



# Finance Act 1988

## 1988 CHAPTER 39

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

#### *Annual payments*

#### **36 Annual payments.**

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

**“347A General rule.**

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

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- (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 to tax under Case III had it arisen in the United Kingdom; and for this purpose “maintenance payment” means a periodical payment (not being an instalment of a lump sum) which satisfies the conditions set out in paragraphs (a) and (b) of section 347B(5).
- (5) No deduction shall be made under section 65(1)(b) on account of an annuity or other annual payment which would not have been within the charge to tax under Case III of Schedule D if it had arisen in the United Kingdom.
- (6) References in subsection (2) above to an individual include references to a Scottish partnership in which at least one partner is an individual.

#### **347B Qualifying maintenance payments.**

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

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amount of the difference between the higher (married person's) relief and the lower (single person's) relief under subsection (1) of section 257 as it applies for the year to a person not falling within subsection (2) or (3) of that section.

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

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

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

**“51A General rule.**

- (1) A payment to which this section applies shall not be a charge on the income of the person liable to make it, and accordingly—
- (a) his income shall be computed without any deduction being made on account of the payment, and
  - (b) the payment shall not form part of the income of the person to whom it is made or of any other person.

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

### **51B Qualifying maintenance payments.**

- (1) In this section “qualifying maintenance payment” means a periodical payment which—
- (a) is made under an order made by a court in the United Kingdom, or under a written agreement the proper law of which is the law of a part of the United Kingdom,
  - (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
    - (i) to or for the benefit of the other party and for the maintenance of the other party, or
    - (ii) to the other party for the maintenance by the other party of any child of the family,
  - (c) is due at a time when—
    - (i) the two parties are not a married couple living together, and
    - (ii) the party to whom or for whose benefit the payment is made has not remarried, and
  - (d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section.

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- (2) Notwithstanding section 51A(1)(a) above but subject to subsections (3) and (4) below, a person making a claim for the purpose shall be entitled, in computing his total income for the year 1987-88, to deduct an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.
- (3) The amount which may be deducted under this section by a person in computing his total income for the year 1987-88 shall not exceed £1,370.
- (4) Where qualifying maintenance payments falling due in the year 1987-88 are made by a person who also makes other maintenance payments attracting relief for that year, subsection (3) above shall apply as if the limit imposed by it were reduced by an amount equal to the aggregate amount of those other payments.
- (5) The reference in subsection (4) above to other maintenance payments attracting relief for the year 1987-88 is a reference to periodical payments which—
- (a) are made under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement, and
  - (b) are made by a person—
    - (i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or
    - (ii) to any person under 21 years of age for his own benefit, maintenance or education, or
    - (iii) to any person for the benefit, maintenance or education of a person under 21 years of age,and in respect of which the person making them is entitled otherwise than under this section to make a deduction in computing his income for the year.
- (6) The reference in subsection (1) above to a married couple living together shall be construed in accordance with section 42(1) above, but section 42(2) above shall not apply for the purposes of this section.
- (7) In this section—
- “child of the family”, in relation to the parties to a marriage, means a person under 21 years of age—
- (a) who is a child of both those parties, or
  - (b) who (not being a person who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family;
- “periodical payment” does not include an instalment of a lump sum.”
- (3) This section shall have effect in relation to any payment falling due on or after 15th March 1988 unless it is made in pursuance of an existing obligation.
- (4) In subsection (3) above “existing obligation” means a binding obligation—
- (a) under an order made by a court (whether in the United Kingdom or elsewhere) before 15th March 1988, or before the end of June 1988 on an application made on or before 15th March 1988;

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- (b) under a deed executed or written agreement made before 15th March 1988 and received by an inspector before the end of June 1988;
- (c) under an oral agreement made before 15th March 1988, written particulars of which have been received by an inspector before the end of June 1988; or
- (d) under an order made by a court (whether in the United Kingdom or elsewhere) on or after 15th March 1988, or under a written agreement made on or after that date, where the order or agreement replaces, varies or supplements an order or agreement within this subsection;

but subject to subsection (5) below.

