purpose “group” means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and
  - “unquoted company” means a company none of whose shares are listed in the Official List of the Stock Exchange.

**Modifications etc. (not altering text)**

**C36** See 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

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**C37** See 1988(F) s.35 and Sch.3 para.15 for changes applicable in respect of payments of interest made on or after 6 April 1990.

**C38** See 1988(F) s.35 and Sch.3 para.15 for changes applicable in respect of payments of interest made on or after 6 April 1990.

#### Marginal Citations

**M36** Source-1974 Sch.1 10A(1); 1981 s.25(3)

**M37** Source-1974 Sch.1 10B; 1981 s.25(3), (6)

**M38** Source-1974 Sch.1 10C; 1983 s.24(1)

**M39** Source-1974 Sch.1 10D(1)-(3); 1983 s.24(1); 1984 s.24(2), (3)

**M40** Source-1974 Sch.1 10D(3A); 1983 s.24(1); 1984 s.24(4)

**M41** Source-1974 Sch.1 10D(4); 1983 s.24(1)

### 362 Loan to buy into partnership.

(1) <sup>M42</sup> Subject to sections 363 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in purchasing a share in a partnership; or
- (b) in contributing money to a partnership by way of capital or premium, or in advancing money to a partnership, where the money contributed or advanced is used wholly for the purposes of the trade, profession or vocation carried on by the partnership; or
- (c) in paying off another loan interest on which would have been eligible for relief under that section had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and the conditions stated in subsection (2) below are satisfied.

(2) <sup>M43</sup> The conditions referred to in subsection (1) above are—

- (a) that, throughout the period from the application of the proceeds of the loan until the interest was paid, the individual has been a member of the partnership otherwise than as a limited partner; and
- (b) that he shows that in that period he has not recovered any capital from the partnership, apart from any amount taken into account under section 363(1).

#### Modifications etc. (not altering text)

**C39** See 1988(F) Sch.6 para.3(3)—disallowance of interest relief in respect of occupation of commercial woodlands.

#### Marginal Citations

**M42** Source-1974 Sch.1 11(1)

**M43** Source-1974 Sch.1 12; 1981 s.25(2)

### 363 Provisions supplementary to sections 360 to 362.

(1) <sup>M44</sup> If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the close company, co-operative, employee-controlled company or partnership without using that amount in repayment of the loan, he shall be treated for the purposes of sections 353, 360, 361 and 362 as if he had at that time repaid that amount out of the loan, so that out of the interest otherwise

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eligible for relief (or, where section 367(4) applies, out of the proportion so eligible) and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

- (2) <sup>M45</sup>The individual shall be treated as having recovered an amount of capital from the close company, co-operative, employee-controlled company or partnership if—
- (a) he receives consideration of that amount or value for the sale, exchange or assignment of any part of the ordinary share capital of the company or of his share or shares in the co-operative or of his interest in the partnership, or of any consideration of that amount or value by way of repayment of any part of that ordinary share capital or of his share or shares in the co-operative; or
  - (b) the close company, co-operative, employee-controlled company or partnership repays that amount of a loan or advance from him or the partnership returns that amount of capital to him; or
  - (c) he receives consideration of that amount or value for assigning any debt due to him from the close company, co-operative, employee-controlled company or partnership;

and where a sale or assignment is not a bargain made at arm's length, the sale or assignment shall be deemed to be for a consideration of an amount equal to the market value of what is disposed of.

- (3) <sup>M46</sup>In the application of this section to Scotland for the word “assignment” wherever it occurs there shall be substituted the word “assignment”.
- (4) <sup>M47</sup>Section 360, or, as the case may be, 361(2) or (4) or 362(2) and subsections (1) to (3) above, shall apply to a loan within section 360(1)(c), 361(1)(c) or (3)(b) or 362(1)(c) as if it, and any loan it replaces, were one loan, and so that—
- (a) references to the application of the proceeds of the loan were references to the application of the proceeds of the original loan; and
  - (b) any restriction under subsection (1) above which applies to any loan which has been replaced shall apply to the loan which replaces it.
- (5) <sup>M48</sup>In this section and sections 361 and 362—
- “co-operative” means a common ownership enterprise or a co-operative enterprise as defined in section 2 of the <sup>M49</sup>Industrial Common Ownership Act 1976; and
- “subsidiary” has the same meaning as for the purposes of section 2 of that Act.

#### Marginal Citations

- M44** Source-1974 Sch.1 13; 1981 s.25(4); 1983 s.24(2)(a)  
**M45** Source-1974 Sch.1 14(1); 1981 s.25(4); 1983 s.24(2)(a)  
**M46** Source-1974 Sch.1 14(2)  
**M47** Source-1974 Sch.1 15; 1981 s.25(4); 1983 s.24(2)(b)  
**M48** Source-1974 Sch.1 10A(2); 1981 s.25(3)  
**M49** 1976 c.78.

### 364 Loan to pay inheritance tax.

- (1) <sup>M50</sup>Interest is eligible for relief under section 353 if it is interest on a loan to the personal representatives of a deceased person, the proceeds of which are applied—

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- (a) in paying, before the grant of representation or confirmation, capital transfer tax or inheritance tax payable on the delivery of the personal representatives' account and attributable to the value of personal property to which the deceased was beneficially entitled immediately before his death and which vests in the personal representatives or would vest in them if the property were situated in the United Kingdom; or
  - (b) in paying off another loan interest on which would have been eligible for that relief by virtue of this section if the loan had not been paid off (on the assumption, if the loan was free of interest, that it carried interest);
- and the interest is paid in respect of a period ending within one year from the making of the loan within paragraph (a) above.
- (2) <sup>M51</sup>If or to the extent that any relief in respect of interest eligible for it under subsection (1) above cannot be given against income of the year in which the interest is paid because of an insufficiency of income in that year, it may instead be given against income of the preceding year of assessment, and so on; and if or to the extent that it cannot be so given it may instead be given against income of the year following that in which the interest is paid, and so on.
  - (3) <sup>M52</sup>Sufficient evidence of the amount of capital transfer tax or inheritance tax paid as mentioned in subsection (1)(a) above and of any statements relevant to its computation may be given by the production of a document purporting to be a certificate from the Board.
  - (4) For the purposes of subsections (1) to (3) above—
    - (a) references to capital transfer tax or inheritance tax include any interest payable on that tax; and
    - (b) references to interest in respect of a period ending within a given time apply whether or not interest continues to run after that time.

