



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART IX

ANNUAL PAYMENTS AND INTEREST

Annual payments

[^{F1}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) ^{F2}
 - (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) [^{F3}, 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.

[^{F4}(7) ^{F5}.....]

(8) ^{F5}.....]

Textual Amendments

- F1** Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), s. 36(1)(3)-(5)
- F2** S. 347A(2)(b) repealed (with effect in accordance with s. 41(9) of the repealing Act) by Finance Act 2000 (c. 17), s. 41(2), Sch. 40 Pt. 2(1), Note 3
- 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)
- F5** S. 347A(7)(8) repealed (with effect in accordance with s. 41(9) of the repealing Act) by Finance Act 2000 (c. 17), s. 41(2), Sch. 40 Pt. 2(1), Note 3

Modifications etc. (not altering text)

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

[^{F6}347B Qualifying maintenance payments.

- (1) [^{F7}Subject to subsection (1A) below] in this section “qualifying maintenance payment” means a periodical payment which—
- (a) is made under an order made by a court [^{F8}in a member State]], or under a written agreement the [^{F9}law applicable to] which is the law of [^{F8}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
- (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

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- (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.

[^{F10}(1A) A periodical payment is not a qualifying maintenance payment unless either of the parties to the marriage mentioned in subsection (1)(b) above was born before 6th April 1935.]

- (2) ^{F11}. . . Subject to [^{F12}subsection (3)] below, a person making a claim for the purpose shall be entitled, [^{F13}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) [^{F14}The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to] the amount [^{F15}specified in [^{F16}section 257A(5A)] for the year].

(4) ^{F17}

(5) ^{F17}

[^{F18}(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 [^{F19}subsections (2) and (3)] 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 [^{F20}10 per cent.] of the relevant amount; and
- (b) the amount which reduces his liability to nil;

^{F21}

(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*^{F22}.

(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.

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[^{F23}(8) In [^{F24}subsection (1)(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;
- (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

[^{F25}(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.]

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[^{F26}(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

- F6** Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), s. 36(1)(3)-(5)
- F7** Words in s. 347B(1) inserted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), s. 36(1)
- F8** 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.
- F9** 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
- F10** S. 347B(1A) inserted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), s. 36(2)
- F11** 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)
- F12** Words in s. 347B(2) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), s. 36(3)
- F13** 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)
- F14** 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)
- F15** 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”.
- F16** Words in s. 347B(3) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 36), s. 36(4)
- F17** S. 347B(4)(5) repealed (with effect in accordance with Sch. 20 Pt. 3(6) Note of the repealing Act) by Finance Act 1999 (c. 16), Sch. 20 Pt. 3(6)
- F18** 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)
- F19** Words in s. 347B(5A) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), s. 36(5)
- F20** 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)
- F21** 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)
- F22** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.
- F23** 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.
- F24** Words in s. 347B(8) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), s. 36(6)
- F25** 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)
- F26** 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)

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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)^{M1} 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;^{F27} . . .
 - (b)^{F27}
- 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)^{M2} This section does not apply to^{F28} . . . any payment to which section 687 applies^{F29} . . . [^{F30} or to any payment which is a qualifying donation for the purposes of section 25 of the^{M3} Finance Act 1990].

Textual Amendments

- F27** 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\(2\)](#)
- F28** Words repealed by 1988(F) Sch.14 Part IV—in respect of payments made on or after 6 April 1989.
- F29** Words in s. 348(3) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by [Finance Act 2000 \(c. 17\), Sch. 40 Pt. 2\(17\)](#), Note 1
- F30** Words in s. 348(3) inserted (with effect in accordance with s. 41(9) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 41\(3\)](#)

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*.

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Marginal Citations

- M1** Source-1970 s.52; 1971 Sch.6 20(c); 1973 s.17(1)
- M2** Source-1970 s.65(2)
- M3** 1990 c. 29.

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

(1) ^{M4}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,^{F31} . . .
- (c) ^{F31}

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 ^{F32} . . . [^{F33} or to any payment which is a qualifying donation (within the meaning of section 339) or a qualifying donation for the purposes of section 25 of the ^{M5}Finance Act 1990] .

