



Finance Act 1988

1988 CHAPTER 39

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Relief for interest

41 Qualifying maximum for loans.

For the year 1988-89 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

42 Home loans: restriction of relief.

(1) The following sections shall be inserted after section 356 of the Taxes Act 1988—

“356A Limit on relief for home loans: residence basis.

- (1) Where all the qualifying interest payable for any period in relation to a residence is payable by one person, it shall be eligible for relief only to the extent that the amount on which it is payable does not exceed the qualifying maximum during the period.
- (2) Where qualifying interest is payable for any period in relation to a residence by more than one person, the interest paid by each of them shall be eligible for relief only to the extent that the amount on which it is payable by him does not exceed the sharer's limit for the period in his case.

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- (3) Subject to the following provisions of this section and section 356B, in this section and section 356B “the sharer’s limit”, in relation to a person by whom qualifying interest is payable for a period in relation to a residence, means the amount arrived at by dividing the amount of the qualifying maximum during the period by the number of persons by whom qualifying interest is payable for the period in relation to the residence.
- (4) Subsection (5) below applies where—
- (a) in the case of any person by whom qualifying interest is payable for any period in relation to a residence the sharer’s limit for the period exceeds the amount on which the interest is payable by him, and
 - (b) the amount which (apart from that subsection) would be the sharer’s limit for the period in the case of any other person by whom qualifying interest is payable for the period in relation to the residence falls short of the amount on which qualifying interest is so payable by him.
- (5) Where this subsection applies—
- (a) the sharer’s limit for the period in the case of the person mentioned in subsection (4)(a) above shall be reduced by the amount of the excess, and
 - (b) the sharer’s limit for the period in the case of any person such as is mentioned in subsection (4)(b) above shall be increased in accordance with subsections (6) to (8) below.
- (6) Where there is only one other person by whom qualifying interest is payable for the period in relation to the residence, the sharer’s limit in his case shall be increased by the amount of the excess.
- (7) Where there is more than one other person by whom qualifying interest is payable for the period in relation to the residence, the sharer’s limit in the case of each of them shall be increased by such part of the excess as bears to the whole of it the same proportion as any shortfall in his case bears to the aggregate of any shortfalls in the case of each of them.
- (8) In subsection (7) above “shortfall” means the amount by which what would be the sharer’s limit in the case of a person (apart from subsection (5) above) falls short of the amount on which qualifying interest is payable by him.

356B Residence basis: married couples.

- (1) Subject to subsections (2) and (4) below, qualifying interest payable or paid by a married woman who is not separated from her husband shall be treated for the purposes of sections 353 to 356A and 369 to 379 as payable or paid by her husband (and not by her).
- (2) Where—
- (a) qualifying interest is payable, or treated by subsection (1) above as payable, for a period in relation to a residence by a married man who is not separated from his wife, and
 - (b) qualifying interest is also payable for the period in relation to the residence by one or more persons other than the man and his wife,

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then for the purposes of section 356A(2) and (3) qualifying interest shall be treated as payable by the wife for the period in relation to the residence (whether or not it actually is).

- (3) The application of subsection (2) above in the case of a husband and wife shall not give rise to a separate sharer's limit for the period in question in the case of the wife; but the limit arrived at under subsection (3) of section 356A for the period in the case of the husband shall be increased by the amount which (apart from this subsection) would be the limit arrived at under that subsection in the case of the wife.
- (4) Where an application under section 283 or an election under section 287 is in force in relation to a husband and wife for a year of assessment, subsections (1) to (3) above shall not apply in relation to them for the year but they may jointly elect—
 - (a) that qualifying interest payable or paid by one of them for the year (or a period within the year), or such part of that interest as may be specified in the election, shall be treated for the purposes of sections 353 to 356A and 369 to 379 (and section 287(7)) as payable or paid by the other, and
 - (b) that the sharer's limit under section 356A for the year (or period) in the case of one of them shall be reduced by such amount as may be specified in the election and the sharer's limit under that section for the year (or period) in the case of the other shall be correspondingly increased.
- (5) An election under subsection (4) above—
 - (a) shall be made before the end of the period of twelve months beginning with the end of the first year of assessment for which it is made or such longer period as the Board may in any particular case allow,
 - (b) shall, subject to subsection (6) below, have effect if made for the year 1988-89 not only for that year but also for the year 1989-90, and
 - (c) shall be in such form, and be made in such manner, as the Board may prescribe.
- (6) Where a husband and wife have made an election under subsection (4) above for the year 1988-89 they may give, for the year 1989-90, a notice to withdraw that election; and, if they do so, the election shall not have effect for the year 1989-90.
- (7) A notice of withdrawal under subsection (6) above—
 - (a) shall be in such form, and be given in such manner, as the Board may prescribe,
 - (b) shall not be given after 5th April 1991 or such later date as the Board may in any particular case allow, and
 - (c) shall not prejudice the making of a fresh election for 1989-90.
- (8) Where—
 - (a) a husband and wife are not separated,
 - (b) the husband pays interest in relation to a residence used or to be used as his only or main residence, and
 - (c) his wife pays interest in relation to some other residence used or to be used as her only or main residence,

