



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 8

#### OTHER RELIEFS

#### CHAPTER 1

##### INTEREST PAYMENTS

*The relief: introduction*

### **383 Relief for interest payments**

- (1) A person who pays interest in a tax year is entitled to relief for the tax year for the interest if—
  - (a) the loan on which the interest is payable is a loan to which a provision specified in subsection (2) applies,
  - (b) the interest is eligible for relief in accordance with this Chapter, and
  - (c) the person makes a claim.
- (2) The provisions are—
  - (a) section 388 (loan to buy plant or machinery for partnership use),
  - (b) section 390 (loan to buy plant or machinery for employment use),
  - (c) section 392 (loan to buy interest in close company),
  - (d) section 396 (loan to buy interest in employee-controlled company),
  - (e) section 398 (loan to invest in partnership),
  - (f) section 401 (loan to invest in co-operative), and
  - (g) section 403 (loan to pay inheritance tax).
- (3) The amount of the relief given under subsection (1) is equal to the amount of the interest eligible for relief.

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- (4) The relief is given by deducting that amount in calculating the person's net income for the tax year in which the interest is paid (see Step 2 of the calculation in section 23).
- (5) This section is subject to—
- (a) section 384 (general restrictions on relief under this Chapter),
  - (b) section 385 (general provisions about loans),
  - (c) section 386 (loans partly meeting requirements),
  - (d) section 387 (exclusion of double relief etc), and
  - (e) section 405 (carry back and forward of relief for interest on loans within section 403).
- (6) See also [<sup>F1</sup>section 564O] (under which this Chapter applies as if arrangements [<sup>F2</sup>to which section 564C applies] were loans and alternative finance return were interest).

#### Textual Amendments

- F1** Words in s. 383(6) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 221\(a\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F2** Words in s. 383(6) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 221\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))

### 384 General restrictions on relief under Chapter

- (1) Relief is not to be given under this Chapter for interest on a debt incurred—
- (a) by overdrawing an account, or
  - (b) by debiting the account of any person as the holder of a credit card or under similar arrangements.
- (2) If [<sup>F3</sup>the interest paid on a loan in a tax year exceeds a reasonable commercial amount of interest on the loan for the relevant period], relief is not to be given under this Chapter for so much of the interest as represents the excess.
- [<sup>F4</sup>(3) The relevant period is the tax year or, if the loan exists for part only of the tax year, the part of the tax year for which the loan exists.
- (4) A reasonable commercial amount of interest on the loan for the relevant period is an amount which, together with any interest paid before that period (other than unrelieved interest), represents a reasonable commercial rate of interest on the loan from the date it was made to the end of that period.
- (5) “Unrelieved interest” means interest which because of subsection (2) is not eligible for relief under this Chapter.]

#### Textual Amendments

- F3** Words in s. 384(2) substituted (21.7.2008 with effect in accordance with Sch. 22 para. 21(4) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 22 para. 21\(2\)](#)
- F4** S. 384(3)-(5) inserted (21.7.2008 with effect in accordance with Sch. 22 para. 21(4) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 22 para. 21\(3\)](#)

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### **[<sup>F5</sup>384A Restriction on relief where arrangements minimise risk to borrower**

