

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 6. (See end of Document for details)

SCHEDULES

SCHEDULE 6

Section 27.

RESTRICTION OF HIGHER RATE RELIEF: BENEFICIAL LOANS ETC

Taxation of beneficial loan arrangements

- 1 (1) In section 160 of the Taxes Act 1988 (charge to tax in respect of beneficial loan arrangements) at the end of subsection (4) (which introduces Schedule 7) there shall be added the words “ but that Part of that Schedule is subject to Part IV of that Schedule, which makes provision in connection with the restriction to tax at the basic rate of certain reliefs in respect of loans to which Part III of that Schedule has effect; and Part V of that Schedule has effect for the interpretation of the Schedule. ”
- (2) After that subsection there shall be inserted—
- “(4A) Where an assessment for any year in respect of a loan has been made or determined on the footing that the whole or part of the interest payable on the loan for that year was not in fact paid, but it is subsequently paid, then, on a claim in that behalf, the cash equivalent for that year shall be recalculated so as to take that payment into account and the assessment shall be adjusted accordingly.”
- 2 In section 167 of that Act, after subsection (2) (taxation of benefits for directors and employees paid more than £8,500 per annum: calculation of emoluments) there shall be inserted—
- “(2A) Where, by virtue of paragraph 15 of Schedule 7, the amount, or the total of the amounts, treated under section 160 as emoluments of a person exceeds what it would have been apart from that paragraph, then, for the purposes of subsection (2)(a) above there shall, instead of that excess, be brought into account an amount equal to the difference between—
- (a) the amount by which his total income for the purposes of excess liability exceeds the basic rate limit; and
- (b) what the amount referred to in paragraph (a) above would have been, apart from paragraph 15 of Schedule 7;
- and in this subsection “excess liability means the excess of liability to income tax over what it would be if all income tax were charged at the basic rate, to the exclusion of any higher rate.”
- 3 (1) In Schedule 7 to that Act (taxation of benefit from loans obtained by reason of employment) in paragraph 3, after paragraph (b) of sub-paragraph (1) there shall be added—
- “ and, in a case where there are two or more loans, the aggregate of the cash equivalents (if any) of the benefit of each of those loans shall be treated for

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the purposes of section 160 as the cash equivalent of the benefit of all of them.”

- (2) Sub-paragraphs (2) and (3) of that paragraph shall cease to have effect.
- 4 Paragraph 6 of that Schedule (meaning of “interest eligible for relief” in Part III, which is superseded by amendments made by paragraph 5 below) shall be omitted.
- 5 At the end of that Schedule there shall be added—

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PART IV

INTEREST ELIGIBLE FOR TAX RELIEF: CONSEQUENCES OF RESTRICTION OF RELIEF TO TAX AT THE BASIC RATE ONLY

- 14 This Part of this Schedule applies in relation to the employee for any year for which he is, or, apart from paragraph 7, 8 or 9 above as they apply in relation to home loans, would be, liable to income tax at a rate higher than basic rate or to tax chargeable in respect of excess liability.
- 15 Where this Part of this Schedule applies in relation to the employee for any year, none of paragraphs 7, 8 and 9 above shall apply in his case in relation to any home loan in that year, except as provided by paragraph 17 below.
- 16 (1) Where, by virtue only of paragraph 15 above, paragraph 7, 8 or 9 above does not apply in the case of the employee in relation to a home loan in any year, there shall be treated as interest eligible for relief under section 353 by virtue of section 355(1)(a) in that year—
- (a) in a case where, apart from paragraph 15 above, paragraph 7 would have applied in relation to the home loan, an amount equal to the cash equivalent of the benefit of that loan in that year, apart from paragraph 7, or
 - (b) in a case where, apart from paragraph 15 above, paragraph 8 or 9 would have applied in relation to the home loan, an amount equal to the difference between—
 - (i) the cash equivalent of the benefit of the home loan in that year, apart from paragraphs 8 and 9, and
 - (ii) what the cash equivalent of the benefit of the home loan would have been in that year, apart from paragraph 15 above,
- but subject to the following provisions of this paragraph.
- (2) In the application of section 353 by virtue of this paragraph—

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- (a) the amount that falls to be treated as mentioned in subparagraph (1) above shall be taken to fall within paragraph (a) of subsection (1) of that section; and
- (b) subsections (2) and (3) of that section shall be disregarded in relation to that amount.