#### Marginal Citations

**M50** Source-1974 Sch.1 17(1); 1975 Sch.12 19(2); 1986 s.100

**M51** Source-1974 Sch.1 18

**M52** Source-1974 Sch.1 20, 21; 1975 Sch.12 19(3), (4); 1986 s.100

### 365 Loan to buy life annuity.

- <sup>M53</sup>(1) Subject to the following provisions of this section, interest is eligible for relief under section 353 if it is interest on a loan in respect of which the following conditions are satisfied—
- (a) that the loan was made as part of a scheme under which not less than nine-tenths of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (“the annuitants”) who include the person to whom the loan was made;
  - (b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65 years;
  - (c) that the loan was secured on land in the United Kingdom or the Republic of Ireland and the person to whom it was made or one of the annuitants owns an estate or interest in that land; and

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- (d) that, if the loan was made after 26th March 1974, the person to whom it was made or each of the annuitants uses the land on which it was secured as his only or main residence at the time the interest is paid.

[<sup>F115</sup>(1A) Where, in the case of any loan—

- (a) the condition specified in subsection (1)(d) above would not (apart from this subsection) be fulfilled with respect to any land by reason of its having ceased at any time to be used by a particular person as his only or main residence; and
- (b) the intention at that time of the person to whom the loan was made, or of each of the annuitants owning an estate or interest in that land, was to take steps, before the end of the period of 12 months after the day on which it ceased to be so used, with a view to the disposal of his estate or interest,

that condition shall be treated in relation to interest on that loan as continuing to be fulfilled with respect to the land from that time until the end of that period or (if sooner) the abandonment by that person or any of those annuitants of his intention to dispose of his estate or interest.

(1B) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1A) above shall have effect as if for the reference to 12 months there were substituted a reference to such longer period as meets the circumstances of that case.]

- (2) Interest is not eligible for relief by virtue of this section unless it is payable by the person to whom the loan was made or by one of the annuitants.
- (3) If the loan was made after 26th March 1974 interest on it is eligible for relief by virtue of this section only to the extent that the amount on which it is payable does not exceed the qualifying maximum for the year of assessment; and if the interest is payable by two or more persons the interest payable by each of them is so eligible only to the extent that the amount on which it is payable does not exceed such amount as bears to the qualifying maximum for the year of assessment the same proportion as the interest payable by him bears to the interest payable by both or all of them.

#### Textual Amendments

**F115** S. 365(1A)(1B) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by [Finance Act 1993 \(c. 34\), s. 57\(3\)\(5\)\(6\)](#)

#### Modifications etc. (not altering text)

**C40** S. 365(1A) modified (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by [1993 c. 34, s. 57\(5\)\(6\)](#)

#### Marginal Citations

**M53** Source-1974 Sch.1 24; 1984 s.22(3)

### 366 Information.

- (1) <sup>M54</sup>A person who claims relief under section 353 in respect of any payment of interest shall furnish to the inspector a statement in writing by the person to whom the payment is made, showing—
- (a) the date when the debt was incurred;
- (b) the amount of the debt when incurred;

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- (c) the interest paid in the year of assessment for which the claim is made (or, in the case of relief by virtue of section <sup>F116</sup> . . . 364(2), the year of assessment for which the claim would be made but for an insufficiency of income); and
  - (d) the name and address of the debtor.
- (2) <sup>M55</sup>Where any such interest as is mentioned in section 353 is paid, the person to whom it is paid shall, if the person who pays it so requests in writing, furnish him with such statement as regards that interest as is mentioned in subsection (1) above; and the duty imposed by this subsection shall be enforceable at the suit or instance of the person making the request.
- (3) Subsections (1) and (2) above do not apply to interest paid to a building society, or to a local authority.

#### Textual Amendments

**F116** Words in s. 366(1)(c) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note

#### Marginal Citations

**M54** Source-1972 Sch.10 7; 1974 Sch.1 25(1)

**M55** Source-1972 Sch.10 8, 9

### 367 Provisions supplementary to sections 354 to 366.

- (1) In sections 354 to 366 as they apply throughout the United Kingdom and in relation to the Republic of Ireland—

“caravan” has the meaning given by section 29(1) of the <sup>M56</sup>Caravan Sites and Control of Development Act 1960;

<sup>M57</sup> “dependent relative” means, in relation to any person, a relative of his, or of his spouse, who is incapacitated by old age or infirmity from maintaining himself, or the mother of that person, or of his spouse, if the mother is widowed or living apart from her husband, or, in consequence of dissolution or annulment of marriage, a single woman;

“house-boat” means a boat or similar structure designed or adapted for use as a place of permanent habitation;

<sup>F117</sup> . . .

“separated” means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent; and

“street works” means any works for the sewerage, levelling, paving, metalling, flagging, channelling and making good of a road, and includes the provision of proper means for lighting a road.

- (2) <sup>M58</sup>Sections 354(1) and 360 to 364 do not apply to a loan unless it is made—
- (a) in connection with the application of money, and
  - (b) on the occasion of, or within what is in the circumstances a reasonable time from, the application of the money;

and those sections do not apply to a loan the proceeds of which are applied for some other purpose before being applied as mentioned in those sections.



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- (3) <sup>M59</sup>For the purposes of sections 354 to 364, the giving of credit for any money due from the purchaser under any sale shall be treated as the making of a loan to defray money applied by him in making the purchase.
- (4) <sup>M60</sup>Where part only of a debt fulfils the conditions required under sections 354 to 364 for interest on the debt to be eligible for relief under section 353, such proportion of the interest shall be treated as eligible for relief under that section as is equal to the portion of the debt fulfilling those conditions at the time of the application of the money in question.
- (5) <sup>M61</sup>In sections [<sup>F118</sup>356A to 357] and 365(3) references to the qualifying maximum for the year of assessment are references to such sum as Parliament may determine for the purpose for that year.

#### Textual Amendments

**F117** In s. 367(1): definition of "large caravan" repealed by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 123, [Sch. 19, Pt. V](#), Note 6 (for year 1991-92 and subsequent years of assessment)

**F118** Words in s. 367(5) substituted by [Finance Act 1988 \(c. 39\)](#), s. 42(3)(b).

#### Modifications etc. (not altering text)

**C41** *The definition in s.29(1) reads as follows:*

““caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or(b) any tent.”

