



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART II

#### ANNUAL PAYMENTS AND INTEREST

##### *Interest paid: relief from income tax*

#### **57 Loans for purchase or improvement of land**

- (1) Subject to the following provisions of this Part of this Act, interest is eligible for relief under this section if it is paid by a person for the time being owning an estate or interest in land in the United Kingdom or the Republic of Ireland on a loan to defray money applied—
  - (a) in purchasing the estate or interest, or one absorbed into, or given up to obtain, the estate or interest, or
  - (b) in improving or developing the land, or buildings on the land, or
  - (c) in paying off another loan, where the claimant could have obtained relief under this section for interest on that other loan if it had not been paid off (and, if free of interest, assuming it carried interest).
- (2) Subsection (1) above shall not apply to a loan unless made in connection with the application of the money, and either on the occasion of its application or within what is in the circumstances a reasonable time from the application of the money ; and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.
- (3) If and so far as a loan made by allowing the debtor to overdraw an account is applied in improving land or buildings (otherwise than by the construction of a building or part of a building), no relief shall be given in respect of interest on the loan falling due more than three years after the end of the year of assessment in which the loan is so applied.
- (4) References in this section to money applied in improving or developing land or buildings include references to payments in respect of maintenance or repairs incurred by reason of dilapidation attributable to a period before the estate or interest

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was acquired, but otherwise do not include references to payments in respect of maintenance or repairs, or any of the other payments mentioned in section 72(1) of this Act (payments deductible from rent).

- (5) References in this section to money applied in improving or developing land include references to expenditure incurred or defrayed directly or indirectly in respect of street works, other than works of maintenance or repair, for any highway or road, or in Scotland any right of way, adjoining or serving the land.
- (6) References in this section to an estate or interest in land include references to the property in any caravan but, unless it is a large caravan, no relief shall be given by virtue of this subsection in respect of the payment of any interest unless—
- (a) the caravan, taken with the land on which it stands, is for the time being a rateable hereditament for the purposes of the General Rate Act 1967 or any corresponding enactment in force in Scotland, Northern Ireland or the Republic of Ireland, and
  - (b) the owner, or his wife or her husband, has, as occupier of the caravan, duly paid rates under that Act or any such enactment for the period in which the interest was paid.

In this subsection "hereditament", in relation to Scotland, means lands and heritages.

- (7) References in this section to an estate or interest do not include references—
- (a) to a rentcharge or, in Scotland, a superiority or the interest of a creditor in a contract of ground annual; or
  - (b) to the interest of a chargee or mortgagee, or, in Scotland, the interest of a creditor in a charge or security of any kind over land.
- (8) Where interest is payable by the tenant occupier of any property to the landlord in pursuance of arrangements whereby money advanced at interest by the landlord is applied by the tenant in purchasing the landlord's estate or interest, but that estate or interest is not to pass to the tenant until some time after the interest begins to be payable, this section shall have effect in relation to the tenant as if he were the owner of the landlord's estate or interest.
- (9) Interest eligible for relief under this section shall be deducted from or set off against the income of the person paying it for the year of assessment in which it is paid, and income tax shall be discharged or repaid accordingly.
- (10) Where relief for any year of assessment is given under this section in respect of interest on any debt, then interest on that debt shall not be allowable as a deduction for any other purpose of the Income Tax Acts for that year or any subsequent year of assessment if and so far as this section applies to that interest; and where interest on any debt is allowed as a deduction in computing profits or gains or losses for the purposes of income tax for any year of assessment, then this section shall not apply to interest on that debt in relation to that or any subsequent year of assessment.

In this subsection references to relief having been given or a deduction being allowed are references to its being given or allowed in a claim or assessment which has been finally determined.

- (11) Subsection (1)(a) above shall not apply—
- (a) where the seller and purchaser are a husband and his wife, and either sells to the other, or

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- (b) where the purchaser, or the wife or husband of the purchaser, has since 15th April 1969 disposed of an estate or interest in the land in question, and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan, or
- (c) where the purchasers are the trustees of a settlement, and the seller is the settlor, or the wife or husband of the settlor, and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan, or
- (d) where the purchaser is directly or indirectly purchasing from a person who is within the terms of section 533 of this Act connected with him, and the price substantially exceeds the value of what is acquired;

and subsection (1)(b) above shall not apply where the person spending the money is within the terms of the said section 533 connected with the person who, directly or indirectly, receives the money, and the money substantially exceeds the value of the work done.