(2) ^{M6}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 [^{F34}(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 [^{F35} (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 [^{F36}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 [^{F37}a bank in the ordinary course of its] business; or
- [^{F38}(ba) to interest paid on deposits with the National Savings Bank; or]
- (c) to any [^{F39}payment of interest on a quoted Eurobond]; or
- (d) to any payment to which section 369 or 479(1) ^{F40} applies; [^{F41}or
- ^{F42}(e)
- [^{F44}]
- ^{F43}(e)
- (f) to any payment in respect of which a liability to deduct income tax is imposed by section 480A(1); or

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- (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; ^{F45} or]]
- ^{F46}(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); ^{F47} or
- (i) in the case of a person who is authorised for the purposes of the Financial Services and Markets Act 2000 and whose business consists wholly or mainly of dealing in financial instruments as principal, to interest paid by that person in the ordinary course of his business.]

^{F48}

^{F49}(3AA) In this section “bank” has the meaning given by section 840A.]

^{F50}(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.]

^{F51}(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 ^{F52} and other than a qualifying deposit right]], and
- (b) the security was ^{F53} listed], or capable of being ^{F53} 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 ^{F39} payment of interest on a quoted Eurobond] .

^{F54}(3C) Subject to any provision to the contrary in the Income Tax Acts, where any UK public revenue dividend is paid, 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 on it for the year in which the payment is made.]

^{F55F56}(4) In ^{F57} this section]] —

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

^{F57} “ 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

^{F58} “ 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,

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- (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]
 - [^{F59}“quoted Eurobond” means any security that—
 - (i) is issued by a company,
 - (ii) is listed on a recognised stock exchange, and
 - (iii) carries a right to interest;]
 - “security” includes share;]
 - [^{F60}“UK public revenue dividend” means any income from securities which is paid out of the public revenue of the United Kingdom or Northern Ireland, but does not include interest on local authority stock.]

[^{F55}(5) For the purposes of subsection (3)(i) above, a financial instrument includes—

- (a) any money,
- (b) any shares or securities,
- (c) an option, future or contract for differences if, but only if, its underlying subject-matter is (or is primarily) a financial instrument, or financial instruments, and
- (d) an instrument the underlying subject-matter of which is (or is primarily) creditworthiness.

(6) For the purposes of subsection (5) above, the “underlying” subject-matter of an instrument the effect of which depends on an index or factor is the matter by reference to which the index or factor is determined.]

Textual Amendments

- F31** 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)**
- F32** Words in s. 349(1) repealed (with effect in accordance with s. 111(6)(b) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**, Note 1
- F33** Words in s. 349(1) inserted (with effect in accordance with s. 41(9) of the amending Act) by Finance Act 2000 (c. 17), **s. 41(4)**
- F34** 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)
- F35** Words in s. 349(2)(a) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(2)**
- F36** 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)**
- F37** 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)**
- F38** 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)**
- F39** Words in ss. 349(3)(c)(3B) substituted (with effect in accordance with s. 111(6)(b) of the amending Act) by Finance Act 2000 (c. 17), **s. 111(2)(a)**
- F40** Words
“or 479(1)”
repealed by 1990 s.132 and Sch. 19 Part. IV.
- F41** 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).

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- F42** 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**
- F43** S. 349(3)(e) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 29 para. 5(2)**
- F44** S. 349(3)(e) repealed (with effect in accordance with s. 111(6)(b) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**, Note 1
- F45** Word in s. 349(3), at the end of para. (g), inserted (27.7.1993) by 1993 c. 34, **s.59**
- F46** S. 349(3)(h) inserted (27.7.1993) by 1993 c. 34, **s. 59**
- F47** S. 349(3)(i) and preceding word inserted (with application in accordance with s. 95(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 95(2)**
- F48** *Words repealed by 1988(F) s.148 and Sch.14 Part IV for payments made on or after 6 April 1989.*
- F49** 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)**
- F50** S. 349(3AB) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 4**
- F51** S. 349(3A)(3B) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(4)**.
- F52** 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**.
- F53** 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)**
- F54** S. 349(3C) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(2)**
- F55** S. 349(5)(6) inserted (with application in accordance with s. 95(4) of the amending Act) by Finance Act 2002 (c. 23) s. 95(3)
- F56** 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).
- F57** 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)**
- F58** 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**
- F59** S. 349(4): definition of "quoted Eurobond" inserted (with effect in accordance with s. 111(6)(b) of the amending Act) by Finance Act 2000 (c. 17), **s. 111(2)(b)**
- F60** S. 349(4): definition of "UK public revenue dividend" inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(3)**

Modifications etc. (not altering text)

- C7** S. 349 excluded (3.5.1994) by Finance Act 1994 (c. 9), **s. 174**
- C8** S. 349 excluded (with effect in accordance with s. 83(3) of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 26 para. 51** (with Sch. 28)
- 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** *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).*
- C11** 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**
- C12** *See—1970(M) s.106—avoidance of agreements for payment without deduction of tax, etc. 1989 s.94 and Sch.11 para.18—deep gain securities. 1989 s.116—certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after 1 April 1989.*
- C13** S. 349(3)(b)(3AA) modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 8(8)**

Marginal Citations

- M4** Source-1970 s.53(1); 1973 s.17(1); 1971 Sch.6 21
- M5** 1990 c. 29.