- C42** S. 367(5): £30,000 specified (1988-89) by [Finance Act 1988 \(c. 39\)](#), s. 41  
S. 367(5): £30,000 specified (1989-90) by [Finance Act 1989 \(c. 26\)](#), s. 46  
S. 367(5): £30,000 specified (1990-91) by [Finance Act 1990 \(c. 29\)](#), s. 71  
S. 367(5): £30,000 specified (1991-92) by [Finance Act 1991 \(c. 31\)](#), s. 26  
S. 367(5): £30,000 specified (1992-93) by [Finance Act 1992 \(c. 20\)](#), s. 10(4) (with s. 10(5))  
S. 367(5): £30,000 specified (1993-94) by [Finance Act 1993 \(c. 34\)](#), s. 55  
S. 367(5): £30,000 specified (1994-95, 1995-96) by [Finance Act 1994 \(c. 9\)](#), s. 80  
S. 367(5): £30,000 specified (1996-97) by [Finance Act 1996 \(c. 8\)](#), s. 76  
S. 367(5): £30,000 specified (1997-98) by [Finance Act 1997 \(c. 16\)](#), s. 57  
S. 367(5): £30,000 specified (1998-99) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), s. 16  
S. 367(5): £30,000 specified (1999-2000) by [Finance Act 1999 \(c. 16\)](#), s. 37

#### Marginal Citations

- M56** 1960 c. 62.  
**M57** Source-1972 Sch.9 5A, 9; 1974 Sch.1 3, 4(4)  
**M58** Source-1972 Sch.9 2; 1974 Sch.1 23  
**M59** Source-1972 Sch.9 14; 1974 Sch.1 23  
**M60** Source-1972 Sch.9 15; 1974 Sch.1 1, 23  
**M61** Source-1972 Sch.9 5(1A); 1984 s.22(1)(c)

VALID FROM 01/04/2010

#### [<sup>F119</sup>367A] Alternative finance arrangements

- (1) Sections 353 and 365 have effect as if—

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- (a) purchase and resale arrangements involved the making of a loan, and
  - (b) alternative finance return were interest.
- (2) Section 366 has effect accordingly.
- (3) In this section—
- “alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007, and
  - “purchase and resale arrangements” means arrangements to which section 564C of ITA 2007 applies.]

#### Textual Amendments

**F119** S. 367A inserted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [Sch. 2 para. 47](#) (with [Sch. 9](#))

### 368 Exclusion of double relief etc.

- <sup>M62</sup>(1) Interest in respect of which relief is given under section 353 shall not be allowable as a deduction [<sup>F120</sup>for any purpose of the Income Tax Acts except so far as it is so allowable in accordance with subsection (1B) of that section.]
- (2) Relief shall not be given under section 353 against income chargeable to corporation tax, and shall not be given against any other income of a company, except where both of the following conditions are satisfied, that is to say—
- (a) that the company is not resident in the United Kingdom; and
  - (b) that the interest cannot be taken into account in computing corporation tax chargeable on the company.
- (3) Where interest on any debt or liability is taken into account in the computation of [<sup>F121</sup>profits] or losses for the purposes of [<sup>F122</sup>Schedule A or] Case I or II of Schedule D no relief shall be given under section 353—
- (a) in respect of the payment of that interest; or
  - (b) in respect of interest on the same debt or liability which is paid in any year of assessment for which that computation is relevant.
- (4) Where relief is given under section 353 in respect of the interest paid in any year of assessment on any debt or liability—
- (a) that interest shall not be taken into account in the computation of [<sup>F121</sup>profits] or losses for the purposes of [<sup>F122</sup>Schedule A or] Case I or II of Schedule D for any year of assessment; and
  - (b) interest on that debt or liability shall not be taken into account in that computation for any year of assessment for which the interest so paid could have been taken into account but for the relief.
- (5) For the purposes of subsections (3) and (4) above, all interest capable of being taken into account in such a computation as is mentioned in those subsections which is payable by any person on money advanced to him on current account, whether advanced on one or more accounts or by the same or separate banks or other persons, shall be treated as interest payable on the same debt.

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- (6) References in subsections (3) and (4) above to relief given or an amount taken into account are references to relief given or an amount taken into account on a claim or in an assessment which has been finally determined.

#### Textual Amendments

- F120** Words in s. 368(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 9**
- F121** Words in s. 368(3)(4)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**
- F122** Words in s. 368(3)(4) inserted (with effect in accordance with s. 39(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para 17**

#### Marginal Citations

- M62** Source-1972 Sch.10 1-6

### *Mortgage interest relief at source*

#### **369 Mortgage interest payable under deduction of tax.**

- (1) <sup>M63</sup>If a person who is a qualifying borrower makes a payment of relevant loan interest to which this section applies, he shall be entitled, on making the payment, to deduct and retain out of it a sum equal to [<sup>F123</sup>the applicable percentage thereof.]
- [<sup>F124</sup>(1A) In subsection (1) above “the applicable percentage”—
- [<sup>F125</sup>(a) in relation to so much of any payment of relevant loan interest as is not a payment in relation to which paragraph (b) below has effect, means 10 per cent; and]
- (b) in relation to so much of any payment as—
- (i) has become due before 6th April 1994; or
- (ii) being a payment becoming due on or after 6th April 1994, would, apart from section 353(2), be eligible for relief under section 353 by virtue of section 365,
- means the percentage which is the basic rate for the year of assessment in which the payment has become or becomes due;
- <sup>F126</sup>..... ]
- (2) Where a sum is deducted under subsection (1) above from a payment of relevant loan interest—
- (a) the person to whom the payment is made shall allow the deduction on receipt of the residue;
- (b) the borrower shall be acquitted and discharged of so much money as is represented by the deduction as if the sum had been actually paid; and
- (c) the sum deducted shall be treated as income tax paid by the person to whom the payment is made.
- [<sup>F127</sup>(3) The following payments, that is to say—
- (a) payments of relevant loan interest to which this section applies, and
- (b) payments which would be such payments but for section 373(5),

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shall not be allowable as deductions for any purpose of the Income Tax Acts except in so far as they fall to be treated as such payments by virtue only of section 375(2) and would be allowable apart from this subsection.]

- (6)<sup>M64</sup> Any person by whom a payment of relevant loan interest to which this section applies is received shall be entitled to recover from the Board, in accordance with regulations, an amount which by virtue of subsection (2)(c) above is treated as income tax paid by him; and any amount so recovered shall be treated for the purposes of the Tax Acts in like manner as the payment of relevant loan interest to which it relates.

[<sup>F128</sup>(7) The following provisions of the Management Act, namely—

- [<sup>F129</sup>(a) section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to (10) of that Act;]  
(b) section 30 (tax repaid in error etc.) [<sup>F130</sup>apart from subsection (1B)] ,  
(c) [<sup>F131</sup>section 86](interest), and  
(d) section 95 (incorrect return or accounts),

shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable in accordance with regulations made by virtue of subsection (6) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid [<sup>F132</sup>as respects a chargeable period] as a relief which was not due.]

[<sup>F133</sup>(8) In the application of section 86 of the Management Act by virtue of subsection (7) above in relation to sums due and payable by virtue of an assessment made for the whole or part of a year of assessment (“the relevant year of assessment”) under section 29(1)(c) or 30 of that Act, as applied by that subsection, the relevant date—

- (a) is 1st January in the relevant year of assessment in a case where the person falling within subsection (6) above has made a relevant interim claim; and  
(b) in any other case, is the later of the following dates, that is to say—  
(i) 1st January in the relevant year of assessment; or  
(ii) the date of the making of the payment by the Board which gives rise to the assessment.