- (1) Relief is not to be given under this Chapter for interest paid by a person on a loan if—
  - (a) the loan is made to the person (“the borrower”) as part of arrangements which appear very likely to produce a post-tax advantage, and
  - (b) the arrangements seem to have been designed to reduce any income tax or capital gains tax to which the borrower (or any person whose circumstances are like those of the borrower) would be liable apart from the arrangements.
- (2) Arrangements “appear very likely” to produce a post-tax advantage if (and only if) it would be reasonable to assume from either or both of—
  - (a) the likely effect of the arrangements, and
  - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected,that there is no risk, or only an insignificant risk, that they will not produce a post-tax advantage.
- (3) “Produce a post-tax advantage” means give rise to a sum or sums—
  - (a) payable to the borrower or a person connected with the borrower, or
  - (b) payable to any other person for the benefit of the borrower or a person connected with the borrower,of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is equal to or greater than the relevant amount.
- (4) “The relevant amount” is the aggregate of—
  - (a) the amount required to meet the borrower's obligations in respect of the loan, and
  - (b) any amount which is used by the borrower in the same way as that which entitles the borrower to relief under this Chapter in respect of the loan and is not money lent to the borrower under any loan.
- (5) If, with a view to securing that the condition in subsection (1)(a) is not met, the arrangements make provision for securing that, in all or any circumstances in which they do not produce a post-tax advantage, they will produce a broadly compensatory amount, the arrangements are to be regarded for the purposes of subsection (2) as making provision for securing the production of a post-tax advantage in those circumstances.
- (6) “Produce a broadly compensatory amount” means give rise to a sum or sums payable as mentioned in subsection (3) of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is not significantly less than the relevant amount.
- (7) For the purposes of subsections (3) and (6) causing the value of an asset to be obtainable, directly or indirectly, by a person is to be treated as equivalent to giving rise to a sum payable to the person of an amount equal to that value.
- (8) To make the appropriate tax adjustments for the purpose of subsection (3) or (6)—
  - (a) if A exceeds B, deduct the amount of the excess from the amount (or aggregate amount), and
  - (b) if B exceeds A, add the amount of the excess to the amount (or aggregate amount).
- (9) For the purposes of subsection (8)—

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A is the amount of any income tax, any capital gains tax and any tax under the law of a territory outside the United Kingdom to which the borrower is liable in consequence of the arrangements, and

B is the amount by which the borrower's liability to income tax and capital gains tax is (or apart from subsection (1) would be) reduced in consequence of the arrangements.

- (10) Arrangements seem to have been designed to reduce any income tax or capital gains tax to which the borrower (or any person whose circumstances are like those of the borrower) would be liable apart from the arrangements if (and only if) it would be reasonable to assume from either or both of—
- (a) the likely effect of the arrangements, and
  - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected,
- that the arrangements, or any parts of the arrangements, are designed to do so.
- (11) In this section “arrangements” means arrangements consisting of any number of agreements, understandings, schemes, transactions or other arrangements (whether or not legally enforceable); but in subsections (1)(a), (2), (5) and (9) the references to arrangements also include any related transactions.
- (12) In subsection (11) “related transactions” means transactions in the case of which it is reasonable to assume from either or both of—
- (a) the likely effect of the transactions, and
  - (b) the circumstances in which the transactions are entered into or effected,
- that the transactions would not have been entered into or effected independently of the arrangements.
- (13) Transactions are not prevented from being related transactions just because the transactions—
- (a) are not between the same parties, or
  - (b) are not between parties to the arrangements.]

#### **Textual Amendments**

**F5** S. 384A inserted (with effect in accordance with Sch. 30 para. 1(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 1\(1\)](#)

### **385 General provisions about loans**

- (1) References in this Chapter to a loan being used or used in any way—
- (a) are references to the money lent being applied or, as the case may be, applied in that way, and
  - (b) except in section 403 include references to a loan being used to meet expenditure already incurred or, as the case may be, already incurred on such a use.
- (2) Sections 392, 396, 398, 401 and 403 apply to a loan only if it is made—
- (a) in connection with the use of money, and
  - (b) on the occasion of its use or within what is in the circumstances a reasonable time from its use.

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- (3) Those sections apply to a loan only if the loan is used as mentioned in those sections without first having been used for another purpose.
- (4) For the purposes of this Chapter the giving of credit for any money due from the purchaser under a sale is treated as the making of a loan used by the purchaser in making the purchase.

### **386 Loans partly meeting requirements**

- (1) If, at the time a loan (“the mixed loan”) is used, only part of the mixed loan is a loan to which any of the provisions specified in section 383(2) apply, for the purposes of this Chapter that part (“the qualifying part”) is treated as a loan to which the provision in question applies.
- (2) Accordingly, the corresponding proportion of the interest on the mixed loan is eligible for relief.
- (3) If a mixed loan is partly repaid, for the purposes of this Chapter the corresponding proportion of the repayment is treated as repaying the qualifying part (but see section 406(5)).
- (4) In this section “the corresponding proportion” means the proportion that the qualifying part bears to the whole of the mixed loan at the time the mixed loan is used.