For the purposes of this subsection, references to a husband and wife are references to a husband and his wife living with him.

- (12) In this section, as it applies throughout the United Kingdom and in relation to the Republic of Ireland—

" caravan " has the meaning given by section 29(1) of the Caravan Sites and Control of Development Act 1960,

" large caravan " means one which has either or both of the following dimensions—

- (a) an overall length (excluding any drawbar) exceeding 22 feet,
- (b) an overall width exceeding 7 feet 6 inches, where " overall length " and " overall width " have the meanings given in Regulation 3 of the Motor Vehicles (Construction and Use) Regulations 1966,

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

## **58 Loan applied in acquiring interest in close company**

- (1) This section applies to a loan to an individual to defray money applied—
- (a) in acquiring any part of the ordinary share capital of a close company within subsection (2) below, or
  - (b) in lending money to such a close company which is used wholly and exclusively for the purposes of the business of the company or of any associated company (being a close company within subsection (2) below) of the company, or
  - (c) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (and, if free of interest, assuming it carried interest).
- (2) Subsection (1) above applies to a close company—
- (a) if it is a trading company, or
  - (b) if it is a member of a trading group, or
  - (c) if the whole, or substantially the whole, of its income is of one or more of the following descriptions, that is—
    - (i) estate or trading income,

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- (ii) interest, and dividends or other distributions, received from a 51 per cent subsidiary of it (both companies being bodies corporate) if the subsidiary is itself within any of paragraphs (a), (b) and (c) of this subsection.
- (3) Relief shall be given in respect of any payment of the interest by the individual on the loan—
- (a) if when the interest is paid he has a material interest in the company, and
  - (b) if, taking the period from the application of the proceeds of the loan until the interest was paid as a whole, he has worked for the greater part of his time in the actual management or conduct of the business of the company, or of any associated company of the company, and
  - (c) if he shows that in that period he has not recovered any capital from the close company, apart from any amount taken into account under subsection (4) below.

- (4) If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the close company without using that amount in repayment of the loan, he shall be treated for the purposes of this section as if he had at that time repaid that amount out of the loan, and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

If under section 64(4) below this section applies to a loan part only of which fulfils the conditions in this section, so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

- (5) The individual shall be treated as having recovered an amount of capital from the close company if—
- (a) he receives consideration of that amount or value for the sale of any part of the ordinary share capital of the company, or any consideration of that amount or value by way of repayment of any part of that ordinary share capital, or
  - (b) the close company repays that amount of a loan or advance from him, or
  - (c) he receives consideration of that amount or value for assigning any debt due to him from the close company.

In the case of a sale or assignment otherwise than by way of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

- (6) Subsections (3), (4) and (5) above shall apply to a loan within subsection (1)(c) above as if it, and any loan it replaces, were one loan, and so that—
- (a) references to the application of the proceeds of the loan are references to the application of the proceeds of the original loan, and
  - (b) any restriction under subsection (4) above which applied to any loan which has been replaced shall apply also to the loan which replaces it.
- (7) Subsection (1) above shall not apply to a loan unless made in connection with the application of the money, and either on the occasion of its application, or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.

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- (8) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.
- (9) "Distribution" has in this section the meaning given by Part X of this Act with sections 284 and 285, and expressions used in this section to which a meaning is given by Chapter III of Part XI of this Act have the same meaning in this section; and—
- (a) in determining for the purposes of subsection (2)(c)(ii) above whether one body corporate is a 51 per cent subsidiary of another, that other shall be treated as not being the owner—
    - (i) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or
    - (ii) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt,
  - (b) for the purposes of subsection (3) (a) above, an individual has a material interest in a company—
    - (i) if he, either on his own or with any one or more of his associates, or if any associate of his with or without any 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
    - (ii) if, on an amount equal to the whole distributable income of the company falling under Chapter III of Part XI of this Act to be apportioned for the purposes of surtax, 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.

