



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART IX

ANNUAL PAYMENTS AND INTEREST

Mortgage interest relief at source

369 Mortgage interest payable under deduction of tax

- (1) 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 income tax thereon at the basic rate for the year of assessment in which the payment becomes due.
- (2) Where a sum is deducted under subsection (1) above from a payment of relevant loan interest—
 - (a) the person to whom the payment is made shall allow the deduction on receipt of the residue;
 - (b) 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
 - (c) the sum deducted shall be treated as income tax paid by the person to whom the payment is made.
- (3) Where payments of relevant loan interest to which this section applies become due in any year, the borrower shall be charged with tax at the basic rate for that year on an amount of income equal, subject to subsection (4) below, to the deduction which, in computing his total income, falls to be made on account of those payments.
- (4) In any case where—
 - (a) payments of relevant loan interest to which this section applies become due in any year; and
 - (b) the total income of the borrower for that year is such that he cannot benefit from any or, as the case may be, the full amount of the relevant personal reliefs to which he is entitled;

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so much of that full amount as cannot be deducted from his total income shall be deducted from the amount of income on which he is chargeable to tax by virtue of subsection (3) above.

- (5) In subsection (4) above “relevant personal relief” means any relief to which the borrower concerned is entitled under Chapter I of Part VII other than—
- (a) relief under section 266 which is given either by deduction by virtue of subsection (5) of that section or in accordance with paragraph 6 of Schedule 14; and
 - (b) relief under section 273;
- and for the purposes of subsection (4) above the full amount of those reliefs means the amount of them determined without regard to section 276.
- (6) 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.

370 Relevant loan interest

- (1) Subject to this section and sections 371 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) or (3) below applies.
- (2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2)—
- (a) it is interest falling within section 354(1) or 365; and
 - (b) apart from section 74(o) and, where applicable, section 357 or 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; and
 - (c) except in the case of interest falling within section 365, at the time the interest is paid, the condition in either section 355(1) or 356(1) is fulfilled with respect to the land, caravan or house-boat to which the loan concerned relates.
- (3) This subsection applies to interest which is payable on a loan—
- (a) in respect of which there was in force on 31st March 1983—
 - (i) an option notice given under section 24(2) of the Housing Subsidies Act 1967 (option mortgages) other than one falling within section 27(3)(b) of the Finance Act 1982; or
 - (ii) an option notice given under Article 142(2) of the Housing (Northern Ireland) Order 1981 (option mortgages in Northern Ireland) other than one falling within section 27(4)(b) of the Finance Act 1982; and
 - (b) which relates to a dwelling in respect of which, at the time the interest is paid, the condition in section 355(1) is fulfilled.
- (4) Subsection (2) above does not apply to interest payable on a loan the only security for which is a contract of insurance on human life or a contract to pay an annuity on human life.

- (5) In determining whether subsection (2) above applies to any interest, sections 354(1) and 365 shall each have effect as if the words “or the Republic of Ireland” were omitted.
- (6) In determining whether subsection (2)(c) above applies to any interest, section 355(1) shall have effect as if—
 - (a) in paragraph (a) after the word “used”, where it first occurs, there were inserted the words “wholly or to a substantial extent”; and
 - (b) paragraph (b) and the word “or” immediately preceding it were omitted.
- (7) In determining for the purposes of subsection (3)(b) above whether the condition in section 355(1) is for the time being fulfilled with respect to any dwelling—
 - (a) subsection (1) of that section shall have effect as if for the words from “section 354” to “used” (where it first occurs) there were substituted the words “interest shall not be relevant loan interest for the purposes of section 369 unless the dwelling to which the loan relates is at the time the interest is paid used wholly or partly” and paragraph (b) and the word “or” immediately preceding it were omitted; and
 - (b) subsection (3) of that section shall have effect as if for “land, caravan or house-boat” there were substituted “dwelling”.

