



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IX

#### ANNUAL PAYMENTS AND INTEREST

##### *Annual payments*

##### [<sup>F1</sup>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 <sup>F2</sup>. . . ;
  - (c) a payment made for bona fide commercial reasons in connection with the individual's trade, profession or vocation; and
  - (d) a payment to which section 125(1) applies.
- (3) This section applies to a payment made by personal representatives (within the meaning given in section 701(4)) where—
  - (a) the deceased would have been liable to make the payment if he had not died, and
  - (b) this section would have applied to the payment if he had made it.
- (4) A maintenance payment arising outside the United Kingdom shall not be within the charge to tax under Case V of Schedule D if, because of this section, it would not have been within the charge of tax under Case III had it arisen in the United Kingdom; and

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for this purpose “maintenance payment” means a periodical payment (not being an instalment of a lump sum) which satisfies the conditions set out in paragraphs (a) and (b) of section 347B(5).

- (5) No deduction shall be made under section 65(1)(b) [<sup>F3</sup>, 68(1)(b) or 192(3)] on account of an annuity or other annual payment which would not have been within the charge to tax under Case III of Schedule D if it had arisen in the United Kingdom.
- (6) References in subsection (2) above to an individual include references to a Scottish partnership in which at least one partner is an individual.
- [<sup>F4</sup>(7) In subsection (2)(b) above “a covenanted payment to charity” means a payment made under a covenant made otherwise than for consideration in money or money’s worth in favour of a body of persons or trust established for charitable purposes only whereby the like annual payments (of which the payment in question is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.
- (8) For the purposes of subsection (7) above the bodies mentioned in section 507 shall each be treated as a body of persons established for charitable purposes only.]

#### Textual Amendments

- F1** Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), s. 36(1)(3)-(5)
- F2** Words in s. 347A(2)(b) repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(8)
- F3** Words in s. 347A(5) inserted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s.60.
- F4** S. 347A(7)(8) inserted (with effect and application in accordance with s. 74 of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 4(2)

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

- C1** S. 347A applied (with effect in accordance with s. 36(8) of the affecting Act) by Finance Act 1999 (c. 16), s. 36(7)
- C2** S. 347A applied (29.4.1996) by Finance Act 1996 (c. 8), 149
- C3** S. 347A applied (with effect and application in accordance with s. 74 of the affecting Act) by Finance Act 1995 (c. 4), Sch. 17 para. 4(1)
- C4** S. 347A applied (with modifications) by Finance Act 1994 (c. 9), s. 79(1)(2)

#### [<sup>F5</sup>347B Qualifying maintenance payments.

- (1) [<sup>F6</sup>Subject to subsection (1A) below] in this section “qualifying maintenance payment” means a periodical payment which—
- (a) is made under an order made by a court [<sup>F7</sup>in a member State]], or under a written agreement the [<sup>F8</sup>law applicable to] which is the law of [<sup>F7</sup>a member State or of a part of a member State]
- (b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—
- (i) to or for the benefit of the other party and for the maintenance of the other party, or

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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 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.
- [<sup>F9</sup>(1A) A periodical payment is not a qualifying maintenance payment unless either of the parties to the marriage mentioned in subsection (1)(b) above was born before 6th April 1935.]
- (2) <sup>F10</sup> . . . Subject to [<sup>F11</sup>subsection (3)] below, a person making a claim for the purpose shall be entitled, [<sup>F12</sup>for a year of assessment to an income tax reduction calculated by reference to] an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.
  - (3) [<sup>F13</sup>The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to] the amount [<sup>F14</sup>specified in [<sup>F15</sup>section 257A(5A)] for the year].
  - (4) <sup>F16</sup> . . . . .
  - (5) <sup>F16</sup> . . . . .
- [<sup>F17</sup>(5A) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to the amount determined in accordance with [<sup>F18</sup>subsections (2) and (3)] above (“the relevant amount”), the amount of that person’s liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—
- (a) the amount equal to [<sup>F19</sup>10 per cent.] of the relevant amount; and
  - (b) the amount which reduces his liability to nil;
- <sup>F20</sup> . . . . .
- (5B) In determining for the purposes of subsection (5A) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—
- (a) any income tax reduction under Chapter I of Part VII;
  - (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
  - (c) any tax at the basic rate on so much of that person’s income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.]
- (6) *The reference in subsection (1) above to a married couple living together shall be construed in accordance with section 282(1), but section 282(2) shall not apply for the purposes of this section*<sup>F21</sup>.
- (7) In this section—
- “child of the family”, in relation to the parties to a marriage, means a person under 21 years of age—

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- (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.

[<sup>F22</sup>(8) In [<sup>F23</sup>subsection (1)(a)] above, the reference to an order made by a court in the United Kingdom includes a reference to a maintenance assessment.

(9) Where—

- (a) any periodical payment is made under a maintenance assessment by one of the parties to a marriage (including a marriage which has been dissolved or annulled),
- (b) the other party to the marriage is, for the purposes of the Child Support Act 1991 or (as the case may be) the Child Support (Northern Ireland) Order 1991, a parent of the child or children with respect to whom the assessment has effect,
- (c) the assessment was not made under section 7 of the Child Support Act 1991 (right of child in Scotland to apply for maintenance assessment), and
- (d) any of the conditions mentioned in subsection (10) below is satisfied,

this section shall have effect as if the payment had been made to the other party for the maintenance by that other party of that child or (as the case may be) those children.

(10) The conditions are that—

- (a) the payment is made to the Secretary of State in accordance with regulations made under section 29 of the Child Support Act 1991, by virtue of subsection (3)(a)(ii) of that section;
- (b) the payment is made to the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 29 of the Child Support (Northern Ireland) Order 1991, by virtue of paragraph (3)(a)(ii) of that Article;
- (c) the payment is retained by the Secretary of State in accordance with regulations made under section 41 of that Act;
- (d) the payment is retained by the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 38 of that Order.

(11) In this section “maintenance assessment” means a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.

(12) Where any periodical payment is made to the Secretary of State or to the Department of Health and Social Services for Northern Ireland—

- (a) by one of the parties to a marriage (including a marriage which has been dissolved or annulled), and

[<sup>F24</sup>(b) under an order—

- (i) made under section 106 of the Social Security Administration Act 1992 or section 101 of the Social Security Administration (Northern Ireland) Act 1992 (recovery of expenditure on benefit from person liable for maintenance) in respect of income support claimed by the other party to the marriage; or
- (ii) made by virtue of section 23 of the Jobseekers Act 1995 (recovery of sums in respect of maintenance), or any corresponding enactment

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in Northern Ireland, in respect of an income-based jobseeker's allowance claimed by the other party to the marriage,]

this section shall have effect as if the payment had been made to the other party to the marriage to or for the benefit, and for the maintenance, of that other party or (as the case may be) to that other party for the maintenance of the child or children concerned.]

[<sup>F25</sup>(13) In subsection (12) above, “income-based jobseeker's allowance” has the same meaning as in the Jobseekers Act 1995 or, for Northern Ireland, the same meaning as in any corresponding enactment in Northern Ireland.]

### Textual Amendments

- F5** Ss. 347A, 347B inserted by [Finance Act 1988 \(c. 39\), s. 36\(1\)\(3\)-\(5\)](#)
- F6** Words in s. 347B(1) inserted (with effect in accordance with s. 36(8) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 36\(1\)](#)
- F7** Words in s. 347B(1)(a) substituted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 61](#).
- F8** Words in s. 347B(1)(a) substituted (1.4.1991) by [Contracts \(Applicable Law\) Act 1990 \(c. 36, SIF 30\), s. 5, Sch. 4 para. 6; S.I. 1991/707, art. 2](#)
- F9** S. 347B(1A) inserted (with effect in accordance with s. 36(8) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 36\(2\)](#)
- F10** Words in s. 347B(2) repealed (with effect in accordance with s. 79(1), Sch. 26 Pt. 5(1) Note of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 79\(3\)\(a\), Sch. 26 Pt. 5\(1\)](#)
- F11** Words in s. 347B(2) substituted (with effect in accordance with s. 36(8) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 36\(3\)](#)
- F12** Words in s. 347B(2) substituted (with effect in accordance with s. 79(1) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 79\(3\)\(b\)](#)
- F13** Words in s. 347B(3) substituted (with effect in accordance with s. 79(1) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 79\(4\)](#)
- F14** 1988(F) s.35 and Sch.3 para.13 for 1990-91 and subsequent years. *Previously* “of the difference between the higher (married person's) relief and the lower (single person's) relief under subsection (1) of section 257 as it applies for the year to a person not falling within subsection (2) or (3) of that section”.
- F15** Words in s. 347B(3) substituted (with effect in accordance with s. 36(8) of the amending Act) by [Finance Act 1999 \(c. 36\), s. 36\(4\)](#)
- F16** S. 347B(4)(5) repealed (with effect in accordance with Sch. 20 Pt. 3(6) Note of the repealing Act) by [Finance Act 1999 \(c. 16\), Sch. 20 Pt. 3\(6\)](#)
- F17** S. 347B(5A)(5B) inserted (with effect in accordance with s. 79(1) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 79\(6\)](#)
- F18** Words in s. 347B(5A) substituted (with effect in accordance with s. 36(8) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 36\(5\)](#)
- F19** Words in s. 347B(5A)(a) substituted (with effect in accordance with s. 27(1) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 27\(1\)\(b\)](#)
- F20** Words in s. 347B(5A) repealed (with effect in accordance with Sch. 27 Pt. 3(1) Note of the repealing Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. 3\(1\)](#)
- F21** *Repealed by* 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.
- F22** S. 347B(8)-(12) inserted (6.4.1993) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 62\(1\); S.I. 1992/2642, art.2](#).
- F23** Words in s. 347B(8) substituted (with effect in accordance with s. 36(8) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 36\(6\)](#)
- F24** S. 347B(12)(b) substituted (7.10.1996) by [Jobseekers Act 1995 \(c. 18\), s. 41\(2\), Sch. 2 para. 15\(2\); SI 1996/2208, art. 2\(b\)](#)

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**F25** S. 347B(13) inserted (7.10.1996) by Jobseekers Act 1995 (c. 18), s. 41(2), **Sch. 2 para. 15(3)**; SI 1996/2208, art. 2(b)

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

**C5** S. 347B modified (with effect in accordance with s. 79(1) of the amending Act) by **Finance Act 1994 (c. 9), s. 79(3)-(6)**

**348 Payments out of profits or gains brought into charge to income tax: deduction of tax.**

- (1) <sup>M1</sup>Subject to any provision to the contrary in the Income Tax Acts, where any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest, is payable wholly out of profits or gains brought into charge to income tax—
- (a) the whole of the profits or gains shall be assessed and charged with income tax on the person liable to the annuity or other annual payment, without distinguishing the annuity or other annual payment; and
  - (b) the person liable to make the payment, whether out of the profits or gains charged with income tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of income tax thereon; and
  - (c) the person to whom the payment is made shall allow the deduction on receipt of the residue of the payment, and the person making the deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid; and
  - (d) the deduction shall be treated as income tax paid by the person to whom the payment is made.
- (2) Subject to any provision to the contrary in the Income Tax Acts, where—
- (a) any royalty or other sum paid in respect of the user of a patent; <sup>F26</sup> . . .
  - (b) <sup>F26</sup> . . . . .
- is paid wholly out of profits or gains brought into charge to income tax, the person making the payment shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of the income tax thereon.
- (3) <sup>M2</sup>This section does not apply to a *small maintenance payment within the meaning of section 351* or to <sup>F27</sup> any payment to which section 687 applies [<sup>F28</sup> or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV].