## **59 Loan applied in acquiring interest in a partnership**

- (1) This section applies to a loan to an individual to defray money applied—
- (a) in purchasing a share in a partnership, or
  - (b) in contributing money to a partnership by way of capital or a premium, or in advancing money to the partnership, where the money contributed or advanced is used wholly and exclusively for the purposes of the trade, profession or vocation carried on by the partnership, or
  - (c) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (and, if free of interest, assuming it carried interest).
- (2) Relief shall be given in respect of any payment of interest by the individual on the loan—
- (a) if throughout the period from the application of the proceeds of the loan until the interest was paid he has personally acted in the conduct of the trade, profession or vocation carried on by the partnership, and
  - (b) if he shows that in that period he has not recovered any capital from the partnership, apart from any amount taken into account under the next following subsection.
- (3) If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the partnership without using that amount in

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repayment of the loan, he shall be treated for the purposes of this section as if he had at that time repaid that amount out of the loan, and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

If under section 64(4) below this section applies to a loan part only of which fulfils the conditions in this section, so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

- (4) The individual shall be treated as having recovered an amount of capital from the partnership if—
- (a) he receives a consideration of that amount or value for the sale of any part of his interest in the partnership, or
  - (b) the partnership returns any amount of capital to him or repays any amount advanced by him, or
  - (c) he receives consideration of that amount or value for assigning any debt due to him from the partnership.

In the case of a sale or assignment otherwise than by way of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

- (5) Subsections (2), (3) and (4) above shall apply to a loan within subsection (1)(c) above as if it, and any loan it replaces, were one loan, and so that—
- (a) references to the application of the proceeds of the loan are references to the application of the proceeds of the original loan, and
  - (b) any restriction under subsection (3) above which applied to any loan which has been replaced shall apply also as respects the loan which replaces it.
- (6) Subsection (1) above shall not apply to a loan unless made in connection with the application of the money, and either on the occasion of its application, or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.
- (7) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.

## **60 Loan to purchase machinery or plant used by a partnership**

- (1) Where an individual is a member of a partnership which, under section 44 of the Capital Allowances Act 1968, is entitled to a capital allowance or liable to a balancing charge for any year of assessment in respect of machinery or plant belonging to the individual, he shall be entitled to relief on any interest paid by him in that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant.
- (2) No relief shall be given under this section in respect of interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.
- (3) Where the machinery or plant is in use partly for the purposes of the trade, profession or vocation carried on by the partnership and partly for other purposes, section 28 of

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the said Act of 1968 (part-time use) shall apply in relation to relief under this section as it applies in relation to writing-down allowances.

- (4) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.

## **61 Loan to pay estate duty**

- (1) This section applies to any loan to the personal representatives of a deceased person the proceeds of which are applied—
- (a) in paying, before the grant of representation, estate duty in accordance with section 6(2) of the Finance Act 1894, being estate duty in respect of personal property of which the deceased was competent to dispose at his death payable on delivery of the Inland Revenue affidavit, or
  - (b) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off.

- (2) Interest paid on the loan in respect of any period ending within one year from the making of the loan within subsection (1)(a) above shall be deducted from or set off against the income of the personal representatives as such for the year in which the interest is paid :

Provided that in relation to estate duty on property the principal value of which falls to be ascertained under section 55 of the Finance Act 1940 (shares and debentures of certain companies) this subsection shall have effect with the substitution for " one year " of " three years ".

- (3) No relief shall be given under this section in respect of interest on so much of any loan as is applied in paying estate duty in respect of property situate in Great Britain which did not pass to the personal representatives as such, or in respect of property which, even if it had been situate in Great Britain, would not have passed to the personal representatives as such.
- (4) Sufficient evidence of the amount of estate duty paid in accordance with the said section 6(2) in respect of any particular description of property, and of any statements relevant to its computation in the Inland Revenue affidavit, may be given by the production of a document purporting to be a certificate from the Board.
- (5) For the purposes of this section—
- (a) " estate duty " means estate duty leviable under the law in force in Great Britain or the law in force in Northern Ireland, together with any interest payable on the duty,
  - (b) references to interest in respect of a period ending within a given time apply whether or not interest continues to run after that time.
- (6) This section shall apply to estate duty leviable under the law of Northern Ireland with the substitution for the estate duty enactments mentioned in this section of the corresponding enactments forming part of the law of Northern Ireland, and with the substitution of " Northern Ireland " for " Great Britain " in subsection (3) above, and the reference to the Board shall include a reference to the Ministry of Finance for Northern Ireland.