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M6 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

[^{F61}349Z] 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

F61 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)

[^{F62}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 [^{F63}or a local authority] if, at the time the payment is made, the company [^{F64}or authority] 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),

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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—
- [^{F65}(a)] a payment by a partnership is treated as made by a company if any member of the partnership is a company [^{F66}, and
 - (b) a payment by a partnership is treated as made by a local authority if any member of the partnership is a local authority].]

Textual Amendments

- F62** 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)
- F63** Words in s. 349A(1) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(1)(a)(i)
- F64** Words in s. 349A(1) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(1)(a)(ii)
- F65** Words in s. 349A(6) renumbered as s. 349A(6)(a) (with application in accordance with s. 94(7) of the amending Act) by virtue of Finance Act 2002 (c. 23), s. 94(1)(b)(i)
- F66** S. 349A(6)(b) and preceding word inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(1)(b)(ii)

[^{F62}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, ^{F67} . . .
 - (b) ^{F67}
- (2) The second of those conditions is that—
- (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.

[The third of those conditions is that the payment is made to—

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- ^{F68}(3) (a) a local authority;
- (b) a health service body within the meaning of section 519A(2);
- (c) a public office or department of the Crown to which section 829(1) applies;
- (d) a charity (within the meaning of section 506(1));
- (e) a body for the time being mentioned in section 507(1) (bodies that are allowed the same exemption from tax as charities the whole income of which is applied to charitable purposes);
- (f) an Association of a description specified in section 508 (scientific research organisations);
- (g) the United Kingdom Atomic Energy Authority;
- (h) the National Radiological Protection Board;
- (i) the administrator (within the meaning of section 611AA) of a scheme entitled to exemption under section 592(2) or 608(2)(a) (exempt approved schemes and former approved superannuation funds);
- (j) the trustees of a scheme entitled to exemption under section 613(4) (Parliamentary pension funds);
- (k) the persons entitled to receive the income of a fund entitled to exemption under section 614(3) (certain colonial, etc pension funds);
- (l) the trustees or other persons having the management of a fund entitled to exemption under section 620(6) (retirement annuity trust schemes); or
- (m) a person holding investments or deposits for the purposes of a scheme entitled to exemption under section 643(2) (approved personal pension schemes).
- (4) The fourth of those conditions is that—
- (a) the person to whom the payment is made is, or is the nominee of, the plan manager of a plan,
- (b) an individual investing under the plan is entitled to exemption by virtue of regulations under section 333 (personal equity plans and individual savings accounts), and
- (c) the plan manager receives the payment in respect of investments under the plan.
- (5) The fifth of those conditions is that—
- (a) the person to whom the payment is made is a society or institution with whom tax-exempt special savings accounts (within the meaning of section 326A) may be held, and
- (b) the society or institution receives the payment in respect of investments held for the purposes of such accounts.
- (6) The sixth of those conditions is that the person beneficially entitled to the income in respect of which the payment is made is a partnership each member of which is—
- (a) a person or body mentioned in subsection (3) above, or
- (b) a person or body mentioned in subsection (7) below.
- (7) The persons and bodies referred to in subsection (6)(b) above are—
- (a) a company resident in the United Kingdom;
- (b) a company that—
- (i) is not resident in the United Kingdom,
- (ii) carries on a trade there through a branch or agency, and

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- (iii) is required to bring into account, in computing its chargeable profits (within the meaning of section 11(2)), the whole of any share of that payment that falls to it by reason of sections 114 and 115;
- (c) the European Investment Fund.
- (8) The Treasury may by order amend—
- (a) subsection (3) above;
 - (b) subsection (7) above;
- so as to add to, restrict or otherwise alter the persons and bodies falling within that subsection.]]