(9) In this section—

“financial year”, in relation to any person, means a financial year of that person for the purposes of the relevant regulations;

“interim claim” means an interim claim within the meaning of the relevant regulations;

“relevant interim claim” means, in relation to an assessment made for a period coterminous with, or falling wholly within, a person’s financial year, an interim claim made for a period falling wholly or partly within that financial year; and

“the relevant regulations” means regulations made under section 378(3) for the purposes of subsection (6) above.]

#### Textual Amendments

**F123** Words in s. 369(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(3)

**F124** S. 369(1A) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(3)

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- F125** S. 369(1A)(a) substituted (with effect in accordance with s. 15(3) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 15(3)
- F126** Words in s. 369(1A) repealed (with effect in accordance with s. 15(3) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 8 Pt. 2(1), Note
- F127** S. 369(3) substituted for s. 369(3)-(5B) (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(4)
- F128** S. 369(7) inserted (27.7.1993) by 1993 c. 34, s. 58(1)(2)
- F129** S. 369(7)(a) substituted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(a)
- F130** Words in s. 369(7)(b) inserted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(b)
- F131** Words in s. 369(7)(c) substituted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(c)
- F132** Words in s. 369(7) inserted (with effect in accordance with Sch. 18 para. 17(8) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(d)
- F133** S. 369(8)(9) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(3)

#### Modifications etc. (not altering text)

- C43** See S.I. 1988 No.1347 (in Part III Vol.5) in respect of housing associations.

#### Marginal Citations

- M63** Source-1982 s.26(1), (2)  
**M64** Source-1982 s.26(7)

### 370 Relevant loan interest.

- (1) <sup>M65</sup>Subject to this section and sections [<sup>F134</sup>372] to 376, in this Part “relevant loan interest” means interest which is paid and payable in the United Kingdom to a qualifying lender and to which subsection (2) or (3) below applies.
- (2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2) [<sup>F135</sup>and any other provision applying to interest falling to be treated as relevant loan interest]—
- it is interest falling within section 354(1) or 365; and
  - apart [<sup>F136</sup>(where applicable) from] section [<sup>F137</sup>356A,] 357 or 365(3), the whole of the interest either would be eligible for relief under section 353 or would be taken into account in a computation of profits or gains or losses for the purposes of Case I, II or VI of Schedule D for any year of assessment; and
  - except in the case of interest falling within section 365, at the time the interest is paid, the condition in either section 355(1) or 356(1) is fulfilled with respect to the land, caravan or house-boat to which the loan concerned relates.
- (3) This subsection applies to interest which is payable on a loan—
- in respect of which there was in force on 31st March 1983—
    - an option notice given under section 24(2) of the <sup>M66</sup>Housing Subsidies Act 1967 (option mortgages) other than one falling within section 27(3)(b) of the Finance Act 1982; or
    - an option notice given under Article 142(2) of the <sup>M67</sup>Housing (Northern Ireland) Order 1981 (option mortgages in Northern Ireland) other than one falling within section 27(4)(b) of the Finance Act 1982; and

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- (b) which relates to a dwelling in respect of which, at the time the interest is paid, the condition in section 355(1) is fulfilled.
- (4) <sup>M68</sup> Subsection (2) above does not apply to interest payable on a loan the only security for which is a contract of insurance on human life or a contract to pay an annuity on human life.
- (5) <sup>M69</sup> In determining whether subsection (2) above applies to any interest, sections 354(1) and 365 shall each have effect as if the words “or the Republic of Ireland” were omitted.
- (6) In determining whether subsection (2)(c) above applies to any interest, section 355(1) shall have effect as if—
  - (a) <sup>F138</sup> . . . after the word “used”, where it first occurs, there were inserted the words “wholly or to a substantial extent”; <sup>F139</sup> . . .
  - (b) <sup>F139</sup> . . . . .

[<sup>F140</sup> and section 355(1A) shall have effect as if after the word “used” in paragraph (a) there were inserted the words “wholly or to a substantial extent”.]
- [<sup>F141</sup>(6A) <sup>F142</sup> . . . . .]
- (7) In determining for the purposes of subsection (3)(b) above whether the condition in section 355(1) is for the time being fulfilled with respect to any dwelling—
  - (a) subsection (1) of that section shall have effect as if for the words from “section 354” to “used” (where it first occurs) there were substituted the words “interest shall not be relevant loan interest for the purposes of section 369 unless the dwelling to which the loan relates is at the time the interest is paid used wholly or partly”<sup>F143</sup> . . . ; and
  - [<sup>F144</sup>(aa) subsections (1A) and (1B) of that section shall have effect as if—
    - (i) after the word “used” in paragraph (a) of subsection (1A) there were inserted the words “wholly or partly”;
    - (ii) <sup>F145</sup> . . . . .
    - (iii) for the words “land, caravan or house-boat”, wherever they occur without being immediately preceded by the word “other”, there were substituted the word “dwelling”; and
    - (iv) for the words “other land, caravan or house-boat”, wherever they occur, there were substituted the words “land, caravan or house-boat”;and]
  - (b) subsection (3) of that section shall have effect as if for “land, caravan or house-boat” there were substituted “dwelling”.

#### Textual Amendments

- F134** Words in s. 370(1) substituted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, s. 57(4)(c)(5)
- F135** Words in s. 370(2) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), Sch. 9 para. 10(1)(a)
- F136** Words in s. 370(2)(b) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), Sch. 9 para. 10(1)(b)
- F137** 1988(F) s.42(3)(c).
- F138** Words in s. 370(6)(a) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(2), Note



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- F139** S. 370(6)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 29 Pt. 8(2)**, Note
  - F140** Words in s. 370(6) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by [1993 c. 34](#), **s. 57(4)(d)(5)**
  - F141** S. 370(6A) inserted (with effect in accordance with s. 81(6) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), **Sch. 9 para. 10(2)**
  - F142** S. 370(6A) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 29 Pt. 8(2)**, Note
  - F143** Words in s. 370(7)(a) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 Sch. 29 Pt. 8\(2\)](#), Note
  - F144** S. 370(7)(aa) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by [1993 c. 34](#), **s. 57(4)(e)(5)**
  - F145** S. 370(7)(aa)(ii) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 29 Pt. 8(2)**, Note
- 
- Modifications etc. (not altering text)**
- C44** See [S.I. 1988 No.1347](#) (in Part III Vol.5) *in respect of housing associations.*
  - C45** See Part II Vol.5 (1989 *edition*).
- 
- Marginal Citations**
- M65** Source-1982 Sch.7 2(1)-(3)
  - M66** [1967 c. 29](#).
  - M67** [S.I. 1981/156 \(N.I.3\)](#).
  - M68** Source-1982 Sch.7 2(7)
  - M69** Source-1982 Sch.7 3(1)-(3)

**F146 371 Second loans.**

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**Textual Amendments**

- F146** S. 371 repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by [Finance Act 1993 \(c. 34\)](#), [ss. 57, 213](#), **Sch. 23 Pt.III**

**372 Home improvement loans.**

- <sup>M70</sup>(1) Notwithstanding anything in section 370(2), interest on a home improvement loan (other than interest to which section 370(3) applies) is not relevant loan interest unless—
  - (a) the qualifying lender to whom the interest is payable is a building society or a local authority or the Northern Ireland Housing Executive; or
  - (b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have those home improvement loans in respect of which he is the lender and which were made after such date as he may specify in the notice brought within the tax deduction scheme.
- (2) A qualifying lender may not specify a date in a notice under subsection (1) above which is earlier than the earliest date on which paragraph 2 of Schedule 7 to the Finance



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Act 1982 applied, or, if that paragraph did not apply, section 370 applies to interest on any loan (whether or not a home improvement loan) made by him.

