



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IX

#### ANNUAL PAYMENTS AND INTEREST

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

#### **353 General provision**

- (1) Where a person pays in any year of assessment—
  - (a) annual interest chargeable to tax under Case III of Schedule D; or
  - (b) interest payable in the United Kingdom or the Republic of Ireland on an advance from a bank carrying on a bona fide banking business in the United Kingdom or the Republic of Ireland or from a person bona fide carrying on a business as a member of the Stock Exchange or bona fide carrying on the business of a discount house in the United Kingdom or the Republic of Ireland;and the interest is stated in sections 354 to 365 to be eligible for relief under this section, then, if he makes a claim to the relief and subject to the following provisions of this section, sections 354 to 368 and section 237(5)(b), the amount of the interest shall be deducted from or set off against his income for that year of assessment, and income tax shall be discharged or repaid accordingly.
- (2) This section does not apply to a payment of relevant loan interest to which section 369 applies.
- (3) Relief under this section shall not be given in respect of—
  - (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.

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### **354 Loans to buy land etc**

(1) Subject to sections 355 to 358 and subsections (2) to (6) below, interest is eligible for relief under section 353 if it is paid by a person for the time being owning an estate or interest in land, or the property in a caravan or house-boat, in the United Kingdom or the Republic of Ireland on a loan to defray money applied—

- (a) in purchasing that estate, interest or property, or another estate, interest or property absorbed into, or given up to obtain, that estate, interest or property; or
- (b) in improving or developing the land, or buildings on the land; or
- (c) in paying off another loan, if interest on that other loan 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) or would have been so eligible apart from section 353(2).

(2) In this section and section 355—

- (a) references to money applied in improving or developing land or buildings include references to payments in respect of maintenance or repairs incurred by reason of dilapidation attributable to a period before the estate or interest was acquired, but otherwise do not include references to payments in respect of maintenance or repairs, or any of the other payments mentioned in section 25(1); and
- (b) references to money applied in improving or developing land include references to expenditure incurred or defrayed directly or indirectly in respect of street works, other than works of maintenance or repair, for any highway or road, or in Scotland any right of way, adjoining or serving the land.

(3) Interest is eligible for relief under section 353 in the case of a caravan only if the caravan—

- (a) is a large caravan, or
- (b) taken with the land on which it stands, is for the time being a rateable hereditament for the purposes of a relevant enactment and the owner or the wife or husband of the owner has as occupier of the caravan duly paid rates under the relevant enactment for the period in which the interest was paid.

In this subsection—

“relevant enactment” means the General Rate Act 1967, any corresponding enactment in force in Scotland or the Republic of Ireland or the Rates (Northern Ireland) Order 1977; and

“hereditament”, in relation to Scotland, means lands and heritages.

(4) References in this section and in section 355 to an estate or interest do not include references—

- (a) to a rentcharge or, in Scotland, a superiority or the interest of a creditor in a contract of ground annual; or
- (b) to the interest of a chargee or mortgagee or, in Scotland, the interest of a creditor in a charge or security of any kind over land.

(5) Where this section applies to a loan by reason of the land, caravan or house-boat concerned being used as a person’s only or main residence, and the borrower raises another loan to defray money to be applied as mentioned in subsection (1) above with a view to the use of other land or another caravan or house-boat as that person’s only or main residence and the disposal of the first-mentioned land, caravan or house-boat,

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then in relation to interest payable within 12 months from the making of the other loan, this section—

- (a) shall continue to apply to the first-mentioned loan, whether or not the first-mentioned land, caravan or house-boat continues to be so used; and
  - (b) shall apply to the other loan to the same extent (if any) as if no interest were payable on the first-mentioned loan.
- (6) 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 (5) 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.
- (7) Where interest is payable by the tenant occupier of any property to the landlord in pursuance of arrangements whereby money advanced at interest by the landlord is applied by the tenant in purchasing the landlord's estate or interest, or in the case of a caravan or house-boat the property in the caravan or house-boat, but that estate or interest or property is not to pass to the tenant until some time after the interest begins to be payable, this section and section 355(5) shall have effect in relation to the tenant as if he were the owner of the landlord's estate, interest or property.