### **387 Exclusion of double relief etc**

- (1) Interest for which relief is given under this Chapter is not allowable as a deduction for any other income tax purposes.
- (2) No relief is given under this Chapter for any tax year for the payment of any interest taken into account in calculating the profits of—
  - (a) any trade, profession or vocation,
  - (b) any UK property business, or
  - (c) any overseas property business.
- (3) If interest is so taken into account, no relief is given under this Chapter for any relevant tax year for other interest on the same debt or liability.
- (4) A tax year is a relevant one if the interest has been taken into account in calculating the profits of the trade, profession, vocation or business of the tax year.
- (5) For the purposes of subsection (3) all interest which—
  - (a) is capable of being taken into account in calculating the profits of a trade, profession, vocation or business, and
  - (b) is payable by the same person on money advanced to the person on current account,is treated as interest on the same debt.
- (6) It does not matter whether the money is advanced—
  - (a) on one or more accounts, or
  - (b) by the same or separate banks or other persons.

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- (7) The reference in subsections (2) to (4) to interest taken into account is a reference to interest allowed as a deduction in an assessment which can no longer be varied (whether on appeal or otherwise).

*Loans for plant or machinery*

**388 Loan to buy plant or machinery for partnership use**

- (1) This section applies to a loan that is used for capital expenditure on the provision of plant or machinery to which subsection (2) applies.
- (2) This subsection applies to plant or machinery if—
- (a) it is in use for the purposes of a trade, profession or ordinary property business carried on by a partnership, and
  - (b) the partnership is entitled to a capital allowance or liable to a balancing charge in respect of it under section 264 of CAA 2001 (partnership using property of a partner) for the period of account in which the interest is paid.
- (3) A partnership is treated as entitled to a capital allowance or liable to a balancing charge in respect of plant or machinery for a period of account (“the later period”) for the purposes of subsection (2)(b) if—
- (a) it has been so entitled or liable for a previous period of account, and
  - (b) no disposal value has been brought into account in respect of it in the later period or any earlier period of account.
- (4) In this section and sections 389 and 390—
- “capital expenditure” has the meaning given in section 4 of CAA 2001,
- “period of account” has the same meaning as in that Act (see section 6(2) to (6) of that Act), and
- “ordinary property business” has the same meaning as in Part 2 of that Act (see section 16 of that Act).

**389 Eligibility requirements for interest on loans within section 388**

- (1) Interest on a loan within section 388(1) is eligible for relief if conditions A and B are met.
- (2) Condition A is that the interest is paid by an individual who is a member of the partnership referred to in section 388(2).
- (3) Condition B is that the interest falls due and payable not later than 3 years after the end of the period of account in which the loan was made.
- (4) If the machinery or plant is in use partly for the purposes of the trade, profession or ordinary property business carried on by the partnership referred to in section 388(2) (“trade purposes”) and partly for other purposes, only part of the interest is eligible for relief.
- (5) That part is such part as it is just and reasonable to attribute to trade purposes, having regard to all the relevant circumstances and, in particular, to the extent of the use for other purposes.

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### **390 Loan to buy plant or machinery for employment use**

- (1) This section applies to a loan that is used for capital expenditure on the provision of plant or machinery to which subsection (2) applies.
- (2) This subsection applies to plant or machinery if—
  - (a) it is in use for the purposes of an office or employment held by an individual in the tax year,
  - (b) the plant or machinery belongs to the individual, and
  - (c) the individual is entitled to a capital allowance or liable to a balancing charge in respect of it under Part 2 of CAA 2001 for the tax year.
- (3) An individual is treated as entitled to a capital allowance or liable to a balancing charge in respect of plant or machinery for a tax year (“the later year”) for the purposes of subsection (2)(c) if—
  - (a) the individual has been so entitled or liable for a previous tax year, and
  - (b) no disposal value has been brought into account in respect of it in the later year or any earlier year.
- (4) An individual is also treated as so entitled or liable for the purposes of this section if the individual would be so entitled or liable but for a contribution made by the individual's employer.