**Textual Amendments**

**F26** S. 348(2)(b) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by **Finance Act 1997 (c. 16), Sch. 18 Pt. 6(2)**

**F27** Words repealed by 1988(F) Sch.14 Part IV—in respect of payments made on or after 6April 1989.

**F28** Words in s. 348(3) inserted (29.4.1996) by **Finance Act 1996 (c. 8), Sch. 29 para. 5(1)**

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

**C6** See also 1970(M) s.90—*interest on unpaid tax*. 1970(M) s.106—*avoidance of agreements for payment without deduction of tax*. 1989 s.94 and Sch.11 para.18—*deep gain securities*. S.I. 1970 No.448 (in Part III Vol.5) regns. 2-11—*procedure for payment without deduction of tax of income exempt under double taxation arrangements*.

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### Marginal Citations

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

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

(1) <sup>M3</sup>Where—

- (a) any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest; or
- (b) any royalty or other sum paid in respect of the user of a patent,<sup>F29</sup> . . .
- (c) <sup>F29</sup> . . . . .

is not payable or not wholly payable out of profits or gains brought into charge to income tax, the person by or through whom any payment thereof is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon .

This subsection does not apply to any payment to which section 687 applies [<sup>F30</sup> or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV] .

(2) <sup>M4</sup>Subject to subsection (3) below and to any other provision to the contrary in the Income Tax Acts, where any yearly interest of money chargeable to tax under Case III of Schedule D is [<sup>F31</sup>(as that Schedule has effect apart from the modification made for the purposes of corporation tax by section 18(3A))] is paid—

- (a) otherwise than in a fiduciary or representative capacity, by a company [<sup>F32</sup> (other than a building society)] or local authority; or
- (b) by or on behalf of a partnership of which a company is a member; or
- (c) by any person to another person whose usual place of abode is outside the United Kingdom;

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3) Subsection (2) above does not apply—

- (a) to interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business [<sup>F33</sup> on an advance from a bank, if at the time when the interest is paid the person beneficially entitled to the interest is within the charge to corporation tax as respects the interest]; or
- (b) to interest paid by [<sup>F34</sup> a bank in the ordinary course of its] business; or
- [<sup>F35</sup>(ba) to interest paid on deposits with the National Savings Bank; or]
- (c) to any payment to which section 124 applies; or
- (d) to any payment to which section 369 or 479(1) <sup>F36</sup> applies; [<sup>F37</sup> or
- <sup>F38</sup>(e) . . . . .
- [<sup>F39</sup>(e) to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV; or]
- (f) to any payment in respect of which a liability to deduct income tax is imposed by section 480A(1); or
- (g) to any payment in respect of which a liability to deduct income tax would be imposed by section 480A(1) if conditions prescribed by regulations under section 480B were not fulfilled. [<sup>F40</sup> or]]

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[<sup>F41</sup>(h) to any payment in respect of which a liability to deduct income tax would, but for section 481(5)(k), be imposed by section 480A(1).]

*and subsection (1) above does not apply to any small maintenance payment within the meaning of section 351* <sup>F42</sup>.

[<sup>F43</sup>(3AA) In this section “bank” has the meaning given by section 840A.]

[<sup>F44</sup>(3AB) An order under section 840A(1)(d) designating an organisation as a bank for the purposes of paragraph (a) of subsection (3) above may provide that that paragraph shall apply to the organisation as if the words from “if” to the end were omitted.]

[<sup>F45</sup>(3A) Subject to subsection (3B) below and to any other provision to the contrary in the Income Tax Acts, where—

- (a) any dividend or interest is paid in respect of a security issued by a building society other than a qualifying certificate of deposit [<sup>F46</sup>and other than a qualifying deposit right]], and
- (b) the security was [<sup>F47</sup>listed], or capable of being [<sup>F47</sup>listed], on a recognised stock exchange at the time the dividend or interest became payable,

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3B) Subsection (3A) above does not apply to any payment to which section 124 applies.

[<sup>F48</sup>(4) In [<sup>F49</sup>this section]] —

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

[<sup>F49</sup>“qualifying certificate of deposit” means a certificate of deposit, as defined in section 56(5), under which—

- (a) the amount payable by the issuing society, exclusive of interest, is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made), and
- (b) the obligation of the society to pay that amount arises after a period of not more than five years beginning with the date on which the deposit is made; and

[<sup>F50</sup>“qualifying deposit right” means a right to receive an amount (with or without interest) in pursuance of a deposit of money, where—

- (a) the right subsists under an arrangement falling within section 56A,
- (b) no certificate of deposit, as defined in section 56(5), has been issued in respect of the right at the time the dividend or interest concerned is paid, and
- (c) the conditions set out in paragraphs (a) and (b) in the definition of “qualifying certificate of deposit” apply; and]

“security” includes share.]

#### Textual Amendments

**F29** S. 349(1)(c) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by [Finance Act 1997 \(c. 16\)](#), **Sch. 18 Pt. 6(2)**

**F30** Words in s. 349(1) inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **Sch. 29 para. 5(1)**

**F31** Words in s. 349 inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 14 para. 18** (with Sch. 15)



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- F32** Words in s. 349(2)(a) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(2)**
- F33** Words in s. 349(3)(a) substituted (with application in accordance with Sch. 37 para. 8(1)–(6) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 3(a)**
- F34** Words in s. 349(3)(b) substituted (with application in accordance with Sch. 37 para. 8(7)(8) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 3(b)**
- F35** S. 349(3)(ba) inserted (with application in accordance with s. 78(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 78(1)**
- F36** *Words*  
“or 479(1)”  
*repealed by 1990 s.132 and Sch.19 Part.IV.*
- F37** S. 349(3)(e)–(g) and the word “or” inserted (26.7.1990) by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(2)(4)** (for payments made on or after 6th April 1991).
- F38** S. 349(3)(e) (which was inserted 26.7.1990 by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(2)(4)**) repealed (25.7.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 52(1), 123, Sch. 11 para. 1(3), **Sch. 19 Pt. V**
- F39** S. 349(3)(e) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 29 para. 5(2)**
- F40** Word in s. 349(3), at the end of para. (g), inserted (27.7.1993) by 1993 c. 34, **s.59**
- F41** S. 349(3)(h) inserted (27.7.1993) by 1993 c. 34, **s. 59**
- F42** *Words repealed by 1988(F) s.148 and Sch.14 Part IV for payments made on or after 6 April 1989.*
- F43** S. 349(3AA) inserted (with application in accordance with Sch. 37 para. 8 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(1)(2)(b)**
- F44** S. 349(3AB) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 4**
- F45** S. 349(3A)(3B) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(4)**.
- F46** Words in s. 349(3A)(a) inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 2(2), **6**.
- F47** Word in s. 349(3A)(b) substituted (with effect in accordance with Sch. 38 para. 6(7) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(e)**
- F48** S. 349(4) inserted (26.7.1990) by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(3)(4)** (for payments made on or after 6th April 1991).
- F49** S. 349(4): definitions of “qualifying certificate of deposit” and “security” substituted for words in s. 349(4) (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(5)**
- F50** S. 349(4): definition of “qualifying deposit right” inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 2(3), **6**

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

- C7** S. 349 excluded (3.5.1994) by Finance Act 1994 (c. 9), **s. 174**
- C8** See S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of s.349(1) for the purposes of S.I. 1986 No.482 (Building Society Regulations).*
- C9** See S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of s.349(1) for the purposes of S.I. 1986 No.482 (Building Society Regulations).*
- C10** S. 349(3)(a) applied (with modifications) (29.4.1996) by The European Investment Bank (Designated International Organisation) Order 1996 (S.I. 1996/1179), **art. 4**
- C11** See—1970(M) s.106—*avoidance of agreements for payment without deduction of tax, etc.* 1989 s.94 and Sch.11 para.18—*deep gain securities.* 1989 s.116—*certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after 1 April 1989.*
- C12** S. 349(3)(b)(3AA) modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 8(8)**

#### Marginal Citations

- M3** Source—1970 s.53(1); 1973 s.17(1); 1971 Sch.6 21
- M4** Source—1970 s.54(1), (2); 1971 Sch.6 22; 1982 s.26(1); 1984 ss.27(2), 35(1); 1970 s.65(2)

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VALID FROM 06/04/2005

**[<sup>F51</sup>349ZA] Extension of section 349: proceeds of sale of UK patent rights**

- (1) Subsection (2) applies if—
  - (a) a person who is a non-UK resident is chargeable to tax under section 587 of ITTOIA 2005 on profits from the sale of the whole or part of any patent rights, and
  - (b) the net proceeds of the sale consist wholly or partly of a capital sum.
- (2) Subsection (1) of section 349 of this Act applies to any payment of the net proceeds of sale, or of an instalment of them, as if the net proceeds or instalment were, so far as consisting of the capital sum—
  - (a) an annual sum to which paragraph (a) of that subsection applies, and
  - (b) payable otherwise than out of profits or gains charged to income tax.
- (3) For the purposes of this section the net proceeds of the sale is the amount of the proceeds net of any incidental expenses of the sale which are deducted before payment.
- (4) Sections 597 to 599 of ITTOIA 2005 (licences connected with patents etc.) apply for the purposes of this section as they apply for the purposes of sections 587 to 596 of that Act.
- (5) Section 4 of the Capital Allowances Act 2001 (meaning of “capital sums” etc.) applies in relation to this section as it applies in relation to Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property).
- (6) In this section “a non-UK resident” means a person who is not resident in the United Kingdom.]

**Textual Amendments**

**F51** S. 349ZA inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 149](#) (with [Sch. 2](#))

VALID FROM 01/05/2001

**[<sup>F52</sup>349A] Exceptions to section 349 for payments between companies etc**

- (1) The provisions specified in subsection (3) below (which require tax to be deducted on making certain payments) do not apply to a payment made by a company if, at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied.
- (2) Subsection (1) above has effect subject to any directions under section 349C.
- (3) The provisions are—
  - section 349(1) (certain annuities and other annual payments, and royalties and other sums paid for use of UK patents),

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section 349(2)(a) and (b) (UK interest),  
section 349(3A) (dividend or interest on securities issued by building societies),  
and  
section 524(3)(b) (which provides for section 349(1) to apply to proceeds of sale of UK patent rights).

- (4) References in subsection (3) above to any provision of section 349 do not include that provision as applied—
- (a) under section 777(9) (directions applying section 349(1) to certain payments to non-residents), or
  - (b) by paragraph 4(2) of Schedule 23A (manufactured overseas dividends to be treated as annual payments within section 349).
- (5) References in this section to the company by which a payment is made do not include a company acting as trustee or agent for another person.
- (6) For the purposes of this section, a payment by a partnership is treated as made by a company if any member of the partnership is a company.]