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the residence which was purchased first shall be treated for the purposes of sections 355(1)(a) and 356 as used or to be used as the only or main residence of both of them and the other residence shall be treated as used or to be used as the only or main residence of neither.

356C Payments to which sections 356A and 356B apply.

- (1) Subject to subsection (2) below, sections 356A and 356B shall have effect with respect to payments of qualifying interest made on or after 1st August 1988.
- (2) Subject to subsection (5) below, those sections shall not have effect with respect to a payment of qualifying interest made by a person in relation to a residence if—
 - (a) the payment is made under a loan made before 1st August 1988,
 - (b) qualifying interest was payable in relation to the residence for 1st August 1988 by someone other than the person making the payment or his spouse,
 - (c) qualifying interest has been payable in relation to the residence by the person making the payment or his spouse throughout the time beginning with 1st August 1988 and ending with the date of the payment, and
 - (d) someone other than the person making the payment or his spouse owns an estate or interest or property in the residence at each point during that time and at each such point at least one such person is a person by whom qualifying interest is payable in relation to the residence at some point during that time.
- (3) For the purposes of subsection (2) above a loan made on or after 1st August 1988 shall be treated as made before that date if it is proved by written evidence—
 - (a) that the loan was made in pursuance of an offer made before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, and
 - (b) that the loan was used to defray money applied in pursuance of a binding contract entered into before that date;

and where a payment is made under such a loan the references in subsection (2) above to 1st August 1988 shall be treated as references to the first day for which qualifying interest is payable in relation to the residence under the loan (or where there is more than one such loan the latest such day).
- (4) Subject to subsection (5) below, where by virtue of subsection (2) above sections 356A and 356B do not have effect with respect to payments of qualifying interest made by a person for any period in relation to a residence under one loan those sections shall not have effect with respect to payments of qualifying interest for that period in relation to the residence made by that person or his spouse under any other loan.
- (5) Where all the persons by whom qualifying interest is payable in relation to a residence have made a joint election for the purpose, sections 356A and 356B shall have effect with respect to all payments of qualifying interest made by any person in relation to the residence notwithstanding that they would

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otherwise be payments with respect to which those sections would not have effect.

- (6) An election under subsection (5) above—
- (a) shall have effect for the period in which it is made and subsequent periods,
 - (b) shall be irrevocable, and
 - (c) shall be in such form, and be made in such manner, as the Board may prescribe.
- (7) Sections 356A and 356B shall not have effect with respect to payments of qualifying interest if the interest is qualifying interest only by reason of its being paid in relation to a residence used or to be used as the only or main residence of a dependent relative or former or separated spouse of the person by whom the payment is made.
- (8) In this section references to a spouse do not include references to a separated spouse.

356D Provisions supplementary to sections 356A to 356C.

- (1) In sections 356A to 356C and this section “qualifying interest” means interest which (apart from those sections or section 357) is eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).
- (2) In sections 356A to 356C and this section “residence” means a building, or part of a building, occupied or intended to be occupied as a separate residence, or a caravan or house-boat; but a building, or part of a building, which is designed for permanent use as a single residence shall be treated as a single residence notwithstanding that it is temporarily divided into two or more parts which are occupied or intended to be occupied as separate residences.
- (3) In sections 356A to 356C and this section “period”, with respect to qualifying interest payable by a person in relation to a residence, means a period commencing with—
- (a) any day which is the first day for which qualifying interest is payable in relation to the residence by that or any other person (whether or not qualifying interest was payable by any person in relation to the residence for any earlier day),
 - (b) any day immediately following a day which is the last day for which qualifying interest is payable in relation to the residence by any other person (whether or not qualifying interest is payable by any person in relation to the residence for any later day), or
 - (c) the first day of a year of assessment,
- and ending with either the day immediately preceding the next day such as is mentioned in paragraph (a), (b) or (c) above or (if sooner) the day which is the last day for which qualifying interest is payable in relation to the residence by that person.
- (4) In section 356A references to the qualifying maximum during a period are references to the qualifying maximum for the year of assessment in which the period falls.