- (3) In this section “home improvement loan” means a loan made to defray money applied wholly in improving or developing land or buildings on land or in paying off another loan which was itself to defray money so applied.
- (4) Section 354(2) shall apply for the purposes of this section as it applies for the purposes of sections 354 and 355.

#### Marginal Citations

M70 Source-1978 Sch.7 4; 1983 s.17(1)

### 373 Loans in excess of the qualifying maximum, and joint borrowers.

- (1) <sup>M71</sup>The provisions of this section have effect in relation to a loan where, by virtue of section [F<sup>147</sup>356A, section] 357(1) or section 365(3), only part of the interest on the loan would (apart from section 353(2)) be eligible for relief under section 353; and in this section any such loan is referred to as a “limited loan”.
- (2) None of the interest on a limited loan is relevant loan interest unless—
  - (a) the loan is made on or after 6th April 1987; or
  - (b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have limited loans of a description which includes that limited loan brought within the tax deduction scheme.
- (3) If in a case where subsection (2) above applies [F<sup>147</sup>section 356D(6) or] section 357(1) requires an earlier loan to be taken into account for the purpose of determining that part of the limited loan interest on which would (apart from section 353(2)) be eligible for relief under section 353, none of the interest on the limited loan is relevant loan interest unless that earlier loan was made by the same qualifying lender as the limited loan.
- (4) <sup>M72</sup>The reference in subsection (1) above to a loan only part of the interest on which would (apart from section 353(2)) be eligible for relief under section 353 includes a reference to each of two or more loans if, by virtue of [F<sup>147</sup>section 356D(7) or] subsection (3)(b) of section 357, the interest on the loans falls to be treated for the purposes of that section as payable on one loan; but, notwithstanding that each of those loans is accordingly a limited loan for the purposes of this section, none of the interest on any of them is relevant loan interest unless each of the loans was made by the same qualifying lender.
- (5) <sup>M73</sup>Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled and, if subsection (3) or (4) above also applies, the condition in that subsection is also fulfilled only so much of the interest as (apart from section 353(2)) would be eligible for relief under section 353 is relevant loan interest.
- (6) <sup>M74</sup>Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person who is not the borrower’s husband or wife, the interest on the loan is not relevant loan interest unless—
  - (a) each of the persons to whom the loan was made is a qualifying borrower; and

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(b) in relation to each of them considered separately, the whole of that interest is relevant loan interest, in accordance with sections 370 to 372 and this section.

(7) In subsection (6) above references to the borrower's husband or wife do not include references to a separated husband or wife, and for this purpose "separated" has the meaning given by section 367(1).

#### Textual Amendments

**F147** 1988(F) s.42(3)(d).

#### Modifications etc. (not altering text)

**C46** See S.I. 1988 No.1347 (in Part III Vol.5) *re housing associations.*

#### Marginal Citations

**M71** Source-1982 Sch.7 5(1)-(3); 1985 s.37(2)

**M72** Source-1982 Sch.7 5(3A); 1983 s.17(2)

**M73** Source-1982 Sch.7 5(4); 1983 s.17(2); 1985 s.37(3)

**M74** Source-1982 Sch.7 6(1), (2)

### 374 Conditions for application of section 369.

- (1) <sup>M75</sup>Section 369 does not apply to any relevant loan interest unless—
- (a) in the case of a loan of a description specified by regulations for the purposes of this paragraph, the borrower or, in the case of joint borrowers, each of them has given notice to the lender in the prescribed form certifying—
    - (i) that he is a qualifying borrower; and
    - (ii) that the interest is relevant loan interest; and
    - (iii) such other matters as may be prescribed; or
  - (b) the Board have given notice to the lender and the borrower that the interest may be paid under deduction of tax; or
  - (c) it is interest to which section 370(3) applies; or
  - (d) <sup>M76</sup>the loan to which the interest relates is of a description specified by regulations for the purposes of this paragraph and was made—
    - (i) if sub-paragraph (2) of paragraph 2 of Schedule 7 to the Finance Act 1982 applied to interest on the loan which became due on or after a date earlier than 6th April 1983, being a date specified by the Board in pursuance of sub-paragraph (5) of that paragraph, before that earlier date; or
    - (ii) if the qualifying lender is a building society or a local authority, before 1st April 1983; or
    - (iii) if sub-paragraphs (i) and (ii) above do not apply and the interest falls within section 370(2), before 6th April 1983.
- (2) <sup>M77</sup>Where notice has been given as mentioned in paragraph (a) or (b) of subsection (1) above, section 369 applies to any relevant loan interest to which the notice relates and which becomes due on or after the relevant date, as defined by subsection (3) below; and in a case falling within paragraph (c) or (d) of subsection (1) above, section 369 applies to the relevant loan interest referred to in that paragraph.
- (3) In subsection (2) above "the relevant date" means—

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- (a) in the case of a notice under subsection (1)(a) above, the date the notice is given, and
- (b) in the case of a notice under subsection (1)(b) above, a date specified in the notice as being the relevant date (which may be earlier than the date so specified as the date from which the interest may be paid under deduction of tax).

#### Modifications etc. (not altering text)

**C47** See S.I. 1988 No.1347 (in Part III Vol.5)re housing associations.

#### Marginal Citations

**M75** Source-1982 Sch.7 7(1)(a)-(c)

**M76** Source-1982 Sch.7 7(1)(d), (4), (5)

**M77** Source-1982 Sch.7 7(2)(3)

### [<sup>F148</sup>374A] Interest which never has been relevant loan interest etc.

- (1) This section applies where, in the case of any loan, interest on the loan never has been relevant loan interest or the borrower never has been a qualifying borrower.
- (2) Without prejudice to subsection (3) below, in relation to a payment of interest—
  - (a) as respects which either of the conditions mentioned in paragraphs (a) and (b) of section 374(1) is fulfilled, and
  - (b) from which a deduction was made as mentioned in section 369(1),section 369 shall have effect as if the payment of interest were a payment of relevant loan interest made by a qualifying borrower.
- (3) Nothing in subsection (2) above shall be taken as regards the borrower as entitling him to make any deduction or to retain any amount deducted and, accordingly, where any amount has been deducted, he shall be liable to make good that amount and an officer of the Board may make such assessments as may in his judgment be required for recovering that amount.
- (4) The Management Act shall apply to an assessment under subsection (3) above as if it were an assessment to income tax for the year of assessment in which the deduction was made<sup>F149</sup> . . . .
- (5) If the borrower fraudulently or negligently makes any false statement or representation in connection with the making of any deduction, he shall be liable to a penalty not exceeding the amount deducted.]