Textual Amendments

- F62** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 85\(1\)](#)
- F67** S. 349B(1)(b) and preceding word repealed (with effect in accordance with s. 94(7) of the repealing Act) by [Finance Act 2002 \(c. 23\), Sch. 40 Pt. 3\(14\)](#), Note
- F68** S. 349B(3)-(8) inserted (with effect in accordance with s. 94(7) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 94\(2\)](#)

[^{F62}349C] Directions disapplying section 349A(1)

- (1) The Board may give a direction to a company [^{F69}or local authority] directing that section 349A(1) is not to apply in relation to any payment that—
 - (a) is made by the company [^{F70}or authority] 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 [^{F71}none] 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.
- [^{F72}(4) In this section—
- “company” includes a partnership of which any member is a company; and
- “local authority” includes a partnership of which any member is a local authority.]]

Textual Amendments

- F62** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by [Finance Act 2001 \(c. 9\), s. 85\(1\)](#)
- F69** Words in s. 349C(1) inserted (with application in accordance with s. 94(7) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 94\(3\)\(a\)\(i\)](#)
- F70** Words in s. 349C(1) inserted (with application in accordance with s. 94(7) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 94\(3\)\(a\)\(ii\)](#)
- F71** Word in s. 349C(2) substituted (with application in accordance with s. 94(7) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 94\(3\)\(b\)](#)
- F72** S. 349C(4) substituted (with application in accordance with s. 94(7) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 94\(3\)\(c\)](#)

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[^{F62}349D Section 349A(1): consequences of reasonable but incorrect belief

(1) Where—

- (a) a payment is made by a company [^{F73}or local authority] 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 [^{F74}or authority] reasonably believes that one of the conditions specified in section 349B is satisfied,
- (c) if the company [^{F74}or authority] did not so believe, tax would be deductible from the payment under section 349, and
- (d) [^{F75}none] 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).

[^{F76}(2) In this section—

“company” includes a partnership of which any member is a company; and
“local authority” includes a partnership of which any member is a local authority.]]

Textual Amendments

- F62** 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)
- F73** Words in s. 349D(1)(a) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(4)(a)(i)
- F74** Words in s. 349D(1)(b)(c) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(4)(a)(ii)
- F75** Word in s. 349D(1)(d) substituted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(4)(a)(iii)
- F76** S. 349D(2) substituted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), s. 94(4)(b)

[^{F77}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.

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- (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.
- (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

F77 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) ^{M7}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 [^{F78}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.

[^{F79}(1A) In subsection (1) above “the applicable rate” means the rate which is applicable to the payment under section 4 [^{F80}(or, where the payment is one to which subsection (1) of section 349E applies, the rate referred to in that subsection)].]

- (2) ^{M8}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) ^{M9}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.

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- (4) ^{M10}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) ^{M11}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—
- (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

- F78** 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**
- F79** 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**
- F80** Words in s. 350(1A) inserted (with application in accordance with s. 96(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 96(2)**

Modifications etc. (not altering text)

- C14** See 1970(M) s.98—*penalties for non-compliance.*
- C15** S. 350(1) excluded (22.3.1992) by S.I. 1992/569, **reg. 13(2)(d).**
- C16** See 1970(M) Parts IV-VI—*principal provisions as to assessment, appeals and collection.*
- C17** See 1988(F) s.130(7)(b)—*payment of outstanding tax by migrating companies.*
- C18** S. 350(4) amended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(1)(2)**
- C19** S. 350(4) extended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(3)**
- C20** (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 350 to go to Special Commissioners.*
- C21** See 1989 s.94 and Sch.11 para.18—*deep gain securities.*

Marginal Citations

- M7** Source-1970 ss.53(2), 54(3); 1971 Sch.6 21
- M8** Source-1970 s.56
- M9** Source-1970 s.53(3), 54(3)

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M10 Source-1970 s.53(4), 54(3); 1972 s.104, 108(1), Sch.24 16

M11 Source-1972 s.108(2)-(4)

[^{F81}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—

- (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

F81 S. 350A inserted (with application in accordance with s. 112(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 112(4)

^{F82}351 Small maintenance payments.

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Textual Amendments

F82 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.

^{M12}(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.

Status: Point in time view as at 24/07/2002. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Annual payments is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

C22 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**.

C23 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

M12 Source-1970 s.55; 1973 s.17(4), 1986 s.29(3)

Status:

Point in time view as at 24/07/2002. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:

Income and Corporation Taxes Act 1988, Cross Heading: Annual payments is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.