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- (5) Where because of section 356A the full amount of qualifying interest paid by a person for a period is not eligible for relief, the part of that interest that is eligible for relief shall be such as bears to the whole of it the same proportion as the part of the amount on which qualifying interest is payable by him for the period that does not exceed the limit under that section in his case bears to the whole of that amount.
 - (6) Where a person pays qualifying interest on more than one loan, the limit under section 356A in his case shall have effect in relation to qualifying interest paid on a later loan as if that loan were reduced by the amount of any earlier loan; and if that amount is equal to or exceeds the limit, none of the interest paid on the later loan is eligible for relief.
 - (7) For the purposes of subsection (6) above, where interest is paid on more than one loan made simultaneously to one person it shall be treated as paid on one loan.
 - (8) Subject to section 356B, where a loan is made jointly to more than one person by whom qualifying interest is payable in relation to a residence under the loan, the amount on which qualifying interest is payable in relation to the residence under the loan by each of the persons shall be treated for the purposes of section 356A as being such amount as is produced by dividing the whole of the amount on which qualifying interest is payable in relation to the residence under the loan by the number of persons by whom qualifying interest is so payable.
 - (9) Where section 354 continues to apply to a loan by virtue of section 354(5)(a), then sections 356A to 356C and this section shall also continue to have effect as if section 354 applied to it by virtue of section 355(1)(a).
 - (10) In determining whether the amount on which interest is payable exceeds any limit under section 356A, no account shall be taken of so much (if any) of that amount as consists of interest which has been added to capital and which does not exceed £1,000.”
- (2) In section 357 of the Taxes Act 1988 (limit on interest relief for home loans where residence basis does not apply)—
- (a) in subsection (1)—
 - (i) for the word “Interest” there shall be substituted the words “Subject to subsection (1A) below, where section 356A does not have effect with respect to a payment of interest because of section 356C(2) or (7) and the payment is of interest”, and
 - (ii) after “356(1)” there shall be inserted the words “the payment of interest”, and
 - (b) the following subsections shall be inserted after that subsection—
 - “(1A) Where section 356A does not have effect with respect to a payment of interest made by a person in relation to land, or a caravan or house-boat, used or to be used as his only or main residence because of section 356C(2), subsection (1) above shall have effect with respect to the payment of interest as if the reference to the qualifying maximum for the year of assessment were a reference to the amount specified in subsection (1B) below.

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- (1B) The amount referred to in subsection (1A) above is the lesser of £30,000 and the amount on which interest was payable by the person in relation to the land, caravan or house-boat immediately before 1st August 1988.
- (1C) Where subsection (2) of section 356C applies in the case of a person by virtue of subsection (3) of that section, for the purposes of subsection (1B) above the amount on which interest is payable by him under the loan referred to in section 356C(3) for the first day for which interest is so payable shall be treated as the amount on which interest is payable by him under the loan immediately before 1st August 1988.”
- (3) In the Taxes Act 1988—
- (a) in section 355(1) (requirement that interest be payable in relation to only or main residence of payer), before “357” there shall be inserted the words “356A or”,
 - (b) in section 367(5) (meaning of “qualifying maximum”), for “357(1)” there shall be substituted “356A to 357”,
 - (c) in section 370(2)(b) (MIRAS: meaning of “relevant loan interest”), before “357” there shall be inserted “356A,”, and
 - (d) in section 373 (MIRAS: large loans and joint borrowers)—
 - (i) in subsection (1), before “357(1)” there shall be inserted “356A, section”,
 - (ii) in subsection (3), after the word “applies” there shall be inserted the words “section 356D(6) or”, and
 - (iii) in subsection (4), after the words “by virtue of” there shall be inserted the words “section 356D(7) or”.
- (4) This section shall come into force on 1st August 1988.