371 Second loans

- (1) Where at a time when interest on a loan (“the first loan”) is relevant loan interest, the borrower raises another loan to defray money to be applied as mentioned in section 354(1) with a view—
 - (a) to the use of other land or another caravan or house-boat wholly or partly as that person’s only or main residence, and
 - (b) to the disposal of the land, caravan, house-boat or dwelling to which the first loan relates,then, in relation to interest payable within 12 months from the making of the other loan, the condition in section 355(1) shall be treated as continuing to be fulfilled.
- (2) If in a case falling within subsection (1) above the interest on the first loan is interest to which section 370(2) applies and a direction is given under section 354(6) extending the period within which section 354 applies to that loan, subsection (1) above shall have effect in relation to that case as if for the reference to 12 months there were substituted a reference to such longer period as is specified in the direction.
- (3) If in a case falling within subsection (1) above the interest on the first loan is interest to which section 370(3) applies and, having regard to the circumstances of that case, it appears to the Board reasonable to do so, they may direct that, in relation to that case, subsection (1) 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 the case.

372 Home improvement loans

- (1) Notwithstanding anything in section 370(2), interest on a home improvement loan (other than interest to which section 370(3) applies) is not relevant loan interest unless—
 - (a) the qualifying lender to whom the interest is payable is a building society or a local authority or the Northern Ireland Housing Executive; or

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- (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 those home improvement loans in respect of which he is the lender and which were made after such date as he may specify in the notice brought within the tax deduction scheme.
- (2) A qualifying lender may not specify a date in a notice under subsection (1) above which is earlier than the earliest date on which paragraph 2 of Schedule 7 to the Finance Act 1982 applied, or, if that paragraph did not apply, section 370 applies to interest on any loan (whether or not a home improvement loan) made by him.
- (3) In this section “home improvement loan” means a loan made to defray money applied wholly in improving or developing land or buildings on land or in paying off another loan which was itself to defray money so applied.
- (4) Section 354(2) shall apply for the purposes of this section as it applies for the purposes of sections 354 and 355.

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

- (1) The provisions of this section have effect in relation to a loan where, by virtue of section 357(1) or 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) If in a case where subsection (2) above applies section 357(1) requires an earlier loan to be taken into account for the purpose of determining that part of the limited loan interest on which would (apart from section 353(2)) be eligible for relief under section 353, none of the interest on the limited loan is relevant loan interest unless that earlier loan was made by the same qualifying lender as the limited loan.
- (4) The reference in subsection (1) above to a loan only part of the interest on which would (apart from section 353(2)) be eligible for relief under section 353 includes a reference to each of two or more loans if, by virtue of subsection (3)(b) of section 357, the interest on the loans falls to be treated for the purposes of that section as payable on one loan; but, notwithstanding that each of those loans is accordingly a limited loan for the purposes of this section, none of the interest on any of them is relevant loan interest unless each of the loans was made by the same qualifying lender.
- (5) Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled and, if subsection (3) or (4) above also applies, the condition in that subsection is also fulfilled 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) 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

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- (b) in relation to each of them considered separately, the whole of that interest is relevant loan interest, in accordance with sections 370 to 372 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, and for this purpose "separated" has the meaning given by section 367(1).

374 Conditions for application of section 369

- (1) Section 369 does not apply to any relevant loan interest unless—
- (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) it is interest to which section 370(3) applies; or
 - (d) 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) 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 (c) or (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).

375 Interest ceasing to be relevant loan interest, etc

- (1) 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;

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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
 - (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 entitles the borrower to any relief from tax or other benefit and, accordingly, where the amount of any such relief or other benefit which is allowed by virtue of that subsection exceeds that which ought to have been allowed, 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.
- (4) The Management Act shall apply to an assessment under subsection (3) above as if it were an assessment to tax for the year of assessment in which the relief was given and as if—
 - (a) the assessment were among those specified in sections 55(1) (recovery of tax not postponed) and 86(2) (interest on overdue tax) of that Act; and
 - (b) the sum charged by the assessment were tax specified in paragraph 3 of the Table in section 86(4) of that Act (reckonable date).
- (5) 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) 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) 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.
- (9) No obligation as to secrecy imposed by statute or otherwise on persons employed in relation to Inland Revenue shall prevent information relating to any loan in respect of which an option notice has been given as mentioned in section 370(3)(a) from being

disclosed to the Secretary of State or the Department of the Environment for Northern Ireland, or to an officer of either of them authorised to receive such information, in connection with the exercise by the Secretary of State or that Department of any of his or its functions in relation to any such loan.