#### Textual Amendments

**F52** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

VALID FROM 01/05/2001

#### [<sup>F52</sup>349B The conditions mentioned in section 349A(1)]

- (1) The first of the conditions mentioned in section 349A(1) is that the person beneficially entitled to the income in respect of which the payment is made is—
- (a) a company resident in the United Kingdom, or
  - (b) a partnership each member of which is a company resident in the United Kingdom.
- (2) The second of those conditions is that—
- (a) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom (“the non-resident company”),
  - (b) the non-resident company carries on a trade in the United Kingdom through a branch or agency, and
  - (c) the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company.]

#### Textual Amendments

**F52** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

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VALID FROM 01/05/2001

**[<sup>F52</sup>349C Directions disapplying section 349A(1)]**

- (1) The Board may give a direction to a company directing that section 349A(1) is not to apply in relation to any payment that—
  - (a) is made by the company after the giving of the direction, and
  - (b) is specified in the direction or is of a description so specified.
- (2) Such a direction shall not be given unless the Board have reasonable grounds for believing as respects each payment to which the direction relates that it is likely that neither of the conditions specified in section 349B will be satisfied in relation to the payment at the time the payment is made.
- (3) A direction under this section may be varied or revoked by a subsequent such direction.
- (4) In this section “company” includes a partnership of which any member is a company.]

**Textual Amendments**

**F52** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

VALID FROM 01/05/2001

**[<sup>F52</sup>349D Section 349A(1): consequences of reasonable but incorrect belief]**

- (1) Where—
  - (a) a payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
  - (b) at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied,
  - (c) if the company did not so believe, tax would be deductible from the payment under section 349, and
  - (d) neither of the conditions specified in section 349B is satisfied at the time the payment is made,
 section 350 applies as if the payment were within section 349 (and Schedule 16 applies as if tax were deductible from the payment under section 349).
- (2) In this section “company” includes a partnership of which any member is a company.]

**Textual Amendments**

**F52** Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), s. 85(1)

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VALID FROM 24/07/2002

**[<sup>F53</sup>349E Deductions under section 349(1): payment of royalties overseas**

- (1) Where—
  - (a) a company makes a payment of a royalty to which section 349(1) applies, and
  - (b) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under any arrangements under section 788 (double taxation relief),the company may, if it thinks fit, calculate the sum to be deducted from the payment under section 349(1) by reference to the rate of income tax appropriate to the payee pursuant to the arrangements.
- (2) But, where the payee is not at that time entitled to such relief, section 350 and Schedule 16 shall have effect as if subsection (1) above never applied in relation to the payment.
- (3) Where the Board are not satisfied that the payee will be entitled to such relief in respect of one or more payments to be made by a company, they may direct the company that subsection (1) above is not to apply to the payment or payments.
- (4) A direction under subsection (3) above may be varied or revoked by a subsequent such direction.
- (5) In this section—

“payee”, in relation to a payment, means the person beneficially entitled to the income in respect of which the payment is made; and

“royalty” includes—
  - (a) any payment received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design, process or information, or
  - (b) any proceeds of sale of all or any part of any patent rights.
- (6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to this section.
- (7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6) above, has effect as if—
  - (a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3000, and
  - (b) sub-paragraphs (2) and (3) were omitted.]

**Textual Amendments**

**F53** S. 349E inserted (with application in accordance with s. 96(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 96(1)

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### 350 Charge to tax where payments made under section 349.

- (1) <sup>M5</sup>Where any payment within section 349 is made by or through any person, that person shall forthwith deliver to the inspector an account of the payment, and shall be assessable and chargeable with income tax at the [<sup>F54</sup>applicable rate] on the payment, or on so much thereof as is not made out of profits or gains brought into charge to income tax.

[<sup>F55</sup>(1A) In subsection (1) above “the applicable rate” means the rate which is applicable to the payment under section 4.]

- (2) <sup>M6</sup>In section 349(1) any reference to a payment or sum as being not payable, or not wholly payable, out of profits or gains brought into charge to income tax shall be construed as a reference to it as being payable wholly or in part out of a source other than profits or gains brought into charge; and any such reference elsewhere in the Tax Acts shall be construed accordingly.
- (3) <sup>M7</sup>All the provisions of the Income Tax Acts relating to persons who are to be chargeable with income tax, to income tax assessments, and to the collection and recovery of income tax, shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this section.
- (4) <sup>M8</sup>Section 349 and this section have effect subject to the provisions of Schedule 16 which has effect for the purpose of regulating the time and manner in which companies resident in the United Kingdom—
- (a) are to account for and pay income tax in respect of payments from which tax is deductible under section 349, and
  - (b) are to be repaid income tax in respect of payments received by them;
- and for that purpose the Board may by regulations modify, supplement or replace any of the provisions of Schedule 16; and references in this Act and in any other enactment to any of those provisions shall be construed as including references to any such regulations.
- (5) <sup>M9</sup>Without prejudice to the generality of subsection (4) above, regulations under that subsection may, in relation to income tax for which a company is liable to account, modify any provision of Parts II to VI of the Management Act or apply any such provision with or without modifications.
- (6) Regulations under this section may—
- (a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects income tax for which a company is liable to account or the repayment of income tax borne by a company;
  - (b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.
- (7) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

#### Textual Amendments

**F54** Words in s. 350(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 8

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**F55** S. 350(1A) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 8

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

**C13** See 1970(M) s.98—penalties for non-compliance.

**C14** S. 350(1) excluded (22.3.1992) by S.I. 1992/569, reg. 13(2)(d).

**C15** See 1970(M) Parts IV-VI—principal provisions as to assessment, appeals and collection.

**C16** See 1988(F) s.130(7)(b)—payment of outstanding tax by migrating companies.

**C17** S. 350(4) amended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), Sch. 11 para. 3(1)(2)

**C18** S. 350(4) extended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), Sch. 11 para. 3(3)

**C19** (See 1970(M) Parts IV-VI—principal provisions as to assessment, appeals and collection.)and also:—  
1970(M) s.31(3)appeals under s.349(1)and 350to go to Special Commissioners.

**C20** See 1989 s.94and Sch.11 para.18—deep gain securities.

**Marginal Citations**

**M5** Source-1970 ss.53(2), 54(3); 1971 Sch.6 21

**M6** Source-1970 s.56

**M7** Source-1970 s.53(3), 54(3)

**M8** Source-1970 s.53(4), 54(3); 1972 s.104, 108(1), Sch.24 16

**M9** Source-1972 s.108(2)-(4)

VALID FROM 28/07/2000

[<sup>F56</sup>**350AUK public revenue dividends: deduction of tax.**

(1) The Board may by regulations—

- (a) make provision as to the time and manner in which persons who under section 349(3C) deduct sums representing income tax out of payments of UK public revenue dividends are to account for and pay those sums; and
- (b) otherwise modify the provisions of sections 349 and 350 in their application to such dividends;

and in this section “UK public revenue dividend” has the same meaning as in section 349.

(2) Regulations under this section may—

- (a) make different provision for different descriptions of UK public revenue dividend and for different circumstances;
- (b) make special provision for UK public revenue dividends which—
  - (i) are payable to the Bank of Ireland out of the public revenue of the United Kingdom, or
  - (ii) are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast;
- (c) include such transitional and other supplementary provisions as appear to the Board to be necessary or expedient.

(3) No regulations under this section shall be made unless a draft of them has been laid before and approved by a resolution of the House of Commons.]

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#### Textual Amendments

**F56** S. 350A inserted (with application in accordance with s. 112(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 112(4)

### <sup>F57</sup> 351 Small maintenance payments.

.....

#### Textual Amendments

**F57** S. 351 repealed by [Finance Act 1988 \(c. 39\)](#) s. 36(6), Sch.14 Part IV, Note 5 (with s. 36(3))

### 352 Certificates of deduction of tax.

<sup>M10</sup>(1) A person making any payment which is subject to deduction of income tax by virtue of section 339, 348, 349 or 687 shall, if the recipient so requests in writing, furnish him with a statement in writing showing the gross amount of the payment, the amount of tax deducted, and the actual amount paid.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the statement.

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

**C21** S. 352 excluded (22.3.1992) by [S.I. 1992/569](#), [reg.21](#).

S. 352 modified (22.3.1992) by [S.I. 1992/569](#), [reg.23](#).

**C22** See s.30 and Sch.5 para.11—words

“or 687”

replaced by

“, 480A or 687 or by virtue of regulations under section 477A(1)”

as regards a payment made on or after 6 April 1991.

#### Marginal Citations

**M10** Source-1970 s.55; 1973 s.17(4), 1986 s.29(3)

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

### 353 General provision.

[<sup>F58</sup>(1) Where a person pays interest in any year of assessment, that person, if he makes a claim to the relief, shall for that year of assessment be entitled (subject to [<sup>F59</sup>sections 359] to 368) to relief in accordance with this section in respect of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of [<sup>F59</sup>sections 359] to 365.]

[<sup>F60</sup>(1A) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

(a) is eligible for that relief by virtue of section <sup>F61</sup> . . . 365, <sup>F62</sup> . . .



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(b) <sup>F62</sup> .....

that relief shall consist in an income tax reduction for that year calculated by reference to that amount.

(1B) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

(a) is eligible for that relief otherwise than by virtue of section <sup>F61</sup> . . . 365, <sup>F63</sup> . . .

(b) <sup>F63</sup> .....

that relief shall consist (subject to [<sup>F64</sup>section 237(5)(b)]) in a deduction or set-off of that amount from or against that person's income for that year.

(1C) <sup>F65</sup> .....

(1D) <sup>F65</sup> .....

(1E) Where any person is entitled for any year of assessment to relief under this section in respect of any amount of interest as is eligible for that relief partly as mentioned in subsection (1A) above and partly as mentioned in subsection (1B) above, that amount of interest shall be apportioned between the cases to which each of those subsections applies without regard to what parts of the total amount borrowed remain outstanding but according to <sup>F66</sup> . . . —

(a) the proportions of the total amount borrowed which were applied for different purposes; <sup>F66</sup> . . .

(b) <sup>F66</sup> .....

and subsection (1A) or (1B) above shall apply accordingly in relation to the interest apportioned to the case to which that subsection applies.

(1F) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to an amount of interest, the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

(a) the amount equal to the applicable percentage of that amount of interest; and

(b) the amount which reduces his liability to nil.

[<sup>F67</sup>(1G) In subsection (1F) above “the applicable percentage” means the percentage which is the basic rate for the year of assessment in question.]

(1H) In determining for the purposes of subsection (1F) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII or section 347B;

(b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or

(c) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.]

(2) <sup>M11</sup>This section does not apply to a payment of relevant loan interest to which section 369 applies.

(3) <sup>M12</sup>Relief under this section shall not be given in respect of—

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- (a) interest on a debt incurred by overdrawing an account or by debiting the account of any person as the holder of a credit card or under similar arrangements; or
- (b) where interest is paid at a rate in excess of a reasonable commercial rate, so much of the interest as represents the excess.
- (4) <sup>F68</sup> .....
- (5) <sup>F68</sup> .....