Modifications etc. (not altering text)

- C1** S. 42 applied (31.7.1998 with effect as mentioned in s. 38 of 1998 c. 36) by 1988 c. 1, s. 21B (as substituted by 1998 c. 36, s. 38, Sch. 5 Pt. I paras. 4, 73, 76)

43 Home improvement loans.

- (1) In relation to payments of interest made on or after 6th April 1988 section 355 of the Taxes Act 1988 (limitations on relief for loans for purchase or improvement of land etc.) shall have effect with the insertion of the following subsections after subsection (2)—
- “(2A) Section 354 shall not apply by virtue of subsection (1)(a) above where the interest is paid on a home improvement loan unless the loan was made before 6th April 1988.
- (2B) In subsection (2A) above “home improvement loan” means—
- (a) a loan to defray money applied in improving or developing land or buildings on land, otherwise than by the erection of a new building (which is not part of an existing residence) on land which immediately

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before the improvement or development began had no building on it,
or

- (b) a loan replacing (whether directly or indirectly) a loan within paragraph (a) above.

(2C) Where it is proved by written evidence that a loan made on or after 6th April 1988 was made in pursuance of an offer made by the lender before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, the loan shall be deemed for the purposes of subsection (2A) above to have been made before that date.”

- (2) In relation to payments of interest made on or after 6th April 1988 section 356 of the Taxes Act 1988 (job-related accommodation) shall have effect with the insertion of the following subsection after subsection (1)—

“(1A) Subsection (1) above shall not apply where the interest is paid on a home improvement loan (as defined in section 355(2B)) unless the loan was made before 6th April 1988; and section 355(2C) shall have effect for the purposes of this subsection as for those of section 355(2A).”

- (3) Interest paid by a housing association on a home improvement loan made on or after 6th April 1988 shall not be relevant loan interest for the purposes of Part IX of the Taxes Act 1988; and for the purposes of this subsection—

- (a) “housing association” means a housing association for the time being approved for the purposes of section 488 of that Act or a self-build society for the time being approved for the purposes of section 489,
(b) “home improvement loan” has the same meaning as in subsection (2B) of section 355 of that Act, and
(c) subsection (2C) of that section shall have effect as it does for the purposes of subsection (2A) of that section.

44 Loans for residence of dependent relative etc.

- (1) In sections 355(1)(a) and 357(2)(a) of the Taxes Act 1988 the words “or of a dependent relative or former or separated spouse of his,” shall not have effect in relation to payments of interest made on or after 6th April 1988.

- (2) Subsection (1) above shall not apply where the interest is paid on a loan made before 6th April 1988 if interest paid on it at a relevant time was eligible for relief under section 353 of the Taxes Act 1988 only because the land, caravan or house-boat concerned was used as the only or main residence of the same dependent relative or former or separated spouse.

- (3) In subsection (2) above “relevant time” means—

- (a) the last time when interest was paid on the loan before 6th April 1988, or
(b) if no interest was paid on it before that date, any time within the period of 12 months (or any longer period substituted in relation to the case under section 355(2) of the Taxes Act 1988) after the date on which the loan was made;

but paragraph (b) above shall not apply if at any time after the date on which the loan was made and before the date on which the land, caravan or house-boat was first used as mentioned in subsection (2) above, the land, caravan or house-boat was used for any other purpose.

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- (4) In section 358(4)(a) of the Taxes Act 1988 (relief where borrower deceased) the words “or of any dependent relative of the deceased” shall not have effect in relation to payments of interest made on or after 6th April 1988 unless—
- (a) the deceased died before that date, and
 - (b) the land, caravan or house-boat was used as the only or main residence of the dependent relative before that date.
- (5) Where it is proved by written evidence that a loan made on or after 6th April 1988 was made in pursuance of an offer made by the lender before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, the loan shall be deemed for the purposes of this section to have been made before that date.
- (6) Interest paid by a housing association shall not be relevant loan interest for the purposes of Part IX of the Taxes Act 1988 where by virtue of this section it would not be relevant loan interest if paid by a member of the association; and in this subsection “housing association” means a housing association for the time being approved for the purposes of section 488 of that Act or a self-build society for the time being approved for the purposes of section 489.

Modifications etc. (not altering text)

- C2** [S. 44](#) applied (31.7.1998 with effect as mentioned in s. 38 of [1998 c. 36](#)) by [1988 c. 1, s. 21](#) (as substituted by [1998 c. 36, s. 38, Sch. 5 Pt. I paras. 4, 73, 76](#))

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