### **391 Eligibility requirements for interest on loans within section 390**

- (1) Interest on a loan within section 390(1) is eligible for relief if conditions A and B are met.
- (2) Condition A is that the interest is paid by the individual referred to in section 390(2).
- (3) Condition B is that the interest falls due and payable not later than 3 years after the end of the tax year in which the loan was made.
- (4) If the machinery or plant is in use partly for the purposes of the office or employment referred to in section 390(2) (“employment purposes”) and partly for other purposes, only part of the interest is eligible for relief.
- (5) That part is such part as it is just and reasonable to attribute to employment purposes having regard to all the relevant circumstances and, in particular, to the extent of the use for other purposes.

#### *Loans for interests in close companies*

### **392 Loan to buy interest in close company**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
  - (a) acquiring any part of the ordinary share capital of a close company that is not a close investment-holding company,
  - (b) lending to such a company money which is used wholly and exclusively—
    - (i) for the purposes of the business of the company, or

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- (ii) for the purposes of the business of any associated company of the company which is also a close company that is not a close investment-holding company, or
  - (c) repaying another loan to which this section applies.
- (3) Subsection (2)(a) does not apply if at any time the individual by whom the shares are acquired or that individual's spouse or civil partner—
- (a) makes a claim for relief in respect of them under Part 5 of this Act or, in the case of shares issued before 6 April 2007, Chapter 3 of Part 7 of ICTA (enterprise investment scheme), or
  - (b) makes a claim in respect of them under Schedule 5B to TCGA 1992 (enterprise investment scheme: reinvestment).
- (4) In this section and section 393—
- “close investment-holding company” [<sup>F6</sup>is to be read in accordance with section 34 of CTA 2010], and
  - “associated company” has the meaning given by [<sup>F7</sup>section 449 of CTA 2010].
- (5) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

#### **Textual Amendments**

- F6** Words in s. 392(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 521\(a\)](#) (with [Sch. 2](#))
- F7** Words in s. 392(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 521\(b\)](#) (with [Sch. 2](#))

### **393 Eligibility requirements for interest on loans within section 392**

- (1) Interest on a loan within section 392(1) to an individual is eligible for relief only if—
- (a) when the interest is paid the company is not a close investment-holding company, and
  - (b) the capital recovery condition and either the full-time working conditions or the material interest conditions are met.
- (2) The capital recovery condition is that in the period from the use of the loan to the payment of the interest the individual has not recovered any capital from the company, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (3) The full-time working conditions are that—
- (a) when the interest is paid the individual holds part of the ordinary share capital of the company, and
  - (b) in the period from the use of the loan to the payment of the interest the greater part of the individual's time has been spent in the actual management or conduct of the company or of an associated company of the company.
- (4) The material interest conditions are that—
- (a) when the interest is paid the individual has a material interest in the company (see section 394), and



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- (b) if the company exists wholly or mainly for the purpose of holding investments or other property, either—
  - (i) the condition in subsection (3)(b) is met, or
  - (ii) no property held by the company is used as a residence by the individual.

### **394 Meaning of “material interest” in section 393**

- (1) For the purposes of section 393(4)(a) an individual has a material interest in a company if a relevant person meets condition A or B.
- (2) In this section “relevant person” means—
  - (a) the individual, either alone or with one or more associates (see section 395), or
  - (b) any associate of the individual with or without such other associates.
- (3) Condition A is that the relevant person is the beneficial owner of, or able directly or indirectly to control, more than 5% of the ordinary share capital of the company.
- (4) Condition B is that the relevant person 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% of the assets which would then be available for distribution among the participators.
- (5) In this section—
  - “control” [<sup>F8</sup>is to be read in accordance with sections 450 and 451 of CTA 2010], and
  - “participator” has the meaning given by [<sup>F9</sup>section 454 of CTA 2010].

#### **Textual Amendments**

- F8** Words in s. 394(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 522\(a\)](#) (with [Sch. 2](#))
- F9** Words in s. 394(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 522\(b\)](#) (with [Sch. 2](#))

### **395 Meaning of “associate” in section 394**

- (1) For the purposes of determining under section 394 whether an individual has a material interest in a company, in that section “associate”, in relation to that individual and company, means—
  - (a) a relative or partner of the individual,
  - (b) the trustees of a settlement in relation to which—
    - (i) the individual is a settlor, or
    - (ii) a relative of the individual (living or dead) is or was a settlor,
  - (c) if the individual is interested in any shares or obligations of the company which are subject to a trust, the trustees of the settlement, and
  - (d) if the individual is interested in any shares or obligations of the company which are part of the estate of a deceased person, the personal representatives.
- (2) But, despite subsection (1)(c), the trustees of an employee benefit trust are not regarded for the purposes of section 394 as the associates of an individual merely because the

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individual has an interest in shares or obligations of the company as a beneficiary of the trust, unless subsection (3) applies.