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

[<sup>F1</sup>(5A) The reference in subsection (4)(d) above to an order made by a court, and the reference in subsection (5)(b) above to an order, in each case includes a reference to a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.]

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

#### Textual Amendments

**F1** S. 36(5A) inserted (6.4.1993) by Finance (No. 2) Act 1992 (c. 48), s. 62(2)(6); S.I. 1992/2642, art.2.

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

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

### 37 Maintenance payments under existing obligations:

- (1) This section applies to any annual payment due in the <sup>M1</sup>year 1988–89 which—
  - (a) is made in pursuance of an existing obligation under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement,
  - (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
    - (i) to or for the benefit of the other party and for the maintenance of the other party, or

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

**Marginal Citations**

**M1** 1988–89.

**38 Maintenance payments under existing obligations:**

- (1) This section applies to any annual payment due in the <sup>M2</sup>year 1989-90 or any subsequent year of assessment which—
- (a) is made in pursuance of an existing obligation under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement,
  - (b) is made by an individual—
    - (i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or
    - (ii) to any person under 21 years of age for his own benefit, maintenance or education, or
    - (iii) to any person for the benefit, maintenance or education of a person under 21 years of age, and
  - (c) is (apart from this section) within the charge to tax under Case III or Case V of Schedule D, and is not by virtue of Part XV of the Taxes Act 1988 treated for any purpose as the income of the person making it.

(2) A payment to which this section applies shall not be a charge on the income of the person liable to make it <sup>F2</sup> . . .

<sup>F3</sup>(3) . . . . .

<sup>F3</sup>(3A) . . . . .

<sup>F3</sup>(4) . . . . .

<sup>F3</sup>(5) . . . . .

<sup>F3</sup>(6) . . . . .

(7) A payment to which this section applies shall be made without deduction of income tax.

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<sup>F3</sup>(8) .....

[<sup>F4</sup>(8A) The reference in subsection (1)(a) above to an order made by a court includes a reference to a maintenance assessment made under the Child Support Act 1991 or under the Child Support (Northern Ireland) Order 1991.]

(9) No deduction shall be made under section 65(1)(b) [<sup>F5</sup>, 68(1)(b) or 192(3)] of the Taxes Act 1988 on account of a payment to which this section applies.

**Textual Amendments**

- F2** Words in s. 38(2) repealed (27.7.1999 with effect in relation to any payment falling due on or after 6.4.2000) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, note
- F3** S. 38(3)-(6)(8) repealed (27.7.1999 with effect in relation to any payment falling due on or after 6.4.2000) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, note
- F4** S. 38(8A) inserted (6.4.1993) by Finance (No. 2) Act 1992 (c. 48), **s. 62(3)(6)**; S.I. 1992/2642, **art. 2.**
- F5** Words in s. 38(9) inserted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 60.**

**Marginal Citations**

- M2** 1989–90 onwards.

<sup>F6</sup>**39** .....

**Textual Amendments**

- F6** S. 39 repealed (27.7.1999 with effect in relation to any payment falling due on or after 6.4.2000) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, note

**40 Provisions supplementary to sections 37 to 39.**

(1) In sections 37 to 39 above—

<sup>F7</sup> . . .

- (a) who is a child of both those parties, or
- (b) who (not being a person who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family;

“existing obligation” has the same meaning as in section 36(3) above.

<sup>F8</sup>(2) .....

[<sup>F9</sup>(3) The references in sections 37 and 38 above to a married couple living together shall be construed in accordance with section 282(1) of the Taxes Act 1988, but section 282(2) shall not apply for the purposes of those sections.]



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**Textual Amendments**

- F7** S. 40(1): Definition of “child of the family” repealed (27.7.1999 with effect in relation to any payment falling due on or after 6.4.2000) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, note
- F8** S. 40(2) repealed (27.7.1999 with effect in relation to any payment falling due on or after 6.4.2000) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, note
- F9** S. 40(3) repealed (for 1990-91 and subsequent years of assessment) by Finance Act 1988 (c. 39, SIF 63:2), s. 148, **Sch. 14 Pt. VIII**, Note 6.

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**Changes to legislation:**

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