- (10) Subsection (9) above extends only to disclosure by or under the authority of the Inland Revenue; and information which is disclosed to any person by virtue of that subsection shall not be further disclosed to any other person unless—
- (a) it could have been disclosed to that other person in accordance with that subsection; or
 - (b) the disclosure is made for the purposes of any civil or criminal proceedings concerned with the loan to which the disclosure relates.

376 Qualifying borrowers and qualifying lenders

- (1) 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, and for this purpose "separated" has the meaning given by section 367(1).
- (4) The following bodies are qualifying lenders:—
- (a) a building society;
 - (b) a local authority;
 - (c) the Bank of England;
 - (d) the Post Office;
 - (e) a company which is authorised under section 3 or 4 of the 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 Trustee Savings Bank Act 1985;
 - (g) a registered friendly society or branch, within the meaning of the Friendly Societies Act 1974 or the Friendly Societies Act (Northern Ireland) 1970;
 - (h) a development corporation within the meaning of the New Towns Act 1981 or the New Towns (Scotland) Act 1968;
 - (j) the Commission for the New Towns;
 - (k) the Housing Corporation;
 - (l) the Northern Ireland Housing Executive;
 - (m) the Scottish Special Housing Association;
 - (n) the Development Board for Rural Wales;
 - (o) the Church of England Pensions Board;
 - (p) any of the following which is prescribed under subsection (5) below, namely, an institution authorised under the 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

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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 Treasury to qualify it for inclusion in this paragraph.

- (5) The Treasury may by order prescribe for the purposes of subsection (4) above generally or in relation to any specified description of loan any of the bodies referred to in paragraph (p) of subsection (4) above; and a body which is prescribed by such an order shall become a qualifying lender generally or, as the case may be, in relation to such description of loan as is specified in the order with effect from such date as may be so specified.
- (6) Without prejudice to subsection (4) above, in relation to interest to which section 370(3) applies, the person who, as a qualifying lender for the purposes of Part II of the Housing Subsidies Act 1967 or Part VIII of the Housing (Northern Ireland) Order 1981, was the lender in relation to the loan referred to in section 370(3) shall also be a qualifying lender.

377 Variation of terms of repayment of certain loans

- (1) If relevant loan interest payable by a qualifying borrower—
- (a) is payable under a loan agreement requiring combined payments, and
 - (b) is payable to a qualifying lender who, in accordance with subsection (5) below, is specified for the purposes of this section, and
 - (c) is interest on a loan made before 1st April 1983, or if it is interest in respect of which the Board notified an earlier date to the lender under paragraph 2(5) of Schedule 7 to the Finance Act 1982, before that earlier date,

then, subject to subsection (2) below, the terms of repayment are by virtue of this section varied in accordance with subsection (3) below.

- (2) Subsection (1) above does not apply to any combined payments unless—
- (a) the qualifying lender concerned has, in accordance with regulations, given notice to the qualifying borrower that this section is to apply to combined payments which the borrower is required to make under the loan agreement; and
 - (b) the qualifying borrower has not, in accordance with regulations, given notice to the qualifying lender that he wishes to continue with combined payments which, allowing for any sums he is entitled to deduct by virtue of section 369, do not exceed the combined payments which he would have been required to make but for the provisions of that section.
- (3) Where subsection (1) applies, the amount of any combined payment payable by the qualifying borrower concerned which includes a payment of relevant loan interest shall be determined by the lender so as to secure, so far as practicable—
- (a) that the principal and interest are repaid over the period which is for the time being agreed between the lender and the borrower; and
 - (b) that, unless there is a change in that period or in the basic rate of income tax or in the rate of interest charged by the lender, the amount of each net payment due from the borrower to the lender will be of the same amount;

and for the purposes of paragraph (b) above “net payment” means a payment which, so far as it is a payment of interest, consists of interest from which the sum provided for by section 369(1) has been deducted.