17 Paragraph 15 above shall not prevent paragraph 7, 8 or 9 applying in the case of the employee in any year if, apart from paragraph 15—

- (a) he would not have been charged for that year to income tax at any rate higher than basic rate in respect of any of his total income or to tax in respect of excess liability; and
- (b) the aggregate of the following amounts, that is to say—
 - (i) the amount of income in respect of which, apart from any home loans, he would have been charged to income tax for that year at the basic rate,
 - (ii) any income which is treated by virtue of section 683(1) or 684(1) as his income for that year for the purposes of excess liability, notwithstanding that he would not have been charged to tax otherwise than at the basic rate,
 - (iii) the cash equivalents, apart from paragraphs 7, 8 and 9 above, of the benefit of any home loans in that year, and
 - (iv) his nominal element (if any) for that year, reduced by an amount equal to the cash equivalents, apart from paragraph 15 above, of the benefit of any home loans in that year,

does not exceed the basic rate limit by more than the amount specified in section 161(1) for that year.

18 If, in the case of the employee, there is a home loan in any year and that is a year for which—

- (a) he is liable to income tax at a rate higher than basic rate or to tax chargeable in respect of excess liability (whether or not by virtue of this Part of this Schedule), but
- (b) he would not have been so liable apart from any home loans, and
- (c) there is in his case a nominal element,

then, in computing his liability to income tax for that year, the amount which falls to be treated as emoluments under section 160(1) in consequence of the operation of paragraph 15 above (or, if more than one, the aggregate of those amounts) shall be taken to be the highest part of the income charged to tax, and an amount equal to the nominal element shall be taken to be the lowest portion of that part.

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PART V

INTERPRETATION

19 (1) In this Schedule—

“eligible for relief shall be construed in accordance with sub-paragraph (2) below;

“eligible loan means—

- (a) any loan the interest on which is eligible for relief, other than a home loan; and
- (b) in a case where part of the interest on a loan is eligible for relief otherwise than by virtue of section 355(1)(a), 356(1) or 365, that proportion of the loan which that part of the interest bears to the whole of the interest;

and in determining for the purposes of this definition whether the whole or any part of the interest on a loan is so eligible for relief, it shall be assumed that interest at a uniform rate is paid on the loan, whether or not that is in fact the case;

“excess liability means liability to income tax over what it would be if all income tax were charged at the basic rate, to the exclusion of any higher rate;

“home loan means—

- (a) any loan the interest on which is, or apart from section 357 would have been, eligible for relief by virtue of section 355(1)(a), 356(1) or 365; and
- (b) in a case where part of the interest on a loan is or would have been so eligible for relief, that proportion of the loan which that part of the interest bears to the whole of the interest;

and in determining for the purposes of this definition whether the whole or any part of the interest on a loan is or would have been so eligible for relief, it shall be assumed that interest at a uniform rate is paid on the loan, whether or not that is in fact the case;

“loan, except in Part I of this Schedule, shall be construed in accordance with sub-paragraphs (3) to (5) below;

“nominal element, in relation to the employee, means the amount (if any) which, apart from paragraph 15 above, would, by virtue of section 161(1), not have been charged to tax under section 160 in that year in his case.

- (2) Interest is “eligible for relief for the purposes of this Schedule if it is eligible for relief under section 353 or would be eligible for such relief apart from subsection (2) of that section.
- (3) In the definitions of “eligible loan and “home loan in sub-paragraph (1) above, “loan means any such loan as is mentioned in section 160(1), and for this purpose sub-paragraphs (4) and (5) below shall be disregarded.
- (4) Where by virtue of sub-paragraph (1) above part of a loan constitutes a home loan or an eligible loan, the loan shall be treated for the purposes

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of this Schedule, apart from Part I, as if it were two or more separate loans, consisting respectively—

- (a) of the part (if any) which is a home loan,
- (b) of the part (if any) which is an eligible loan, and
- (c) of the part (if any) which is neither a home loan nor an eligible loan,

and, subject to sub-paragraph (5) below, references in this Schedule, apart from Part I, to loans, home loans and eligible loans shall be construed accordingly.

- (5) Except for home loans and eligible loans, all the loans between the same lender and borrower for which a cash equivalent falls to be ascertained and which are outstanding at any time, as to any amount, in any year are to be treated for the purposes of this Schedule, apart from Part I, as a single loan.”

Applicable rates of capital gains tax

- 6 (1) In section 102 of the ^{M1}Finance Act 1988 (unification of rates of tax on income and gains: special cases) after subsection (1) there shall be inserted—

“(1A) References in section 98 above to income tax chargeable at the higher rate also include references to tax chargeable by virtue of section 353(4) or 369(3A) of that Act (restriction to basic rate of relief on certain interest etc) in respect of excess liability; and where for any year of assessment a deduction is by virtue of either of those provisions not allowed in computing the total income of a person for the purposes of excess liability then, whether or not he is chargeable to tax otherwise than at the basic rate, that deduction shall not be allowed for the purposes of section 98(4) above.”

- (2) In subsection (4) of that section (deductions in respect of personal reliefs not to be affected), after the words “subsection (1) there shall be inserted the words “or (1A) ”.

Marginal Citations

M1 1988 c. 39.

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