- (3) This subsection applies if at any time after 26 July 1989 the individual, alone or with associates, or an associate of the individual, alone or with other such associates—
- (a) has been the beneficial owner of more than 5% of the ordinary share capital of the company, or
  - (b) has been able directly or indirectly to control more than 5% of that share capital.
- (4) In subsection (3) “associate” has the meaning given by section 549(4) of ITEPA 2003.
- (5) Sections 552 to 554 of ITEPA 2003 (attribution of interests in company) apply for the purposes of subsection (3) in relation to the individual as they apply for the purposes of the provisions listed in section 549(2) of that Act in relation to an employee.
- (6) In this section—
- “control” [F10] is to be read in accordance with sections 450 and 451 of CTA 2010],
- “employee benefit trust” has the meaning given by section 550 of ITEPA 2003 except that the reference in section 550(3) of that Act to 13 March 1989 is to be read as a reference to 26 July 1989, and
- “relative” means spouse or civil partner, ancestor or lineal descendant or brother or sister.

#### **Textual Amendments**

- F10** Words in s. 395(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 523](#) (with [Sch. 2](#))

### *Loans for interests in employee-controlled companies*

#### **396 Loan to buy interest in employee-controlled company**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
- [F11](a) acquiring part of the ordinary share capital of a company that first becomes an employee-controlled company—
    - (i) after the date of acquisition, or
    - (ii) not earlier than 12 months before that date, and]
  - (b) repaying another loan to which this section applies.
- (3) For the purposes of this section and section 397, a company is employee-controlled at any time when—
- (a) more than 50% of the issued ordinary share capital of the company is owned beneficially by persons who are full-time employees of the company, and
  - (b) more than 50% of the voting power in the company is so owned.
- (4) If an individual owns beneficially more than 10% of the issued ordinary share capital of, or voting power in, a company, for the purposes of subsection (3) the excess

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is treated as being owned by an individual who is not a full-time employee of the company.

- (5) In this section and section 397 “full-time employee”, in relation to a company, means an individual the greater part of whose time is spent working as an employee or director of the company or of a 51% subsidiary of the company.
- (6) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

#### Textual Amendments

- F11** S. 396(2)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\)](#), arts. 1(1), **3(2)**

### **397 Eligibility requirements for interest on loans within section 396**

- (1) Interest on a loan within section 396 to an individual is eligible for relief only if conditions A to D are met.
- (2) Condition A is that 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 (“the payment date”)—
  - (a) an unquoted company that is UK resident and is not resident outside the United Kingdom, and
  - (b) a trading company or the holding company of a trading group.
- (3) Condition B is that during the tax year in which the interest is paid the company either—
  - (a) first becomes an employee-controlled company, or
  - (b) is such a company throughout a period of at least 9 months.
- (4) Condition C is that—
  - (a) the individual is a full-time employee of the company throughout the period beginning with the date on which the loan is used (“the use date”) and ending with the payment date, or
  - (b) the individual ceased to be such an employee not more than 12 months before the payment date and was such an employee throughout the period beginning with the use date and ending with the date the individual ceased to be such an employee.
- (5) Condition D is that in the period from the use of the loan to the payment of the interest the individual has not recovered any capital from the company, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (6) In this section—

“holding company” means a company whose business (ignoring 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% subsidiaries,

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades,

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“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 (taking a group to consist of a company with one or more 75% subsidiaries and those subsidiaries), and

“unquoted company” means a company none of whose shares is [<sup>F12</sup>included in the official UK list ].