- (4) Where the qualifying borrower gives a notice under subsection (2)(b) above, the amount of any combined payment payable by him which includes a payment of relevant loan interest and the period over which the principal and interest on the loan are to be repaid shall be determined by the lender so as to secure, so far as practicable, that, unless there is a change in the basic rate of income tax or in the rate of interest charged by the lender—
- (a) the amount of each net payment as defined in subsection (3) above which is due from the borrower to the lender will be of the same amount; and
 - (b) the amount of each such payment does not exceed what, apart from section 369, would have been the amount of the combined payment payable by the borrower on the effective date of the notice under subsection (2)(a) above, less tax at the basic rate for the year of assessment in which that effective date falls on so much of that combined payment as would have consisted of interest.
- (5) Nothing in this section or in the loan agreement shall prevent the borrower from making, at such time or times as he chooses, additional repayments of capital of any amount so as to secure that the principal and interest on the loan are repaid within a period which is not shorter than that referred to in subsection (3)(a) above.
- (6) For the purposes of subsection (4)(b) above the effective date of a notice under subsection (2)(a) above is the date which, in accordance with regulations, is the due date for the first combined payment which, in consequence of that notice and the notice under subsection (2)(b) above, is a net payment for the purposes of subsection (3)(b) above.
- (7) The repeal by this Act of section 28 of the Finance Act 1982 shall not affect the variation of any agreement in pursuance of that section before 26th July 1984 and accordingly, where the borrower gave a notice under subsection (2)(b) of that section, the maximum amount of any combined payment payable under the agreement as so varied which includes a payment of relevant loan interest shall continue to be the amount which would, apart from section 369, have been the first combined payment payable by the borrower after the date referred to in subsection (1)(c) above less tax at the basic rate for the year 1983-84 on so much of that combined payment as would have consisted of interest (subject to any change in the basic rate of income tax or in the rate of interest charged by the lender); and subsection (5) above shall apply in relation to any agreement as so varied.
- (8) A building society is by virtue of this subsection specified for the purposes of this section; and the Treasury may by order specify any other qualifying lender or class of qualifying lender for the purposes of this section.
- (9) The giving of a notice under subsection (2)(a) or (b) above does not affect the right of the qualifying lender and the qualifying borrower to vary, by agreement, the terms on which interest or capital or both is to be repaid.
- (10) In this section—
- “loan agreement” means an agreement governing the terms of payment of interest and repayment of capital of a loan the interest on which is relevant loan interest; and
 - “combined payment” means one of a number of regular payments which are attributable in part to repayment of capital and in part to payment of interest.

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378 Supplementary regulations

- (1) The Treasury may by regulations make provision for the application of sections 369 to 377 in relation to—
 - (a) a housing association which is for the time being approved for the purposes of section 488 and which borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that association on land in the United Kingdom; and
 - (b) a self-build society which is for the time being approved for the purposes of section 489 and which borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that society on land in the United Kingdom.
- (2) Regulations under subsection (1) above—
 - (a) may contain such modifications of the provisions of sections 369 to 377, and
 - (b) may make the application of any of those provisions subject to such special conditions,
 as appear to the Treasury to be appropriate.
- (3) The Board may by regulations make provision—
 - (a) for the purposes of any provision of sections 369 to 377 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 377.
- (4) In this section—
 - (a) references to a self-build society are references to a self-build society within the meaning of Part I of the Housing Associations Act 1985 or, in Northern Ireland, Part VII of the Housing (Northern Ireland) Order 1981; and
 - (b) in its application to Scotland —
 - (i) “a freehold or leasehold estate” means any interest in land, and
 - (ii) any reference to a loan on the security of such an estate is a reference to a loan upon a heritable security within the meaning of section 9(8) (a) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

379 Interpretation of sections 369 to 378

In sections 369 to 378—

- “prescribed”, except in section 376(4) and (5), 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) to (6);
- “regulations”, except in sections 378(1) and (2), means regulations made by the Board under section 378;

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“relevant loan interest” has the meaning given by section 370(1).