#### Textual Amendments

- F58** S. 353(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 81\(1\)](#)
- F59** Words in s. 353(1) substituted (with effect in accordance with [Sch. 4 para. 18\(5\)](#) of the amending Act) by [Finance Act 1999 \(c. 16\), Sch. 4 para. 1\(2\)](#)
- F60** S. 353(1A)-(1H) inserted (with effect in accordance with s. 81(6) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 81\(2\)](#)
- F61** Words in s. 353(1A)(1B) repealed (with effect in accordance with [Sch. 4 para. 18\(5\)](#), [Sch. 20 Pt. 3\(7\)](#) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\), Sch. 4 para. 1\(3\), Sch. 20 Pt. 3\(7\)](#)
- F62** S. 353(1A)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), Sch. 29 Pt. 8\(2\)](#), Note
- F63** S. 353(1B)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), Sch. 29 Pt. 8\(2\)](#), Note
- F64** Words in s. 353(1B) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 42\(2\)\(a\)](#)
- F65** S. 353(1C)(1D) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), Sch. 29 Pt. 8\(2\)](#), Note
- F66** S. 353(1E)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), Sch. 29 Pt. 8\(2\)](#), Note
- F67** S. 353(1G) substituted (with effect in accordance with [Sch. 4 para. 18\(5\)](#) of the amending Act) by [Finance Act 1999 \(c. 16\), Sch. 4 para. 1\(4\)](#)
- F68** S. 353(4)(5) repealed (with effect in accordance with s. 81(6) of the repealing Act) by [Finance Act 1994 \(c. 9\), Sch. 9 para. 3, Sch. 26 Pt. 5\(2\)](#), Note

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

- C23** *See—1988 s.117—limited partners. 1988 s.280—transfer of reliefs between spouses. 1988(F) Sch.6 para.3(3)—disallowance of interest relief in respect of occupation of commercial woodlands.*
- C24** S. 353 restricted (27.7.1999) by [Finance Act 1999 \(c. 16\), s. 38\(1\)](#)
- C25** S. 353 restricted (1.5.1995) by [Finance Act 1995 \(c. 4\), s. 123, Sch. 22 para. 2](#)

#### Marginal Citations

- M11** Source-1986 s.26(1)
- M12** Source-1972 s.75(1A), (2); 1974 s.19(1)(b)

## 354 Loans to buy land etc.

<sup>F69</sup> .....

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**Textual Amendments**

**F69** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**355 Matters excluded from section 354.**

**F70** .....

**Textual Amendments**

**F70** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**356 Job-related accommodation.**

**F71** .....

**Textual Amendments**

**F71** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**[<sup>F72</sup>356A] Limit on relief for home loans: residence basis.**

**F73** .....

**Textual Amendments**

**F72** Ss. 356A-356D inserted (1.8.1988) by [Finance Act 1988 \(c. 39\)](#), **s.42(1)(4)**  
**F73** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**[<sup>F74</sup>356B] Residence basis: married couples.**

**F75** .....

**Textual Amendments**

**F74** Ss. 356A-356D inserted (1.8.1988) by [Finance Act 1988 \(c. 39\)](#), **s. 42(1)(4)**; and s. 356B substituted (1990-91 and subsequent years) by [Finance Act 1988 \(c. 39\)](#), **Sch. 3 para. 14**  
**F75** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**[<sup>F76</sup>356C] Payments to which sections 356A and 356B apply.**

**F77** .....

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#### Textual Amendments

- F76** Ss. 356A-356D inserted (1.8.1988) by [Finance Act 1988 \(c. 39\)](#), [s.42\(1\)\(4\)](#)  
**F77** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, [Sch. 20 Pt. 3\(7\)](#)

### [<sup>F78</sup> 356D Provisions supplementary to sections 356A to 356C.

<sup>F79</sup> .....

#### Textual Amendments

- F78** Ss. 356A-356D inserted (1.8.1988) by [Finance Act 1988 \(c. 39\)](#), [s.42\(1\)\(4\)](#)  
**F79** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, [Sch. 20 Pt. 3\(7\)](#)

### 357 Limit on amount of loan eligible for relief by virtue of section 354.

<sup>F80</sup> .....

#### Textual Amendments

- F80** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, [Sch. 20 Pt. 3\(7\)](#)

### [<sup>F81</sup> 357A Substitution of security.

<sup>F82</sup> .....

#### Textual Amendments

- F81** Ss. 357A-357C inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), [s. 56](#)  
**F82** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, [Sch. 20 Pt. 3\(7\)](#)

### [<sup>F83</sup> 357B Treatment of loans following security substitution.

<sup>F84</sup> .....

#### Textual Amendments

- F83** Ss. 357A-357C inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), [s. 56](#)  
**F84** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), Sch. 4 para. 2, [Sch. 20 Pt. 3\(7\)](#)

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[<sup>F85</sup>**357C**Substitution of security: supplemental.

<sup>F86</sup> .....

**Textual Amendments**

**F85** Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 56

**F86** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**358 Relief where borrower deceased.**

<sup>F87</sup> .....

**Textual Amendments**

**F87** Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

**359 Loan to buy machinery or plant.**

- (1) <sup>M13</sup>Where an individual is a member of a partnership which, under section 44 of the 1968 Act, 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, any interest paid by him in the basis period (as defined in section 72 of that Act) for that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant is eligible for relief under section 353, except interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.
- (2) <sup>M14</sup>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, such part only of the interest is eligible for relief under section 353 as is just and reasonable to attribute to the purposes of the trade, profession or vocation, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.
- (3) <sup>M15</sup>Where the holder of an office or employment—
  - (a) is under [<sup>F88</sup>Part II of the 1990 Act] entitled to a capital allowance or liable to a balancing charge, (or would be so entitled or liable but for some contribution made by the employer), for any year of assessment in respect of machinery or plant belonging to him and in use for the purposes of the office or employment; and
  - (b) pays interest in that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant;the interest so paid is eligible for relief under section 353 unless it is interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.
- (4) <sup>M16</sup>Where the machinery or plant is in use partly for the purposes of the office or employment and partly for other purposes, such part only of the interest is eligible for relief under section 353 as it is just and reasonable to attribute to the purposes

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of the office or employment, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.

#### Textual Amendments

**F88** 1990(C) s.164 and Sch.1 para.8(12). *Previously*  
“Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971”.

#### Marginal Citations

**M13** Source-1972 Sch.9 10; 1974 Sch.1 1  
**M14** Source-1972 Sch.9 11; 1974 Sch.1 1  
**M15** Source-1972 Sch.9 12; 1974 Sch. 1 1  
**M16** Source-1972 Sch.9 13; 1974 Sch.1 1

### 360 Loan to buy interest in close company.

(1) <sup>M17</sup> Subject to the following provisions of this section and sections 361 to 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in acquiring any part of the ordinary share capital of a close company [<sup>F89</sup>complying with section 13A(2)]; 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 of it which is a close company satisfying any of those conditions; or
- (c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and either the conditions stated in subsection (2) below or those stated in subsection (3) below are satisfied.

(2) <sup>M18</sup> The conditions first referred to in subsection (1) above are—

- (a) that, when the interest is paid, the company continues to [<sup>F89</sup>comply with section 13A(2)] and the individual has a material interest in the company; and
- (b) that he shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1); and
- (c) that, if the company exists wholly or mainly for the purpose of holding investments or other property, no property held by the company is used as a residence by the individual;

but the condition in paragraph (c) above shall not apply in a case where the individual has worked for the greater part of his time in the actual management or conduct of the business of the company, or of an associated company of the company.

(3) <sup>M19</sup> The conditions secondly referred to in subsection (1) above are—

- (a) that, when the interest is paid, the company continues to [<sup>F90</sup>comply with section 13A(2)] and the individual holds any part of the ordinary share capital of the company; and
- (b) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his

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time in the actual management or conduct of the company or of an associated company of the company; and

- (c) that he shows in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).

[<sup>F91</sup>(3A) Interest shall not be eligible for relief under section 353 by virtue of paragraph (a) of subsection (1) above in respect of shares acquired on or after 14th March 1989 if at any time the person by whom they are acquired, or that person's husband or wife, makes a claim for relief in respect of them under Chapter III of Part VII [<sup>F92</sup>or makes a claim in respect of them under Schedule 5B to the 1992 Act].]

[<sup>F93</sup>(4) Subject to section 360A, in this section expressions to which a meaning is assigned by Part XI have that meaning.]

#### Textual Amendments

**F89** 1989 s.107 and Sch.12 para.12—in relation to interest paid on or after 27 July 1989. 1988 s.424(4) continues to have effect for purposes of s.360 in relation to interest paid before 27 July 1989. Previously

“satisfying any of the conditions of section 424(4)”

in subs.1(a) and

“satisfy any of the conditions of section 424(4)”

in subs.2(a).

**F90** 1989 s.107 and Sch.12 para.12—in relation to interest paid on or after 27 July 1989. 1988 s.424(4) continues to have effect for purposes of s.360 in relation to interest paid before 27 July 1989. Previously

“satisfy any of the conditions of section 424(4)”.

**F91** 1989 s.47.

**F92** Words in s. 360(3A) inserted (with effect in accordance with s. 79(2) of the amending Act) by Finance Act 1998 (c. 36), s. 79(1)

**F93** 1989 s.48(1). Previously

“(4) In this section expressions to which a meaning is assigned by Part XI have that meaning, but—  
(a) in relation to any loan made after 5th April 1987, paragraph 39 of Schedule 9 shall have effect for determining whether the interest on the loan is eligible for relief under section 353 by virtue of this section; and (b) in relation to any loan made before 14th November 1986, section 417 shall have effect subject to the following modifications—(i) in subsection (3)(c) for the words following “deceased person” there shall be substituted the words “subject to subsection (3A) below, any other person interested therein”; and (ii) after subsection (3) there shall be added—“(3A) Subsection (3)(c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company; and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.””.

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

**C26** See 1988(F) Sch.6 para.3(3)—disallowance of interest relief in respect of occupation of commercial woodlands.

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#### **Marginal Citations**

**M17** Source-1974 Sch.1 9(1); 1982 s.49(2)

**M18** Source-1974 Sch.1 10(1); 1980 s.28(1)(b), (c); 1982 s.49(3)

**M19** Source-1974 Sch.1 10(2); 1982 s.49(3)

#### **[<sup>F94</sup>360A Meaning of “material interest” in section 360.**

- (1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest [<sup>F95</sup> in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
  - (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company, or
  - (b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participants.]
- (2) Subject to the following provisions of this section, in subsection (1) above “associate”, in relation to an individual, means—
  - (a) any relative or partner of the individual;
  - (b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor (“settlement” and “settlor” having the same meaning as in [<sup>F96</sup>Chapter IA of Part XV (see section 660G(1) and (2))]); and
  - (c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.
- (3) In relation to any loan made after 5th April 1987, there shall be disregarded for the purposes of subsection (2)(c) above—
  - (a) the interest of the trustees of an approved profit sharing scheme (within the meaning of section 187) in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and
  - (b) any rights exercisable by those trustees by virtue of that interest.
- (4) In relation to any loan made on or after the day on which the Finance Act 1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.
- (5) In subsection (4) above “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.
- (6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—
  - (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,



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has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company.

- (7) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of subsection (6) above in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.
- (8) In relation to any loan made before 14th November 1986, where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, subsection (2)(c) above shall have effect as if for the reference to the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased there were substituted a reference to any person (other than the individual) interested in the settlement or estate, but subject to subsection (9) below.
- (9) Subsection (8) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—
- (a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or
  - (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;
- and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.
- (10) In this section [F97“participator” has the meaning given by section 417(1) and]“relative” means husband or wife, parent or remoter forebear, child or remoter issue or brother or sister.]