#### Textual Amendments

**F148** S. 374A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(1)

**F149** Words in s. 374A(4) repealed (with effect in accordance with Sch. 18 para. 17(5) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 18 para. 7, Sch. 41 Pt. 5(8), Note

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### **375 Interest ceasing to be relevant loan interest, etc.**

- (1) <sup>M78</sup>If at any time—
  - (a) the interest on a loan ceases to be relevant loan interest; or
  - (b) a person making payments of relevant loan interest ceases to be a qualifying borrower;

the borrower shall give notice of the fact to the lender.
- (2) Without prejudice to subsection (3) below, in relation to a payment of interest—
  - (a) which is due after the time referred to in subsection (1) above and before the date on which notice is given under that subsection, and
  - <sup>F150</sup>(aa) as respects which any of the conditions mentioned in section 374(1) is fulfilled, and]
  - (b) from which a deduction was made as mentioned in section 369(1),

section 369 shall have effect as if the payment were a payment of relevant loan interest made by a qualifying borrower.
- (3) Nothing in subsection (2) above <sup>F151</sup>shall be taken as regards the borrower as entitling him to any deduction or to retain any amount deducted and, accordingly, where any amount that has been deducted exceeds the amount which ought to have been deducted] , he shall be liable to make good the excess and an inspector may make such assessments as may in his judgment be required for recovering the excess.
- <sup>F152</sup>(4) The Management Act shall apply to an assessment under subsection (3) above <sup>F153</sup>as if it were an assessment to income tax for the year of assessment in which the deduction was made] .
- (4A) If there is any unreasonable delay in the giving of a notice under subsection (1) above, the borrower shall be liable to a penalty not exceeding so much of the aggregate amount that he is liable to make good under subsection (3) above as is attributable to that delay.]
- (5) <sup>M79</sup>If, as a result of receiving a notice under subsection (1) above or otherwise, a qualifying lender has reason to believe that any interest is no longer relevant loan interest or that a borrower is no longer a qualifying borrower, the lender shall furnish the Board with such information as is in his possession with respect to those matters.
- (6) <sup>M80</sup>Where it appears to the Board that any of the provisions of sections 370 to 373 is not or may not be fulfilled with respect to any interest, or that a qualifying borrower has or may have ceased to be a qualifying borrower, they shall give notice of that fact to the lender and the borrower specifying the description of relevant loan interest concerned or, as the case may be, that the borrower has or may have ceased to be a qualifying borrower.
- (7) Section 369 shall not apply to any payment of relevant loan interest of a description to which a notice under subsection (6) above relates and which becomes due or is made after such date as may be specified in the notice and before such date as may be specified in a further notice given by the Board to the lender and the borrower.
- (8) <sup>M81</sup>In any case where—
  - (a) section 369 applies to any relevant loan interest by virtue of a notice under section 374(1)(b), and
  - (b) the relevant date specified in the notice is earlier than the date from which the interest begins to be paid under deduction of tax, and

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- (c) a payment of that interest was made on or after the relevant date but not under deduction of tax,
- regulations may provide for a sum to be paid by the Board of an amount equal to that which the borrower would have been able to deduct from that payment by virtue of section 369 if it had been made after the relevant date.
- [<sup>F154</sup>(8A) In any case where an amount to which a person is not entitled is paid to him by the Board in pursuance of regulations made by virtue of subsection (8) above, regulations may—
- (a) provide for an officer of the Board to make such assessments as may in his judgment be required for recovering that amount from that person; and
  - (b) make provision corresponding to that made by subsection (4A) above and subsections (4) and (5) of section 374A.]
- (9) <sup>M82</sup>No obligation as to secrecy imposed by statute or otherwise on persons employed in relation to Inland Revenue shall prevent information relating to any loan in respect of which an option notice has been given as mentioned in section 370(3)(a) from being disclosed to the Secretary of State or the Department of the Environment for Northern Ireland, or to an officer of either of them authorised to receive such information, in connection with the exercise by the Secretary of State or that Department of any of his or its functions in relation to any such loan.
- (10) Subsection (9) above extends only to disclosure by or under the authority of the Inland Revenue; and information which is disclosed to any person by virtue of that subsection shall not be further disclosed to any other person unless—
- (a) it could have been disclosed to that other person in accordance with that subsection; or
  - (b) the disclosure is made for the purposes of any civil or criminal proceedings concerned with the loan to which the disclosure relates.

#### Textual Amendments

**F150** S. 375(2)(aa) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(2)

**F151** Words in s. 375(3) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), Sch. 9 para. 11

**F152** S. 375(4)(4A) substituted for s. 375(4) (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(3)

**F153** Words in s. 375(4) substituted (with effect in accordance with Sch. 18 para. 17(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 8

**F154** S. 375(8A) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(4)

#### Marginal Citations

**M78** Source-1982 Sch.7 8

**M79** Source-1982 Sch.7 9(1)

**M80** Source-1982 Sch.7 10(1), (2)

**M81** Source-1982 Sch.7 11

**M82** Source-1982 Sch.7 12

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### [<sup>F155</sup>375A] Option to deduct interest for the purposes of Schedule A.

- (1) If an individual who is a qualifying borrower with respect to any interest on a loan which is relevant loan interest—
  - (a) is carrying on or proposing to carry on a Schedule A business, and
  - (b) gives notice to the Board that deductions are to be made in respect of payments of interest on that loan in computing the [<sup>F156</sup>profits] of that business,
 then (subject to the following provisions of this section) section 369 shall not apply to any payment of interest on that loan which becomes due or is made on or after such date as may be specified for the purposes of this subsection in the notice.
- (2) A notice specifying a date for the purposes of subsection (1) above—
  - (a) may be given at any time before the end of the period of twenty-two months beginning with the end of the year of assessment in which that date falls, but
  - (b) once given, shall not be withdrawn.
- (3) Where notice is given to the Board under subsection (1) above, the Board shall give notice to the lender and the borrower specifying a date, not being a date before either—
  - (a) the date specified for the purposes of that subsection, or
  - (b) the date on which the notice under this subsection is given to the lender,
 as the date on or after which payments of interest on the loan are to be treated in relation to the lender as payments of interest to which section 369 does not apply.
- (4) Subsections (2) and (3) of section 375 shall have effect in relation to any period between—
  - (a) the beginning of any date specified for the purposes of subsection (1) above, and
  - (b) the date specified in that case in the notice given under subsection (3) above,
 as they apply, in the case of any relevant loan interest, in relation to the period between the time when the borrower ceases to be a qualifying borrower and the date on which he gives notice of that fact to the lender.
- (5) Where a notice under subsection (1) above has taken effect in relation to payments of interest on any loan, section 369 shall not again apply to payments of interest on that loan except where they become due after such time as may be specified in a further notice given by the Board for the purposes of this subsection to the lender and the borrower.
- (6) A notice under subsection (5) above shall not specify a time for the purposes of that subsection which falls before the time when the Schedule A business in question is permanently discontinued or, as the case may be, when the proposal to carry it on is finally abandoned.]