#### **Textual Amendments**

**F12** Words in s. 397(6) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(9\)](#)

### *Loans for investing in partnerships*

#### **398 Loan to invest in partnership**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
  - (a) purchasing a share in a partnership,
  - (b) contributing money to a partnership, by way of capital or premium, that is used wholly for the purposes of the trade or profession carried on by the partnership,
  - (c) advancing money to a partnership that is so used, and
  - (d) repaying another loan to which this section applies.
- (3) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

#### **399 Eligibility requirements for interest on loans within section 398**

- (1) Interest on a loan within section 398 to an individual is eligible for relief only if conditions A and B are met.
- (2) Condition A is that throughout the period from the use of the loan until the interest is paid the individual has been a member of the partnership otherwise than—
  - (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (c. 24), or
  - (b) as a member of an investment LLP.
- (3) Condition B is that in that period the individual has not recovered any capital from the partnership, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (4) If section 400 (film partnerships) applies in a tax year, only 40% of the interest that would otherwise be eligible for relief for that year is eligible.
- (5) For the purposes of subsection (2) an individual who is not a member of a partnership is treated as such a member if—
  - (a) the partnership carries on a profession,
  - (b) the individual is employed by the partnership in a senior capacity, and

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- (c) the individual is allowed—
  - (i) to act independently in dealing with clients of the partnership, and
  - (ii) to act generally in such a way as to be indistinguishable from the partners in relations with those clients.
- (6) For the purposes of subsection (2) “investment LLP” means a limited liability partnership—
  - (a) whose business consists wholly or mainly of the making of investments, and
  - (b) the principal part of whose income is derived from investments,and whether a limited liability partnership is an investment LLP is determined for each period of account of the partnership.

#### **400 Film partnerships**

- (1) This section applies in a tax year if—
  - (a) the partnership (“the film partnership”) carries on a trade,
  - (b) the profits or losses of the trade are calculated in accordance with Chapter 9 of Part 2 of ITTOIA 2005 (films etc),
  - (c) the loan is secured on an asset or activity of another partnership (“the investment partnership”),
  - (d) the individual to whom the loan is made (“A”) is or has been a member of the investment partnership, and
  - (e) at any time in the year the proportion of the profits of the investment partnership to which A is entitled is less than the proportion of that partnership's capital contributed by A at that time.
- (2) For the purposes of subsection (1)(c), a loan is secured on an asset or activity of a partnership if there is an arrangement—
  - (a) under which such an asset may be used or relied upon wholly or partly to guarantee repayment of any part of the loan, or
  - (b) because of which any part of the loan is expected to be repaid directly or indirectly out of assets held by or income accruing to the partnership.
- (3) In subsection (1)(e)—
  - “profits” excludes any amount that would not be taken into account as, or for the purposes of calculating, income for income tax purposes, and
  - “partnership's capital” means—
    - (a) anything that is, or in accordance with generally accepted accounting practice would be, accounted for as partners' capital or partners' equity, and
    - (b) amounts lent to the partnership by partners or persons connected with partners.
- (4) So far as the investment partnership's capital includes at any time any of the following amounts, they are treated as amounts contributed by A—
  - (a) any amount A paid to acquire any interest in the partnership, so far as A retains the interest at that time,
  - (b) any amount made available by A directly or indirectly to another person, so far as that person retains any interest in the partnership at that time,
  - (c) any amount A lent to the partnership, so far as it has not been repaid at that time,

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- (d) any amount A made available directly or indirectly to another person, so far as any amount that person lent to the partnership has not been repaid at that time, and
  - (e) an amount made available in any other way prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (5) Regulations under subsection (4)(e)—
- (a) may make provision having retrospective effect,
  - (b) may make provision generally or only in relation to specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) may make transitional, consequential or incidental provision, and
  - (e) may be made only if a draft of them has been laid before and approved by a resolution of the House of Commons.
- (6) In this section a reference to A includes a reference to a person connected with A.
- (7) Section 993 (meaning of “connected” persons) applies for the purposes of this section with the omission of subsections (3) to (7).

#### *Loans for investing in co-operatives*

### **401 Loan to invest in co-operative**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
- (a) acquiring shares in a body which is a co-operative,
  - (b) 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, and
  - (c) repaying another loan to which this section applies.
- (3) In this Chapter—
- “co-operative” means a common ownership enterprise or a co-operative enterprise as defined in section 2 of the Industrial Common Ownership Act 1976 (c. 78), and
- “subsidiary”, in relation to a co-operative, has the same meaning as for the purposes of section 2 of that Act.