#### Textual Amendments

**F94** S. 360A inserted by Finance Act 1989 (c. 26), s. 48(2)

**F95** 1989 s.107 and Sch.12 para.13(2) in relation to accounting periods beginning after 31 March 1989. For accounting periods beginning on or before 31 March 1989, the following wording applies:

“in a company—(a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or (b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.”

**F96** Words in s. 360A(2)(b) substituted (with effect and application in accordance with s. 74 of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 5

**F97** 1989 s.107 and Sch.12 para.13(3) in relation to accounting periods beginning after 31 March 1989.

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

**C27** 27 July 1989.

**C28** 27 July 1989.

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### **361 Loan to buy interest in co-operative or employee-controlled company.**

(1) <sup>M20</sup>Subject to the following provisions of this section and sections 363 and 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in acquiring a share or shares in a body which is a co-operative as defined by section 363(5); or
- (b) in 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; or
- (c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions in subsection (2) below are satisfied.

(2) <sup>M21</sup>The conditions referred to in subsection (1) above are—

- (a) that the loan was made after 10th March 1981;
- (b) that, when the interest is paid, the body continues to be a co-operative; and
- (c) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his time as an employee of the body or of a subsidiary of the body; and
- (d) that he shows that in that period he has not recovered any capital from the body apart from any taken into account under section 363(1).

(3) <sup>M22</sup>Subject to sections 362 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

- (a) in acquiring any part of the ordinary share capital of an employee-controlled company; or
- (b) in paying off another loan, interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions stated in subsection (4) below are satisfied.

(4) <sup>M23</sup>The conditions referred to in subsection (3) above are that—

- (a) 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—
  - (i) an unquoted company resident in the United Kingdom and not resident elsewhere; and
  - (ii) a trading company or the holding company of a trading group;
- (b) the shares are acquired before, or not later than 12 months after, the date on which the company first becomes an employee-controlled company;
- (c) during the year of assessment in which the interest is paid the company either—
  - (i) first becomes an employee-controlled company; or
  - (ii) is such a company throughout a period of at least nine months;
- (d) the individual or his spouse is a full-time employee of the company throughout the period beginning with the date on which the proceeds of the loan are applied and ending with the date on which the interest is paid or, if at that date he has ceased to be such an employee, ending with whichever is the later of—
  - (i) the date on which he ceased to be such an employee;
  - (ii) the date 12 months before the payment of the interest; and

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- (e) the individual shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).
- (5) For the purposes of this section a company is employee-controlled at any time when more than 50 per cent.—
- (a) of the issued ordinary share capital of the company, and
- (b) of the voting power in the company,
- is beneficially owned by persons who, or whose spouses, are full-time employees of the company.
- (6) Where an individual owns beneficially, or he and his spouse together own beneficially, more than 10 per cent. of the issued ordinary share capital of, or voting power in, a company, the excess shall be treated for the purposes of subsection (5) above as being owned by an individual who is neither a full-time employee of the company nor the spouse of such an employee.
- (7) <sup>M24</sup>Where an individual and his spouse are both full-time employees of the company, subsection (6) above shall apply in relation to them with the omission of the words “or he and his spouse together own beneficially”.
- (8) <sup>M25</sup>In this section—
- “full-time employee”, in relation to a company, means a person who works for the greater part of his time as an employee or director of the company or of a 51 per cent. subsidiary of the company;
- “holding company” means a company whose business (disregarding 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 per cent. subsidiaries;
- “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades;
- “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, and for this purpose “group” means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and
- “unquoted company” means a company none of whose shares are listed in the Official List of the Stock Exchange.

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

- C29** See 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*
- C30** See 1988(F) s.35 and Sch.3 para.15 for changes applicable in respect of payments of interest made on or after 6 April 1990.
- C31** See 1988(F) s.35 and Sch.3 para.15 for changes applicable in respect of payments of interest made on or after 6 April 1990.

#### **Marginal Citations**

- M20** Source-1974 Sch.1 10A(1); 1981 s.25(3)
- M21** Source-1974 Sch.1 10B; 1981 s.25(3), (6)
- M22** Source-1974 Sch.1 10C; 1983 s.24(1)
- M23** Source-1974 Sch.1 10D(1)-(3); 1983 s.24(1); 1984 s.24(2), (3)
- M24** Source-1974 Sch.1 10D(3A); 1983 s.24(1); 1984 s.24(4)

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**M25** Source-1974 Sch.1 10D(4); 1983 s.24(1)

### 362 Loan to buy into partnership.

- (1) <sup>M26</sup>Subject to sections 363 to 365, interest is eligible for relief under section 353 if it is interest on 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 premium, or in advancing money to a partnership, where the money contributed or advanced is used wholly for the purposes of the trade, profession or vocation carried on by the partnership; or
  - (c) in paying off another loan interest on which would have been eligible for relief under that section had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);
- and the conditions stated in subsection (2) below are satisfied.
- (2) <sup>M27</sup>The conditions referred to in subsection (1) above are—
- (a) that, throughout the period from the application of the proceeds of the loan until the interest was paid, the individual has been a member of the partnership otherwise than as a limited partner; and
  - (b) that he shows that in that period he has not recovered any capital from the partnership, apart from any amount taken into account under section 363(1).

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

**C32** See 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

#### Marginal Citations

**M26** Source-1974 Sch.1 11(1)

**M27** Source-1974 Sch.1 12; 1981 s.25(2)

### 363 Provisions supplementary to sections 360 to 362.

- (1) <sup>M28</sup>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, co-operative, employee-controlled company or partnership without using that amount in repayment of the loan, he shall be treated for the purposes of sections 353, 360, 361 and 362 as if he had at that time repaid that amount out of the loan, so that out of the interest otherwise eligible for relief (or, where section 367(4) applies, out of the proportion so eligible) and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.
- (2) <sup>M29</sup>The individual shall be treated as having recovered an amount of capital from the close company, co-operative, employee-controlled company or partnership if—
- (a) he receives consideration of that amount or value for the sale, exchange or assignment of any part of the ordinary share capital of the company or of his share or shares in the co-operative or of his interest in the partnership, or of any consideration of that amount or value by way of repayment of any part of that ordinary share capital or of his share or shares in the co-operative; or

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- (b) the close company, co-operative, employee-controlled company or partnership repays that amount of a loan or advance from him or the partnership returns that amount of capital to him; or
- (c) he receives consideration of that amount or value for assigning any debt due to him from the close company, co-operative, employee-controlled company or partnership;

and where a sale or assignment is not a bargain made at arm's length, the sale or assignment shall be deemed to be for a consideration of an amount equal to the market value of what is disposed of.

- (3) <sup>M30</sup>In the application of this section to Scotland for the word “assignment” wherever it occurs there shall be substituted the word “assignment”.
- (4) <sup>M31</sup>Section 360, or, as the case may be, 361(2) or (4) or 362(2) and subsections (1) to (3) above, shall apply to a loan within section 360(1)(c), 361(1)(c) or (3)(b) or 362(1)(c) 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 were references to the application of the proceeds of the original loan; and
  - (b) any restriction under subsection (1) above which applies to any loan which has been replaced shall apply to the loan which replaces it.
- (5) <sup>M32</sup>In this section and sections 361 and 362—
  - “co-operative” means a common ownership enterprise or a co-operative enterprise as defined in section 2 of the <sup>M33</sup>Industrial Common Ownership Act 1976; and
  - “subsidiary” has the same meaning as for the purposes of section 2 of that Act.

#### Marginal Citations

- M28** Source-1974 Sch.1 13; 1981 s.25(4); 1983 s.24(2)(a)
- M29** Source-1974 Sch.1 14(1); 1981 s.25(4); 1983 s.24(2)(a)
- M30** Source-1974 Sch.1 14(2)
- M31** Source-1974 Sch.1 15; 1981 s.25(4); 1983 s.24(2)(b)
- M32** Source-1974 Sch.1 10A(2); 1981 s.25(3)
- M33** 1976 c.78.

### 364 Loan to pay inheritance tax.

- (1) <sup>M34</sup>Interest is eligible for relief under section 353 if it is interest on a loan to the personal representatives of a deceased person, the proceeds of which are applied—
  - (a) in paying, before the grant of representation or confirmation, capital transfer tax or inheritance tax payable on the delivery of the personal representatives' account and attributable to the value of personal property to which the deceased was beneficially entitled immediately before his death and which vests in the personal representatives or would vest in them if the property were situated in the United Kingdom; or
  - (b) in paying off another loan interest on which would have been eligible for that relief by virtue of this section if the loan had not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

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and the interest is paid in respect of a period ending within one year from the making of the loan within paragraph (a) above.

- (2) <sup>M35</sup>If or to the extent that any relief in respect of interest eligible for it under subsection (1) above cannot be given against income of the year in which the interest is paid because of an insufficiency of income in that year, it may instead be given against income of the preceding year of assessment, and so on; and if or to the extent that it cannot be so given it may instead be given against income of the year following that in which the interest is paid, and so on.
- (3) <sup>M36</sup>Sufficient evidence of the amount of capital transfer tax or inheritance tax paid as mentioned in subsection (1)(a) above and of any statements relevant to its computation may be given by the production of a document purporting to be a certificate from the Board.
- (4) For the purposes of subsections (1) to (3) above—
- (a) references to capital transfer tax or inheritance tax include any interest payable on that tax; and
  - (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.

#### Marginal Citations

**M34** Source-1974 Sch.1 17(1); 1975 Sch.12 19(2); 1986 s.100

**M35** Source-1974 Sch.1 18

**M36** Source-1974 Sch.1 20, 21; 1975 Sch.12 19(3), (4); 1986 s.100

### 365 Loan to buy life annuity.

<sup>M37</sup>(1) Subject to the following provisions of this section, interest is eligible for relief under section 353 if it is interest on a loan in respect of which the following conditions are satisfied—

- [<sup>F98</sup>(aa) that the loan was made before 9th March 1999;]
- (a) that the loan was made as part of a scheme under which not less than nine-tenths of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (“the annuitants”) who include the person to whom the loan was made;
  - (b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65 years;
  - (c) that the loan was secured on land in the United Kingdom or the Republic of Ireland and the person to whom it was made or one of the annuitants owns an estate or interest in that land; and
  - (d) that, if the loan was made after 26th March 1974, the person to whom it was made or each of the annuitants [<sup>F99</sup>used the land on which it was secured as his only or main residence immediately before 9th March 1999] .

[<sup>F100</sup>(1AA) Where—

- (a) a loan made on or after 9th March 1999 was made in pursuance of an offer made by the lender before that date, and

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- (b) the offer was either in writing or evidenced by a note or memorandum made by the lender before that date,

the loan shall be deemed for the purposes of subsection (1)(aa) above to have been made before that date.]

[<sup>F101</sup>(1AB) Subject to subsection (1AC) below, the conditions in paragraphs (aa) and (a) of subsection (1) above shall be treated as satisfied in relation to a loan (“the new loan”) if—

- (a) the new loan was made on or after the day on which the Finance Act 1999 was passed;
- (b) the new loan was made as part of a scheme (“the scheme”) under which the whole or any part of the proceeds of the loan was used to defray money applied in paying off another loan (“the old loan”); and
- (c) the conditions in subsection (1) above were, or were treated by virtue of this subsection as, satisfied with respect to the old loan.