#### Textual Amendments

**F155** S. 375A inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), Sch. 6 para. 18

**F156** Words in s. 375A(1)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1

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### 376 Qualifying borrowers and qualifying lenders.

- (1) <sup>M83</sup>Subject to subsection (2) below, an individual is a qualifying borrower with respect to the interest on any loan.
  - (2) In relation to interest paid at a time when the borrower or the borrower's husband or wife holds an office or employment in respect of the emoluments of which he or she would but for some special exemption or immunity from tax be chargeable to tax under Case I, II or III of Schedule E, the borrower is not a qualifying borrower.
  - (3) In subsection (2) above references to the borrower's husband or wife do not include references to a separated husband or wife, and for this purpose "separated" has the meaning given by section 367(1).
  - (4) <sup>M84</sup>The following bodies are qualifying lenders:—
    - (a) a building society;
    - (b) a local authority;
    - (c) the Bank of England;
    - (d) the Post Office;
    - (e) a company which is authorised under section 3 or 4 of the <sup>M85</sup>Insurance Companies Act 1982 to carry on in the United Kingdom any of the classes of business specified in Schedule 1 to that Act;
    - (f) any company to which property and rights belonging to a trustee savings bank were transferred by section 3 of the <sup>M86</sup>Trustee Savings Bank Act 1985;
    - <sup>F157</sup>(g) a friendly society;
    - (h) a development corporation within the meaning of the <sup>M87</sup>New Towns Act 1981 or the <sup>M88</sup>New Towns (Scotland) Act 1968;
    - (j) the Commission for the New Towns;
    - (k) the Housing Corporation;
    - <sup>F158</sup>(ka) the Secretary of State if the loan is made by him under section 79 of the <sup>M89</sup>Housing Associations Act 1985;
    - (l) the Northern Ireland Housing Executive;
    - (m) the Scottish Special Housing Association;
    - (n) <sup>F159</sup>.....
    - (o) the Church of England Pensions Board;
    - (p) any of the following which is [<sup>F160</sup>for the time being registered under section 376A below], namely, an institution authorised under the <sup>M90</sup>Banking Act 1987, a company which is authorised as mentioned in paragraph (e) above to carry on in the United Kingdom any of the classes of business specified in Schedule 2 to the Insurance Companies Act 1982, and a 90 per cent. subsidiary of any such institution or company or of a company within paragraph (e) above and any other body whose activities and objects appear to the [<sup>F160</sup>Board] to qualify it for inclusion in this paragraph.
- <sup>F161</sup>(4A) In subsection (4)(g) above, "friendly society" means—
- (a) a friendly society within the meaning of the Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act), or
  - (b) a registered branch within the meaning of that Act (including any branch that by virtue of section 96(3) of that Act is to be treated as a registered branch within the meaning of that Act).]



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- (5) <sup>F162</sup> .....
- (6) <sup>M91</sup> Without prejudice to subsection (4) above, in relation to interest to which section 370(3) applies, the person who, as a qualifying lender for the purposes of Part II of the <sup>M92</sup>Housing Subsidies Act 1967 or Part VIII of the <sup>M93</sup>Housing (Northern Ireland) Order 1981, was the lender in relation to the loan referred to in section 370(3) shall also be a qualifying lender.

#### Textual Amendments

- F157** S. 376(4)(g) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(2), **22**; S.I. 1993/236, **art.2**
- F158** S. 376(4)(ka) substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140(2), 158(1), **Sch. 16 para. 55**; S.I. 1998/2244, **art. 5**
- F159** S. 376(4)(n) repealed (1.10.1998) by Government of Wales Act 1998 (c. 38), ss. 152, 158(1), **Sch. 18 Pt. 4**; S.I. 1998/2244, **art. 4**
- F160** Words in s. 376(4)(p) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. **142(1)(a)**
- F161** S. 376(4A) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(3), **22**; S.I. 1993/236, **art. 2**
- F162** S. 376(5) repealed (3.5.1994) by Finance Act 1994 (c. 9), s. 142(1)(b), **Sch. 26 Pt. 5(19)**

#### Marginal Citations

- M83** Source-1982 Sch.7 13
- M84** Source-1982 Sch.7 14(1); 1983 s.17(3)
- M85** 1982 c. 50.
- M86** 1985 c. 50.
- M87** 1981 c.64.
- M88** 1968 c. 16.
- M89** 1985 c. 69.
- M90** 1987 c. 22.
- M91** Source-1982 Sch.7 15
- M92** 1967 c. 29.
- M93** S.I. 1981/156 (N.I.3).

#### [<sup>F163</sup>376A] The register of qualifying lenders.

- (1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).
- (2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.
- (3) The registration of any body may be varied by the Board—
  - (a) where it is general, by providing for it to be in relation to a specified description of loan, or
  - (b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,

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and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.

- (4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.
- (5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.
- (6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board's decision, require the matter to be determined by the Special Commissioners; and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.]

