



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IX **U.K.**

#### ANNUAL PAYMENTS AND INTEREST

##### *Relief for payments of interest (excluding MIRAS)*

#### **[<sup>F1</sup>360A Meaning of “material interest” in section 360. **U.K.****

- (1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest [<sup>F2</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 participators.]
- (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>F3</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.

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*Status: Point in time view as at 14/10/1996. This version of this provision has been superseded.*

**Changes to legislation:** *Income and Corporation Taxes Act 1988, Section 360A is up to date with all changes known to be in force on or before 16 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)*

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- (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.
- (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.

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- (10) In this section [F4“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

- F1** S. 360A inserted by [Finance Act 1989 \(c. 26\), s. 48\(2\)](#)
- F2** 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, 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.”
- F3** 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](#)
- F4** 1989 s.107 and Sch.12 para.13(3) in relation to accounting periods beginning after 31 March 1989.

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

- C1** 27 July 1989.
- C2** 27 July 1989.

**Status:**

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