(1AC) If only part of the proceeds of the new loan was used to defray money applied in paying off the old loan, subsection (1AB) above applies only if, under the scheme, not less than nine-tenths of the remaining part of the proceeds of the new loan was applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons who include him.

(1AD) In subsection (1AC) above “the remaining part” means the part of the proceeds of the new loan that was not used to defray money applied in paying off the old loan.]

[<sup>F102</sup>[<sup>F103</sup>(1A) The condition in subsection (1)(d) above shall be treated as satisfied in relation to a loan if—

- (a) the person to whom the loan was made, or any of the annuitants, ceased to use the land as his only or main residence at a time falling within the period of twelve months ending with 8th March 1999, and
- (b) the intention at that time of the person to whom the loan was made, or each of the annuitants owning an estate or interest in the land, was to take steps, before the end of the period of twelve months after the day on which the land ceased to be so used, with a view to the disposal of his estate or interest.]

(1B) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1A) above shall have effect as if for the reference to 12 months there were substituted a reference to such longer period as meets the circumstances of that case.]

(2) Interest is not eligible for relief by virtue of this section unless it is payable by the person to whom the loan was made or by one of the annuitants.

(3) If the loan was made after 26th March 1974 interest on it is eligible for relief by virtue of this section only to the extent that the amount on which it is payable does not exceed the qualifying maximum for the year of assessment; and if the interest is payable by two or more persons the interest payable by each of them is so eligible only to the extent that the amount on which it is payable does not exceed such amount as bears to the qualifying maximum for the year of assessment the same proportion as the interest payable by him bears to the interest payable by both or all of them.

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#### Textual Amendments

- F98** S. 365(1)(aa) inserted (with effect in accordance with s. 39(3) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 39\(1\)](#)
- F99** Words in s. 365(1)(d) inserted (with effect in accordance with s. 40(5) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 40\(2\)](#)
- F100** S. 365(1AA) inserted (with effect in accordance with s. 39(3) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 39\(2\)](#)
- F101** S. 365(1AB)-(1AD) inserted (with effect in accordance with s. 40(5) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 40\(3\)](#)
- F102** S. 365(1A)(1B) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by [Finance Act 1993 \(c. 34\), s. 57\(3\)\(5\)\(6\)](#)
- F103** S. 365(1A) substituted (with effect in accordance with s. 40(5) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 40\(4\)](#)

#### Marginal Citations

- M37** Source-1974 Sch.1 24; 1984 s.22(3)

### 366 Information.

- (1) <sup>M38</sup>A person who claims relief under section 353 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 (or, in the case of relief by virtue of section <sup>F104</sup> . . . 364(2), the year of assessment for which the claim would be made but for an insufficiency of income); and
  - (d) the name and address of the debtor.
- (2) <sup>M39</sup>Where any such interest as is mentioned in section 353 is paid, the person to whom it is paid shall, if the person who pays it so requests in writing, furnish him with such statement as regards that interest as is mentioned in subsection (1) above; and the duty imposed by this subsection shall be enforceable at the suit or instance of the person making the request.
- (3) Subsections (1) and (2) above do not apply to interest paid to a building society, or to a local authority.

#### Textual Amendments

- F104** Words in s. 366(1)(c) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), Sch. 29 Pt. 8\(2\)](#), Note

#### Marginal Citations

- M38** Source-1972 Sch.10 7; 1974 Sch.1 25(1)  
**M39** Source-1972 Sch.10 8, 9



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### 367 Provisions supplementary to sections 354 to 366.

- (1) <sup>F105</sup> .....
- (2) <sup>M40</sup> Sections <sup>F106</sup> . . . 360 to 364 do not apply to a loan unless it is made—
  - (a) in connection with the application of money, and
  - (b) on the occasion of, or within what is in the circumstances a reasonable time from, the application of the money;and those sections do not apply to a loan the proceeds of which are applied for some other purpose before being applied as mentioned in those sections.
- (3) <sup>M41</sup> For the purposes of [<sup>F107</sup> sections 359] to 364, the giving of credit for any money due from the purchaser under any sale shall be treated as the making of a loan to defray money applied by him in making the purchase.
- (4) <sup>M42</sup> Where part only of a debt fulfils the conditions required under [<sup>F107</sup> sections 359] to 364 for interest on the debt to be eligible for relief under section 353, such proportion of the interest shall be treated as eligible for relief under that section as is equal to the portion of the debt fulfilling those conditions at the time of the application of the money in question.
- (5) <sup>M43</sup> In [<sup>F108</sup> section] 365(3) references to the qualifying maximum for the year of assessment are references to such sum as Parliament may determine for the purpose for that year.

#### Textual Amendments

- F105** S. 367(1) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 3\(2\)](#), [Sch. 20 Pt. 3\(7\)](#)
- F106** Words in s. 367(2) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 3\(2\)](#), [Sch. 20 Pt. 3\(7\)](#)
- F107** Words in s. 367(3)(4) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 3\(3\)](#)
- F108** Words in s. 367(5) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 3\(4\)](#)

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

- C33** S. 367(5): £30,000 specified (1988-89) by [Finance Act 1988 \(c. 39\)](#), [s. 41](#)  
S. 367(5): £30,000 specified (1989-90) by [Finance Act 1989 \(c. 26\)](#), [s. 46](#)  
S. 367(5): £30,000 specified (1990-91) by [Finance Act 1990 \(c. 29\)](#), [s. 71](#)  
S. 367(5): £30,000 specified (1991-92) by [Finance Act 1991 \(c. 31\)](#), [s. 26](#)  
S. 367(5): £30,000 specified (1992-93) by [Finance Act 1992 \(c. 20\)](#), [s. 10\(4\)](#) (with s. 10(5))  
S. 367(5): £30,000 specified (1993-94) by [Finance Act 1993 \(c. 34\)](#), [s. 55](#)  
S. 367(5): £30,000 specified (1994-95, 1995-96) by [Finance Act 1994 \(c. 9\)](#), [s. 80](#)  
S. 367(5): £30,000 specified (1996-97) by [Finance Act 1996 \(c. 8\)](#), [s. 76](#)  
S. 367(5): £30,000 specified (1997-98) by [Finance Act 1997 \(c. 16\)](#), [s. 57](#)  
S. 367(5): £30,000 specified (1998-99) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [s. 16](#)  
S. 367(5): £30,000 specified (1999-2000) by [Finance Act 1999 \(c. 16\)](#), [s. 37](#)

#### Marginal Citations

- M40** Source-1972 Sch.9 2; 1974 Sch.1 23  
**M41** Source-1972 Sch.9 14; 1974 Sch.1 23  
**M42** Source-1972 Sch.9 15; 1974 Sch.1 1, 23

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**M43** Source-1972 Sch.9 5(1A); 1984 s.22(1)(c)

VALID FROM 01/04/2010

**[<sup>F109</sup>367A] Alternative finance arrangements**

- (1) Sections 353 and 365 have effect as if—
  - (a) purchase and resale arrangements involved the making of a loan, and
  - (b) alternative finance return were interest.
- (2) Section 366 has effect accordingly.
- (3) In this section—
 

“alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007, and

“purchase and resale arrangements” means arrangements to which section 564C of ITA 2007 applies.]

**Textual Amendments**

**F109** S. 367A inserted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [Sch. 2 para. 47](#) (with Sch. 9)

**368 Exclusion of double relief etc.**

- <sup>M44</sup>(1) Interest in respect of which relief is given under section 353 shall not be allowable as a deduction [<sup>F110</sup>for any purpose of the Income Tax Acts except so far as it is so allowable in accordance with subsection (1B) of that section.]
- (2) Relief shall not be given under section 353 against income chargeable to corporation tax, and shall not be given against any other income of a company, except where both of the following conditions are satisfied, that is to say—
    - (a) that the company is not resident in the United Kingdom; and
    - (b) that the interest cannot be taken into account in computing corporation tax chargeable on the company.
  - (3) Where interest on any debt or liability is taken into account in the computation of [<sup>F111</sup>profits] or losses for the purposes of [<sup>F112</sup>Schedule A or] Case I or II of Schedule D no relief shall be given under section 353—
    - (a) in respect of the payment of that interest; or
    - (b) in respect of interest on the same debt or liability which is paid in any year of assessment for which that computation is relevant.
  - (4) Where relief is given under section 353 in respect of the interest paid in any year of assessment on any debt or liability—
    - (a) that interest shall not be taken into account in the computation of [<sup>F111</sup>profits] or losses for the purposes of [<sup>F112</sup>Schedule A or] Case I or II of Schedule D for any year of assessment; and

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- (b) interest on that debt or liability shall not be taken into account in that computation for any year of assessment for which the interest so paid could have been taken into account but for the relief.
- (5) For the purposes of subsections (3) and (4) above, all interest capable of being taken into account in such a computation as is mentioned in those subsections which is payable by any person on money advanced to him on current account, whether advanced on one or more accounts or by the same or separate banks or other persons, shall be treated as interest payable on the same debt.
- (6) References in subsections (3) and (4) above to relief given or an amount taken into account are references to relief given or an amount taken into account on a claim or in an assessment which has been finally determined.

#### Textual Amendments

- F110** Words in s. 368(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 9**
- F111** Words in s. 368(3)(4)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**
- F112** Words in s. 368(3)(4) inserted (with effect in accordance with s. 39(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para 17**

#### Marginal Citations

- M44** Source-1972 Sch.10 1-6

### *Mortgage interest relief at source*

#### **369 Mortgage interest payable under deduction of tax.**

- (1) <sup>M45</sup>If a person who is a qualifying borrower makes a payment of relevant loan interest to which this section applies, he shall be entitled, on making the payment, to deduct and retain out of it a sum equal to [<sup>F113</sup>the applicable percentage thereof.]
- [<sup>F114</sup>(1A) In subsection (1) above “the applicable percentage” means the percentage which is the basic rate for the year of assessment in which the payment has become or becomes due.]
- (2) Where a sum is deducted under subsection (1) above from a payment of relevant loan interest—
- the person to whom the payment is made shall allow the deduction on receipt of the residue;
  - the borrower shall be acquitted and discharged of so much money as is represented by the deduction as if the sum had been actually paid; and
  - the sum deducted shall be treated as income tax paid by the person to whom the payment is made.
- [<sup>F115</sup>(3) The following payments, that is to say—
- payments of relevant loan interest to which this section applies, and
  - payments which would be such payments but for section 373(5),

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shall not be allowable as deductions for any purpose of the Income Tax Acts except in so far as they fall to be treated as such payments by virtue only of section 375(2) and would be allowable apart from this subsection.]

- (6)<sup>M46</sup> Any person by whom a payment of relevant loan interest to which this section applies is received shall be entitled to recover from the Board, in accordance with regulations, an amount which by virtue of subsection (2)(c) above is treated as income tax paid by him; and any amount so recovered shall be treated for the purposes of the Tax Acts in like manner as the payment of relevant loan interest to which it relates.