### **402 Eligibility requirements for interest on loans within section 401**

- (1) Interest on a loan within section 401 to an individual is eligible for relief only if conditions A to C are met.
- (2) Condition A is that when the interest is paid the body continues to be a co-operative.
- (3) Condition B is that in the period from the use of the loan to the payment of the interest the greater part of the individual's time has been spent working as an employee of the body or of a subsidiary of the body.

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- (4) Condition C is that in that period the individual has not recovered any capital from the body, apart from any taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).

#### *Loans for paying inheritance tax*

### **403 Loan to pay inheritance tax**

- (1) This section applies to a loan to the personal representatives of a deceased person if the loan is used—
- (a) in paying inheritance tax that meets the condition specified in subsection (2), or
  - (b) in repaying another loan to which this section applies.
- (2) The condition is that the personal representatives are obliged to pay the tax under section 226(2) of IHTA 1984 (obligation of personal representatives to pay tax on delivery of their account).
- (3) A written statement appearing to be from an officer of Revenue and Customs is sufficient evidence—
- (a) of the amount of inheritance tax that meets the condition specified in subsection (2), and
  - (b) of any statements relevant to its calculation.
- (4) In this section references to inheritance tax include interest payable on that tax.

### **404 Eligibility requirements for interest on loans within section 403**

Interest on a loan within section 403(1) is eligible for relief only so far as it is paid in respect of a period ending within 12 months from the making of the loan used as mentioned in section 403(1)(a).

### **405 Carry back and forward of relief for interest on loans within section 403**

- (1) This section applies if relief for any interest on a loan within section 403(1) that is eligible for relief cannot be given for the tax year in which the interest is paid because there is not enough income in that year.
- (2) The person paying the interest is entitled to relief for that interest—
- (a) for the preceding tax year, or
  - (b) if there is not enough income in that year, for the tax year preceding it, and so on.
- (3) If relief cannot be given under subsection (2), it may instead be given—
- (a) for the tax year following that in which the interest is paid, or
  - (b) if there is not enough income in that year, for the tax year following it, and so on.

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### *General and supplementary*

#### **406 Effect of recovery of capital in the case of some loans**

- (1) This section applies if the individual to whom a loan is made to which section 392, 396, 398 or 401 applies recovers any amount of capital from the company, partnership or co-operative concerned at any time after the loan is used.
- (2) The individual is treated for the purposes of this Chapter as having repaid that amount out of the loan at that time, whether or not such a repayment occurred.
- (3) Accordingly, only part of the interest that, apart from any such repayment, would be payable on the loan for any period after that time and eligible for relief is so eligible.
- (4) That part is so much of that interest as is attributable to the amount of the loan after the repayment.
- (5) In the case of a loan to which section 386 applies (loans partly meeting requirements), subsection (3) applies instead of section 386(3) (under which repayments are apportioned between the qualifying and non-qualifying parts of such loans).
- (6) The cases in which an individual is treated as having recovered an amount of capital for the purposes of this section are set out in section 407(1) to (3).

#### **407 Events counting as recovery of capital for section 406**

- (1) An individual is treated as having recovered an amount of capital from a company for the purposes of section 406 if—
  - (a) the individual receives consideration of that amount or value—
    - (i) for the sale, exchange or assignment of part of the ordinary share capital of the company,
    - (ii) by way of repayment of part of that ordinary share capital, or
    - (iii) for assigning a debt due to the individual from the company, or
  - (b) the company repays that amount of a loan or advance from the individual.
- (2) An individual is treated as having recovered an amount of capital from a partnership for those purposes if—
  - (a) the individual receives consideration of that amount or value—
    - (i) for the sale, exchange or assignment of part of the individual's interest in the partnership, or
    - (ii) for assigning a debt due to the individual from the partnership, or
  - (b) the partnership repays that amount of a loan or advance from the individual, or
  - (c) the partnership returns that amount of capital to the individual.
- (3) An individual is treated as having recovered an amount of capital from a co-operative for those purposes if—
  - (a) the individual receives consideration of that amount or value—
    - (i) for the sale, exchange or assignment of part of the individual's shares in the co-operative,
    - (ii) by way of repayment of part of the individual's shares in the co-operative, or
    - (iii) for assigning a debt due to the individual from the co-operative, or



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- (b) the co-operative repays that amount of a loan or advance from the individual.
- (4) A sale or assignment that is not a bargain made at arm's length is treated for the purposes of this section as being made for a consideration of an amount equal to the market value of what is disposed of.