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## **62 Certain pre-1970 loans**

- (1) Relief shall be given in respect of any payment of interest falling due before 6th April 1975 on a debt incurred on or before 15th April 1969, being annual interest—
  - (a) on which the recipient is chargeable to tax under Case III of Schedule D, and
  - (b) which is not interest on a debt incurred by overdrawing an account with the creditor,where both the date when the payment fell due and its amount were fixed by or under arrangements made when the debt was incurred, or subsequent arrangements in force on 15th April 1969.
- (2) Relief shall be given in respect of any interest paid without deduction of tax in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person bona fide carrying on business as a member of a stock exchange in the United Kingdom or bona fide carrying on the business of a discount house in the United Kingdom, if, assuming that it had been paid without deduction of tax when it became due and payable, relief could have been given in respect of it under section 200 of the Income Tax Act 1952 (which was repealed by section 18(2) of the Finance Act 1969, but not so as to affect relief for interest paid before 6th April 1970 in respect of a period before 1st July 1969).
- (3) Interest eligible for relief under this section shall be deducted from or set off against the income of the person paying the interest for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.

## **63 Supplemental: overdrafts**

- (1) This section has effect for the purposes of sections 57 to 61 above.
- (2) If a person draws money from a bank account or other running account, and applies it, or any part of it, so as to fulfil the conditions in any of those sections, he shall be regarded as obtaining a loan of that money up to the amount of the highest debit balance in the account in the six months beginning with the date on which the money is drawn:

Provided that if the date fell before 6th April 1968, it shall be assumed that the said highest debit balance was not less than the amount of money drawn from the account.
- (3) If the account has been in credit throughout a year of assessment (excluding any year before the year 1968-69), any loan so obtained before the year in which the account has been in credit shall be treated as having been repaid at the beginning of that year.
- (4) The whole of the interest on debit balances in the account in any year of assessment shall be available for attribution to any outstanding loans so obtained:

Provided that the amount of interest attributable to a loan, or to the aggregate of any loans, made before the beginning of the year 1968-69 shall not exceed the amount of interest on debit balances in the account in the year 1968-69 with which the said person has been charged.
- (5) A loan so obtained shall be regarded as carrying interest in any year of assessment at the rate chargeable on the account on the last day of that year on which the account was in debit, but only so far as interest is available for attribution under subsection (4) above, and, where part only of a loan is eligible for relief under the said sections 57



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to 61, that interest is to be attributed rateably to the eligible and ineligible parts of the loan.

- (6) Where the amount of interest paid on a loan for part only of a year of assessment is to be ascertained, this section shall be applied to ascertain the amount of interest paid for the whole of the year, and that amount shall be apportioned between that part of the year and the remainder according to their respective lengths.

#### **64 Other supplemental provisions**

- (1) The following provisions have effect as respects relief under sections 57 to 62 above.
- (2) Where credit is given for any money due from the purchaser under any sale, that shall be treated for the purposes of those sections as the making of a loan to defray money applied by the purchaser in making the purchase.
- (3) If interest is paid at a rate in excess of a reasonable commercial rate, so much of any payment as represents such an excess shall not be eligible for relief under any of those sections.
- (4) Where the whole of a debt does not fulfil the conditions required by any one of those sections, relief shall be given under the section only in respect of the proportion of any payment of interest equal to the proportion of the debt fulfilling those conditions at the time of the application of the money in question.
- (5) If relief is given in respect of any interest under any of those sections, the interest shall not be allowable as a deduction for any other purpose of the Income Tax Acts.
- (6) No relief shall be given against income chargeable to corporation tax, or any other income of a company.
- (7) The relief shall be given only on the making of a claim therefor.
- (8) Subject to subsection (10) below, a person who claims relief in respect of any payment of interest shall furnish to the inspector a statement in writing by the person to whom the payment is made showing—
- (a) the date when the debt was incurred,
  - (b) the amount of the debt when incurred,
  - (c) the interest paid in the year of assessment for which the claim is made, and
  - (d) the name and address of the debtor:

Provided that if the claim relates to interest on an overdraft the statement shall show, instead of the particulars in paragraphs (a) to (d) above—

- (i) the date when the money was drawn out of the account, and, unless that date fell before 6th April 1968, the highest debit balance in the account in the six months beginning with that date,
  - (ii) the rate of interest chargeable on the account for the last day of the year of assessment to which the claim relates on which the account was in debit,
  - (iii) the amount of interest on debit balances in the account in the year of assessment, and
  - (iv) the name and address of the claimant.
- (9) Subject to the said subsection (10), a person to whom any interest is paid by another person shall, if that other person so requests in writing, furnish that other person with

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a statement in writing conforming with subsection (8) above and dealing with that payment of interest.

The duty imposed by this subsection shall be enforceable at the suit or instance of the person making the request.

- (10) Subsections (8) and (9) above shall not apply to interest paid to a building society as denned in section 343(8) of this Act, to a company within section 343(9) of this Act, or to a local authority.