[<sup>F116</sup>(7) The following provisions of the Management Act, namely—

- [<sup>F117</sup>(a) section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to (10) of that Act;]  
(b) section 30 (tax repaid in error etc.) [<sup>F118</sup>apart from subsection (1B)] ,  
(c) [<sup>F119</sup>section 86] (interest), and  
(d) section 95 (incorrect return or accounts),

shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable in accordance with regulations made by virtue of subsection (6) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid [<sup>F120</sup>as respects a chargeable period] as a relief which was not due.]

[<sup>F121</sup>(8) In the application of section 86 of the Management Act by virtue of subsection (7) above in relation to sums due and payable by virtue of an assessment made for the whole or part of a year of assessment (“the relevant year of assessment”) under section 29(1)(c) or 30 of that Act, as applied by that subsection, the relevant date—

- (a) is 1st January in the relevant year of assessment in a case where the person falling within subsection (6) above has made a relevant interim claim; and  
(b) in any other case, is the later of the following dates, that is to say—  
(i) 1st January in the relevant year of assessment; or  
(ii) the date of the making of the payment by the Board which gives rise to the assessment.

(9) In this section—

“financial year”, in relation to any person, means a financial year of that person for the purposes of the relevant regulations;

“interim claim” means an interim claim within the meaning of the relevant regulations;

“relevant interim claim” means, in relation to an assessment made for a period coterminous with, or falling wholly within, a person’s financial year, an interim claim made for a period falling wholly or partly within that financial year; and

“the relevant regulations” means regulations made under section 378(3) for the purposes of subsection (6) above.]

#### Textual Amendments

**F113** Words in s. 369(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(3)

**F114** S. 369(1A) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), Sch. 4 para. 4

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**F115** S. 369(3) substituted for s. 369(3)-(5B) (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), s. 81(4)

**F116** S. 369(7) inserted (27.7.1993) by 1993 c. 34, s. 58(1)(2)

**F117** S. 369(7)(a) substituted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(a)

**F118** Words in s. 369(7)(b) inserted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(b)

**F119** Words in s. 369(7)(c) substituted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(c)

**F120** Words in s. 369(7) inserted (with effect in accordance with Sch. 18 para. 17(8) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(2)(d)

**F121** S. 369(8)(9) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 6(3)

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

**C34** S. 369(1) excluded (27.7.1999) by Finance Act 1999 (c. 16), s. 38(2)-(7)

**C35** See S.I. 1988 No.1347 (in Part III Vol.5) in respect of housing associations.

**Marginal Citations**

**M45** Source-1982 s.26(1), (2)

**M46** Source-1982 s.26(7)

**370 Relevant loan interest.**

- (1) <sup>M47</sup>Subject to this section and [<sup>F122</sup>sections 373] to 376, in this Part “relevant loan interest” means interest which is paid and payable in the United Kingdom to a qualifying lender and to which subsection (2) <sup>F123</sup>. . . below applies.
- (2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2) [<sup>F124</sup>and any other provision applying to interest falling to be treated as relevant loan interest]—
  - (a) it is interest falling within section <sup>F125</sup>. . . 365; and
  - (b) apart [<sup>F126</sup>(where applicable) from] section <sup>F125</sup>. . . 365(3), the whole of the interest either would be eligible for relief under section 353 or would be taken into account in a computation of profits or gains or losses for the purposes of Case I, II or VI of Schedule D for any year of assessment; <sup>F127</sup>. . .
  - (c) <sup>F127</sup> . . . . .
- (3) <sup>F128</sup> . . . . .
- (4) <sup>F128</sup> . . . . .
- (5) <sup>M48</sup>In determining whether subsection (2) above applies to any interest, [<sup>F129</sup>section 365 shall] have effect as if the words “or the Republic of Ireland” were omitted.
- (6) <sup>F128</sup> . . . . .
- [<sup>F130</sup>(6A) <sup>F131</sup> . . . . .]
- (7) <sup>F128</sup> . . . . .

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**Textual Amendments**

- F122** Words in s. 370(1) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 5(2)(a)**
- F123** Words in s. 370(1) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(2)(b), **Sch. 20 Pt. 3(7)**
- F124** Words in s. 370(2) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 10(1)(a)**
- F125** Words in s. 370(2) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(3), **Sch. 20 Pt. 3(7)**
- F126** Words in s. 370(2)(b) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 10(1)(b)**
- F127** S. 370(2)(c) and preceding word repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(3), **Sch. 20 Pt. 3(7)**
- F128** S. 370(3)(4)(6)(7) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(4), **Sch. 20 Pt. 3(7)**
- F129** Words in s. 370(5) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 5(5)**
- F130** S. 370(6A) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 10(2)**
- F131** S. 370(6A) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

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

- C36** See S.I. 1988 No.1347 (in Part III Vol.5) *in respect of housing associations.*

**Marginal Citations**

- M47** Source-1982 Sch.7 2(1)-(3)
- M48** Source-1982 Sch.7 3(1)-(3)

**<sup>F132</sup>371 Second loans.**

**Textual Amendments**

- F132** S. 371 repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by Finance Act 1993 (c. 34), ss. 57, 213, **Sch. 23 Pt.III**

**372 Home improvement loans.**

**<sup>F133</sup>** .....

**Textual Amendments**

- F133** S. 372 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 6, **Sch. 20 Pt. 3(7)**

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### 373 Loans in excess of the qualifying maximum, and joint borrowers.

- (1) <sup>M49</sup>The provisions of this section have effect in relation to a loan where, by virtue of <sup>F134</sup> . . . section 365(3), only part of the interest on the loan would (apart from section 353(2)) be eligible for relief under section 353; and in this section any such loan is referred to as a “limited loan”.
- (2) None of the interest on a limited loan is relevant loan interest unless—
  - (a) the loan is made on or after 6th April 1987; or
  - (b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have limited loans of a description which includes that limited loan brought within the tax deduction scheme.
- (3) <sup>F135</sup> . . . . .
- (4) <sup>F135</sup> . . . . .
- (5) <sup>M50</sup>Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled <sup>F136</sup> . . . only so much of the interest as (apart from section 353(2)) would be eligible for relief under section 353 is relevant loan interest.
- (6) <sup>M51</sup>Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person who is not the borrower’s husband or wife, the interest on the loan is not relevant loan interest unless—
  - (a) each of the persons to whom the loan was made is a qualifying borrower; and
  - (b) in relation to each of them considered separately, the whole of that interest is relevant loan interest, in accordance with [<sup>F137</sup>section 370] and this section.
- (7) In subsection (6) above references to the borrower’s husband or wife do not include references to a separated husband or wife <sup>F138</sup> . . . .

#### Textual Amendments

- F134** Words in s. 373(1) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 7\(2\)\(a\)](#), [Sch. 20 Pt. 3\(7\)](#)
- F135** [S. 370\(3\)\(4\)](#) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 7\(2\)\(b\)](#), [Sch. 20 Pt. 3\(7\)](#)
- F136** Words in s. 373(5) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 7\(2\)\(c\)](#), [Sch. 20 Pt. 3\(7\)](#)
- F137** Words in s. 373(6) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 7\(3\)](#)
- F138** Words in s. 373(7) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 7\(2\)\(d\)](#), [Sch. 20 Pt. 3\(7\)](#)

#### Marginal Citations

- M49** Source-1982 Sch.7 5(1)-(3); 1985 s.37(2)
- M50** Source-1982 Sch.7 5(4); 1983 s.17(2); 1985 s.37(3)
- M51** Source-1982 Sch.7 6(1), (2)

### 374 Conditions for application of section 369.

- (1) <sup>M52</sup>Section 369 does not apply to any relevant loan interest unless—

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- (a) in the case of a loan of a description specified by regulations for the purposes of this paragraph, the borrower or, in the case of joint borrowers, each of them has given notice to the lender in the prescribed form certifying—
- (i) that he is a qualifying borrower; and
  - (ii) that the interest is relevant loan interest; and
  - (iii) such other matters as may be prescribed; or
- (b) the Board have given notice to the lender and the borrower that the interest may be paid under deduction of tax; or
- (c) <sup>F139</sup> . . . . .
- (d) <sup>M53</sup> the loan to which the interest relates is of a description specified by regulations for the purposes of this paragraph and was made—
- (i) if sub-paragraph (2) of paragraph 2 of Schedule 7 to the Finance Act 1982 applied to interest on the loan which became due on or after a date earlier than 6th April 1983, being a date specified by the Board in pursuance of sub-paragraph (5) of that paragraph, before that earlier date; or
  - (ii) if the qualifying lender is a building society or a local authority, before 1st April 1983; or
  - (iii) if sub-paragraphs (i) and (ii) above do not apply and the interest falls within section 370(2), before 6th April 1983.
- (2) <sup>M54</sup> Where notice has been given as mentioned in paragraph (a) or (b) of subsection (1) above, section 369 applies to any relevant loan interest to which the notice relates and which becomes due on or after the relevant date, as defined by subsection (3) below; and in a case falling within paragraph <sup>F140</sup> . . . (d) of subsection (1) above, section 369 applies to the relevant loan interest referred to in that paragraph.
- (3) In subsection (2) above “the relevant date” means—
- (a) in the case of a notice under subsection (1)(a) above, the date the notice is given, and
  - (b) in the case of a notice under subsection (1)(b) above, a date specified in the notice as being the relevant date (which may be earlier than the date so specified as the date from which the interest may be paid under deduction of tax).

#### Textual Amendments

**F139** S. 374(1)(c) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 8, Sch. 20 Pt. 3(7)

**F140** Words in s. 374(2) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 8, Sch. 20 Pt. 3(7)

#### Marginal Citations

**M52** Source-1982 Sch.7 7(1)(a)-(c)

**M53** Source-1982 Sch.7 7(1)(d), (4), (5)

**M54** Source-1982 Sch.7 7(2)(3)



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### [<sup>F141</sup>374A] Interest which never has been relevant loan interest etc.

- (1) This section applies where, in the case of any loan, interest on the loan never has been relevant loan interest or the borrower never has been a qualifying borrower.
- (2) Without prejudice to subsection (3) below, in relation to a payment of interest—
  - (a) as respects which either of the conditions mentioned in paragraphs (a) and (b) of section 374(1) is fulfilled, and
  - (b) from which a deduction was made as mentioned in section 369(1),section 369 shall have effect as if the payment of interest were a payment of relevant loan interest made by a qualifying borrower.
- (3) Nothing in subsection (2) above shall be taken as regards the borrower as entitling him to make any deduction or to retain any amount deducted and, accordingly, where any amount has been deducted, he shall be liable to make good that amount and an officer of the Board may make such assessments as may in his judgment be required for recovering that amount.
- (4) The Management Act shall apply to an assessment under subsection (3) above as if it were an assessment to income tax for the year of assessment in which the deduction was made <sup>F142</sup> . . . .
- (5) If the borrower fraudulently or negligently makes any false statement or representation in connection with the making of any deduction, he shall be liable to a penalty not exceeding the amount deducted.]