#### **408 Replacement loans**

- (1) This section applies to a replacement loan.
- (2) In subsection (1) “replacement loan” means a loan to which section 392, 396, 398 or 401 applies because the loan is used in repaying another loan (“the replaced loan”) to which that section applies.
- (3) This Chapter, except for sections 385 and 386, applies to the replacement loan as if that loan and the replaced loan were a single loan (subject to subsection (5)).
- (4) Accordingly, any restriction under section 406 (effect of recovery of capital in the case of some loans) which applies to the replaced loan applies to the replacement loan.
- (5) But this Chapter, except for sections 385 and 386, applies as if references to the use of the loan were references to the use of the original loan.

#### **409 Business successions between partnerships**

- (1) This section applies if—
  - (a) a loan to which section 398 applies is made to an individual,
  - (b) the partnership in question (“the old partnership”) is dissolved,
  - (c) on its dissolution another partnership of which the individual is a member (“the new partnership”) is formed to carry on the whole or part of the undertaking carried on by the old partnership, and
  - (d) interest payable on the loan for the period ending with the dissolution of the old partnership was eligible for relief (or would have been had any been payable).
- (2) This Chapter applies as if the old partnership and the new partnership were the same partnership.
- (3) Section 399(5) (salaried partners etc treated as partners) applies for the purposes of subsection (1)(c) as it applies for the purposes of section 399(2).

#### **410 Other business successions and reorganisations**

- (1) This subsection applies if—
  - (a) a loan to which one of the business loan provisions or section 398 (loan to invest in partnership) applies is made to an individual (“the original loan”),
  - (b) the company, partnership or co-operative in question is involved in a transaction as a result of which the individual acquires shares in or makes a loan to another company or a body that is a co-operative,
  - (c) interest payable on the original loan for the period ending with the time of the transaction was eligible for relief (or would have been had any been payable), and

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- (d) had the original loan been made at the time of the transaction and applied in acquiring the shares in or making the loan to the other company or the co-operative, the original loan would have fallen within one of the business loan provisions.
- (2) If subsection (1) applies, from the time of the transaction referred to in subsection (1) (b) the original loan is treated as if it had been made and applied as mentioned in subsection (1)(d).
- (3) In this section “the business loan provisions” means—
  - (a) section 392 (loan to buy interest in close company),
  - (b) section 396 (loan to buy interest in employee-controlled company), and
  - (c) section 401 (loan to invest in co-operative).

#### **411 Ineligibility of interest where business is occupation of commercial woodlands**

- (1) Interest that would be eligible for relief under this Chapter apart from this section is not eligible if—
  - (a) the interest is on a loan to which section 392, 396 or 398 applies, and
  - (b) the business carried on by the close company, employee-controlled company or partnership concerned consists of the occupation of commercial woodlands.
- (2) If only part of the business consists in such occupation, only part of the interest is ineligible for the relief.
- (3) That part is such part of the interest as it is just and reasonable to attribute to that part of the business having regard to all the relevant circumstances and, in particular, to the extent of the other part of the business.
- (4) For the purposes of this section two or more businesses carried on by a company or partnership are to be regarded as a single business.
- (5) In this section “commercial woodlands” means woodlands in the United Kingdom which are managed on a commercial basis and with a view to the realisation of profits.

#### **412 Information**

- (1) A person (“the payer”) who claims relief under this Chapter for a payment of interest made in a tax year is entitled to request the person to whom the interest is paid to give the payer a statement in writing about that interest containing the information specified in subsection (3).
- (2) That request must be in writing.
- (3) The information is—
  - (a) the date when the debt was incurred,
  - (b) the amount of the debt when incurred,
  - (c) the interest paid in the tax year, and
  - (d) the name and address of the debtor.
- (4) The person to whom the interest is paid has a duty to comply with a request under subsection (1) and that duty is enforceable by the payer.

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- (5) This section does not apply if the interest is paid to a building society or to a local authority.

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