#### Textual Amendments

**F163** S. 376A inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 142(2)

### 377 Variation of terms of repayment of certain loans.

- (1) <sup>M94</sup>If relevant loan interest payable by a qualifying borrower—
  - (a) is payable under a loan agreement requiring combined payments, and
  - (b) is payable to a qualifying lender who, in accordance with subsection [F164(8)] below, is specified for the purposes of this section, and
  - (c) is interest on a loan made before 1st April 1983, or if it is interest in respect of which the Board notified an earlier date to the lender under paragraph 2(5) of Schedule 7 to the Finance Act 1982, before that earlier date,then, subject to subsection (2) below, the terms of repayment are by virtue of this section varied in accordance with subsection (3) below.
- (2) Subsection (1) above does not apply to any combined payments unless—
  - (a) the qualifying lender concerned has, in accordance with regulations, given notice to the qualifying borrower that this section is to apply to combined payments which the borrower is required to make under the loan agreement; and
  - (b) the qualifying borrower has not, in accordance with regulations, given notice to the qualifying lender that he wishes to continue with combined payments which, allowing for any sums he is entitled to deduct by virtue of section 369, do not exceed the combined payments which he would have been required to make but for the provisions of that section.
- (3) Where subsection (1) applies, the amount of any combined payment payable by the qualifying borrower concerned which includes a payment of relevant loan interest shall be determined by the lender so as to secure, so far as practicable—
  - (a) that the principal and interest are repaid over the period which is for the time being agreed between the lender and the borrower; and

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- (b) that, unless there is a change in that period or in the basic rate of income tax or in the rate of interest charged by the lender, the amount of each net payment due from the borrower to the lender will be of the same amount;
- and for the purposes of paragraph (b) above “net payment” means a payment which, so far as it is a payment of interest, consists of interest from which the sum provided for by section 369(1) has been deducted.
- (4) <sup>M95</sup>Where the qualifying borrower gives a notice under subsection (2)(b) above, the amount of any combined payment payable by him which includes a payment of relevant loan interest and the period over which the principal and interest on the loan are to be repaid shall be determined by the lender so as to secure, so far as practicable, that, unless there is a change in the basic rate of income tax or in the rate of interest charged by the lender—
- (a) the amount of each net payment as defined in subsection (3) above which is due from the borrower to the lender will be of the same amount; and
- (b) the amount of each such payment does not exceed what, apart from section 369, would have been the amount of the combined payment payable by the borrower on the effective date of the notice under subsection (2)(a) above, less tax at the basic rate for the year of assessment in which that effective date falls on so much of that combined payment as would have consisted of interest.
- (5) <sup>M96</sup>Nothing in this section or in the loan agreement shall prevent the borrower from making, at such time or times as he chooses, additional repayments of capital of any amount so as to secure that the principal and interest on the loan are repaid within a period which is not shorter than that referred to in subsection (3)(a) above.
- (6) <sup>M97</sup>For the purposes of subsection (4)(b) above the effective date of a notice under subsection (2)(a) above is the date which, in accordance with regulations, is the due date for the first combined payment which, in consequence of that notice and the notice under subsection (2)(b) above, is a net payment for the purposes of subsection (3)(b) above.
- (7) <sup>M98</sup>The repeal by this Act of section 28 of the Finance Act 1982 shall not affect the variation of any agreement in pursuance of that section before 26th July 1984 and accordingly, where the borrower gave a notice under subsection (2)(b) of that section, the maximum amount of any combined payment payable under the agreement as so varied which includes a payment of relevant loan interest shall continue to be the amount which would, apart from section 369, have been the first combined payment payable by the borrower after the date referred to in subsection (1)(c) above less tax at the basic rate for the year 1983-84 on so much of that combined payment as would have consisted of interest (subject to any change in the basic rate of income tax or in the rate of interest charged by the lender); and subsection (5) above shall apply in relation to any agreement as so varied.
- (8) <sup>M99</sup>A building society is by virtue of this subsection specified for the purposes of this section; and the Treasury may by order specify any other qualifying lender or class of qualifying lender for the purposes of this section.
- (9) The giving of a notice under subsection (2)(a) or (b) above does not affect the right of the qualifying lender and the qualifying borrower to vary, by agreement, the terms on which interest or capital or both is to be repaid.
- (10) In this section—

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“loan agreement” means an agreement governing the terms of payment of interest and repayment of capital of a loan the interest on which is relevant loan interest; and

“combined payment” means one of a number of regular payments which are attributable in part to repayment of capital and in part to payment of interest.

#### Textual Amendments

**F164** 1990 s.89 and Sch.14 para.6 (correction of errors)—deemed always to have had effect. Previously “(5)”.

#### Modifications etc. (not altering text)

**C48** S. 377 modified (3.5.1994) by Finance Act 1994 (c. 9), s. 81(8)

#### Marginal Citations

**M94** Source-1982 s.28(1)-(3)

**M95** Source-1982 s.28(4); 1984 s.23(2)

**M96** Source-1984 s.28(4)

**M97** Source-1982 s.28(4A); 1984 s.23(3)

**M98** Source-1982 s.28(4)

**M99** Source-1982 s.28(5)-(7)

### 378 Supplementary regulations.

<sup>M100</sup>(1) The Treasury may by regulations make provision for the application of sections 369 to 377 in relation to—

- (a) a housing association which is for the time being approved for the purposes of section 488 and which borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that association on land in the United Kingdom; and
- (b) a self-build society which is for the time being approved for the purposes of section 489 and which borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that society on land in the United Kingdom.

(2) Regulations under subsection (1) above—

- (a) may contain such modifications of the provisions of sections 369 to 377, and
- (b) may make the application of any of those provisions subject to such special conditions,

as appear to the Treasury to be appropriate.

(3) The Board may by regulations make provision—

- (a) for the purposes of any provision of sections 369 to 377 which relates to any matter or thing to be specified by or done in accordance with regulations;
- (b) for the application of those sections in relation to loan interest paid by personal representatives and trustees;
- (c) with respect to the furnishing of information by borrowers or lenders, including, in the case of lenders, the inspection of books, documents and other records on behalf of the Board;

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- (d) for, and with respect to, appeals to the General Commissioners or the Special Commissioners against the refusal of the Board to issue a notice under section 374(1)(b) or the issue of a notice under section 375(6) or (7); and
  - (e) generally for giving effect to sections 369 to 377.
- (4) In this section—
- (a) references to a self-build society are references to a self-build society within the meaning of Part I of the <sup>M101</sup>Housing Associations Act 1985 or, in Northern Ireland, Part VII of the <sup>M102</sup>Housing (Northern Ireland) Order 1981; and
  - (b) in its application to Scotland—
    - (i) “a freehold or leasehold estate” means any interest in land, and
    - (ii) any reference to a loan on the security of such an estate is a reference to a loan upon a heritable security within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

**Modifications etc. (not altering text)**

**C49** See S.I. 1983 No.368 (in Part III Vol.5)—*housing associations*.

**Marginal Citations**

**M100** Source-1982 s.29; 1984 s.56(2)

**M101** 1985 c. 69.

**M102** S.I. 1981/156 (N.I.3).

**379**

In sections 369 to 378—

- “prescribed”, <sup>F165</sup> . . . means prescribed by the Board;
- “qualifying borrower” has the meaning given by section 376(1) to (3);
- “qualifying lender” has the meaning given by section 376(4) to (6);
- “regulations”, except in sections 378(1) and (2), means regulations made by the Board under section 378;
- “relevant loan interest” has the meaning given by section 370(1).

**Textual Amendments**

**F165** S. 379: words in definition of “prescribed” repealed (3.5.1994) by Finance Act 1994 (c. 9), Sch. 26 Pt. 5(19)

**Status:**

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**Changes to legislation:**

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