#### Textual Amendments

**F141** S. 374A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(1)

**F142** Words in s. 374A(4) repealed (with effect in accordance with Sch. 18 para. 17(5) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 18 para. 7, Sch. 41 Pt. 5(8), Note

### 375 Interest ceasing to be relevant loan interest, etc.

- (1) <sup>M55</sup>If at any time—
  - (a) the interest on a loan ceases to be relevant loan interest; or
  - (b) a person making payments of relevant loan interest ceases to be a qualifying borrower;the borrower shall give notice of the fact to the lender.
- (2) Without prejudice to subsection (3) below, in relation to a payment of interest—
  - (a) which is due after the time referred to in subsection (1) above and before the date on which notice is given under that subsection, and
  - [<sup>F143</sup>(aa) as respects which any of the conditions mentioned in section 374(1) is fulfilled, and]
  - (b) from which a deduction was made as mentioned in section 369(1),section 369 shall have effect as if the payment were a payment of relevant loan interest made by a qualifying borrower.
- (3) Nothing in subsection (2) above [<sup>F144</sup>shall be taken as regards the borrower as entitling him to any deduction or to retain any amount deducted and, accordingly, where

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any amount that has been deducted exceeds the amount which ought to have been deducted], he shall be liable to make good the excess and an inspector may make such assessments as may in his judgment be required for recovering the excess.

[<sup>F145</sup>(4) The Management Act shall apply to an assessment under subsection (3) above [<sup>F146</sup>as if it were an assessment to income tax for the year of assessment in which the deduction was made].

(4A) If there is any unreasonable delay in the giving of a notice under subsection (1) above, the borrower shall be liable to a penalty not exceeding so much of the aggregate amount that he is liable to make good under subsection (3) above as is attributable to that delay.]

(5) <sup>M56</sup>If, as a result of receiving a notice under subsection (1) above or otherwise, a qualifying lender has reason to believe that any interest is no longer relevant loan interest or that a borrower is no longer a qualifying borrower, the lender shall furnish the Board with such information as is in his possession with respect to those matters.

(6) <sup>M57</sup>Where it appears to the Board that any of the provisions of sections 370 to 373 is not or may not be fulfilled with respect to any interest, or that a qualifying borrower has or may have ceased to be a qualifying borrower, they shall give notice of that fact to the lender and the borrower specifying the description of relevant loan interest concerned or, as the case may be, that the borrower has or may have ceased to be a qualifying borrower.

(7) Section 369 shall not apply to any payment of relevant loan interest of a description to which a notice under subsection (6) above relates and which becomes due or is made after such date as may be specified in the notice and before such date as may be specified in a further notice given by the Board to the lender and the borrower.

(8) <sup>M58</sup>In any case where—  
 (a) section 369 applies to any relevant loan interest by virtue of a notice under section 374(1)(b), and  
 (b) the relevant date specified in the notice is earlier than the date from which the interest begins to be paid under deduction of tax, and  
 (c) a payment of that interest was made on or after the relevant date but not under deduction of tax,

regulations may provide for a sum to be paid by the Board of an amount equal to that which the borrower would have been able to deduct from that payment by virtue of section 369 if it had been made after the relevant date.

[<sup>F147</sup>(8A) In any case where an amount to which a person is not entitled is paid to him by the Board in pursuance of regulations made by virtue of subsection (8) above, regulations may—

- (a) provide for an officer of the Board to make such assessments as may in his judgment be required for recovering that amount from that person; and
- (b) make provision corresponding to that made by subsection (4A) above and subsections (4) and (5) of section 374A.]

[<sup>F148</sup>(8B) Subsections (1), (5) and (6) above shall not apply where interest ceases to be relevant loan interest by virtue of section 38 of the Finance Act 1999.]

(9) <sup>F149</sup> .....

(10) <sup>F149</sup> .....

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#### Textual Amendments

- F143** S. 375(2)(aa) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(2)
- F144** Words in s. 375(3) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), Sch. 9 para. 11
- F145** S. 375(4)(4A) substituted for s. 375(4) (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(3)
- F146** Words in s. 375(4) substituted (with effect in accordance with Sch. 18 para. 17(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 18 para. 8
- F147** S. 375(8A) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(4)
- F148** S. 375(8B) inserted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), Sch. 4 para. 9(1)
- F149** S. 375(9)(10) repealed (with effect in accordance with Sch. 4 para. 18(1) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 9(2), Sch. 20 Pt. 3(7), Note 1

#### Marginal Citations

- M55** Source-1982 Sch.7 8
- M56** Source-1982 Sch.7 9(1)
- M57** Source-1982 Sch.7 10(1), (2)
- M58** Source-1982 Sch.7 11

### [<sup>F150</sup>375A] Option to deduct interest for the purposes of Schedule A.

<sup>F151</sup> . . . . . ]

#### Textual Amendments

- F150** S. 375A inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), Sch. 6 para. 18
- F151** S. 375A repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 10, Sch. 20 Pt. 3(7)

### 376 Qualifying borrowers and qualifying lenders.

- (1) <sup>M59</sup>Subject to subsection (2) below, an individual is a qualifying borrower with respect to the interest on any loan.
- (2) In relation to interest paid at a time when the borrower or the borrower's husband or wife holds an office or employment in respect of the emoluments of which he or she would but for some special exemption or immunity from tax be chargeable to tax under Case I, II or III of Schedule E, the borrower is not a qualifying borrower.
- (3) In subsection (2) above references to the borrower's husband or wife do not include references to a separated husband or wife <sup>F152</sup> . . . .
- (4) <sup>M60</sup>The following bodies are qualifying lenders:—
  - (a) a building society;
  - (b) a local authority;
  - (c) the Bank of England;

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- (d) the Post Office;
- (e) a company which is authorised under section 3 or 4 of the <sup>M61</sup>Insurance Companies Act 1982 to carry on in the United Kingdom any of the classes of business specified in Schedule 1 to that Act;
- (f) any company to which property and rights belonging to a trustee savings bank were transferred by section 3 of the <sup>M62</sup>Trustee Savings Bank Act 1985;
- [<sup>F153</sup>(g) a friendly society;]
- (h) a development corporation within the meaning of the <sup>M63</sup>New Towns Act 1981 or the <sup>M64</sup>New Towns (Scotland) Act 1968;
- (j) the Commission for the New Towns;
- (k) the Housing Corporation;
- [<sup>F154</sup>(ka) the Secretary of State if the loan is made by him under section 79 of the <sup>M65</sup>Housing Associations Act 1985;]
- (l) the Northern Ireland Housing Executive;
- (m) the Scottish Special Housing Association;
- (n) <sup>F155</sup> .....
- (o) the Church of England Pensions Board;
- (p) any of the following which is [<sup>F156</sup>for the time being registered under section 376A below], namely, an institution authorised under the <sup>M66</sup>Banking Act 1987, a company which is authorised as mentioned in paragraph (e) above to carry on in the United Kingdom any of the classes of business specified in Schedule 2 to the Insurance Companies Act 1982, and a 90 per cent. subsidiary of any such institution or company or of a company within paragraph (e) above and any other body whose activities and objects appear to the [<sup>F156</sup>Board] to qualify it for inclusion in this paragraph.

[<sup>F157</sup>(4A) In subsection (4)(g) above, “friendly society” means—

- (a) a friendly society within the meaning of the Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act), or
- (b) a registered branch within the meaning of that Act (including any branch that by virtue of section 96(3) of that Act is to be treated as a registered branch within the meaning of that Act).]

(5) <sup>F158</sup> .....

(6) <sup>F159</sup> .....

**Textual Amendments**

**F152** Words in s. 376(3) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 11(a), **Sch. 20 Pt. 3(7)**

**F153** S. 376(4)(g) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(2), **22**; S.I. 1993/236, **art.2**

**F154** S. 376(4)(ka) substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140(2), 158(1), **Sch. 16 para. 55**; S.I. 1998/2244, **art. 5**

**F155** S. 376(4)(n) repealed (1.10.1998) by Government of Wales Act 1998 (c. 38), ss. 152, 158(1), **Sch. 18 Pt. 4**; S.I. 1998/2244, **art. 4**

**F156** Words in s. 376(4)(p) substituted (3.5.1994) by Finance Act 1994 (c. 9), **s. 142(1)(a)**

**F157** S. 376(4A) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(3), **22**; S.I. 1993/236, **art. 2**

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**F158** S. 376(5) repealed (3.5.1994) by Finance Act 1994 (c. 9), s. 142(1)(b), Sch. 26 Pt. 5(19)

**F159** S. 376(6) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 11(b), Sch. 20 Pt. 3(7)

#### Marginal Citations

**M59** Source-1982 Sch.7 13

**M60** Source-1982 Sch.7 14(1); 1983 s.17(3)

**M61** 1982 c. 50.

**M62** 1985 c. 50.

**M63** 1981 c.64.

**M64** 1968 c. 16.

**M65** 1985 c. 69.

**M66** 1987 c. 22.

### [<sup>F160</sup>376A] The register of qualifying lenders.

- (1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).
- (2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.
- (3) The registration of any body may be varied by the Board—
  - (a) where it is general, by providing for it to be in relation to a specified description of loan, or
  - (b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.
- (4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.
- (5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.
- (6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board's decision, require the matter to be determined by the Special Commissioners; and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.]

#### Textual Amendments

**F160** S. 376A inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 142(2)

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### 377 Variation of terms of repayment of certain loans.

F161 .....

#### Textual Amendments

**F161** S. 377 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 12, Sch. 20 Pt. 3(7)

### 378 Supplementary regulations.

M67(1) F162 .....

(2) F162 .....

(3) The Board may by regulations make provision—

- (a) for the purposes of any provision of sections 369 to [F163376A] which relates to any matter or thing to be specified by or done in accordance with regulations;
- (b) for the application of those sections in relation to loan interest paid by personal representatives and trustees;
- (c) with respect to the furnishing of information by borrowers or lenders, including, in the case of lenders, the inspection of books, documents and other records on behalf of the Board;
- (d) for, and with respect to, appeals to the General Commissioners or the Special Commissioners against the refusal of the Board to issue a notice under section 374(1)(b) or the issue of a notice under section 375(6) or (7); and
- (e) generally for giving effect to sections 369 to [F163376A].

(4) F162 .....

#### Textual Amendments

**F162** S. 378(1)(2)(4) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 13(a), Sch. 20 Pt. 3(7)

**F163** Words in s. 378(3) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), Sch. 4 para. 13(b)

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

**C37** See S.I. 1983 No.368 (in Part III Vol.5)—housing associations.

#### Marginal Citations

**M67** Source-1982 s.29; 1984 s.56(2)

### 379

In sections 369 to 378—

- “prescribed”, F164 . . . means prescribed by the Board;
- “qualifying borrower” has the meaning given by section 376(1) to (3);
- “qualifying lender” has the meaning given by section 376(4) F165 . . . ;
- “regulations”, F165 . . . means regulations made by the Board under section 378;

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**Status:** Point in time view as at 27/07/1999. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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“relevant loan interest” has the meaning given by section 370(1).  
[<sup>F166</sup>“separated” means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent.]

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**Textual Amendments**

**F164** S. 379: words in definition of "prescribed" repealed (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 26 Pt. 5\(19\)](#)

**F165** S. 379: words in definition of "qualifying lender" repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 14\(a\)](#), [Sch. 20 Pt. 3\(7\)](#)

**F166** S. 379: definition of "separated" inserted (with effect in accordance with [Sch. 4 para. 18\(5\)](#) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 4 para. 14\(c\)](#)

**Status:**

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