### **355 Matters excluded from section 354**

- (1) Subject to the following provisions of this section and sections 356 to 358, section 354 shall not apply unless the land, caravan or house-boat in question—
- (a) is at the time the interest is paid used as the only or main residence of the person by whom it is paid (“the borrower”) or of a dependent relative or former or separated spouse of his, or, if the interest is paid less than 12 months after the date on which the loan is made, is so used within 12 months after that date; or
  - (b) is, in any period of 52 weeks comprising the time at which the interest is payable and falling wholly or partly within the year of assessment, let at a commercial rent for more than 26 weeks and, when not so let, either available for letting at such a rent or used as mentioned in paragraph (a) above or prevented from being so available or used by any works of construction or repair;
- and shall in a case within paragraph (a) above apply only within the limit imposed by section 357.
- (2) 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 (1) above shall have effect as if for the references to 12 months there were substituted references to such longer period as meets the circumstances of that case.
- (3) The land, caravan or house-boat does not fall within subsection (1)(a) above by reason of its being used as the only or main residence of a dependent relative of the borrower unless it is provided rent-free and without any other consideration.
- (4) Relief under section 353 for interest eligible for it by virtue of section 354 in a case where it is eligible only because the land, caravan or house-boat referred to in it falls under subsection (1)(b) above shall be given only against income from the letting of that or any other land, caravan or house-boat, but may, if and to the extent that such income for the year of assessment is insufficient, be given against such income for the

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following year, and so on, provided the first-mentioned land, caravan or house-boat continues to fall under that subsection.

- (5) Subsection (1)(a) of section 354 shall not apply—
- (a) where the seller and purchaser are husband and wife and either sells to the other, or
  - (b) where the purchaser, or the wife or husband of the purchaser, has since 15th April 1969 disposed of an estate or interest in the land, or the property in the caravan or house-boat, in question, and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan, or
  - (c) where the purchasers are the trustees of a settlement, and the seller is the settlor, or the wife or husband of the settlor, and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan, or
  - (d) where the purchaser is directly or indirectly purchasing from a person who is connected with him, and the price substantially exceeds the value of what is acquired;

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

For the purposes of this subsection—

- (i) references to a husband and wife are references to a husband and his wife living with him; and
- (ii) one person is connected with another if he is so connected within the terms of section 839.

### **356 Job-related accommodation**

- (1) Section 355(1) shall not prevent relief being given under section 353 in a case where the land, caravan or house-boat in question—
- (a) is, at the time the interest is paid, used by the borrower as a residence or, if it is paid less than 12 months after the date on which the loan is made, is so used by him within 12 months after that date; or
  - (b) is intended at that time to be used in due course as his only or main residence; and at that time he resides in living accommodation which is for him job-related.
- (2) A borrower for whom there are two or more properties falling within subsection (1) above may not by virtue of this section claim relief for any period under section 353 in respect of more than one of them.
- (3) Subject to subsections (4) and (5) below, living accommodation is job-related for a person if—
- (a) it is provided for him by reason of his employment, or for his spouse by reason of her employment, in any of the following cases—
    - (i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;
    - (ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;

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- (iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements; or
  - (b) under a contract entered into at arm's length and requiring him or his spouse to carry on a particular trade, profession or vocation, he or his spouse is bound—
    - (i) to carry on that trade, profession or vocation on premises or other land provided by another person (whether under a tenancy or otherwise); and
    - (ii) to live either on those premises or on other premises provided by that other person.
- (4) If the living accommodation is provided by a company and the employee is a director of that or an associated company, subsection (3)(a)(i) or (ii) above shall not apply unless—
  - (a) the company of which the employee is a director is one in which he or she has no material interest; and
  - (b) either—
    - (i) the employment is as a full-time working director, or
    - (ii) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property, or
    - (iii) the company is established for charitable purposes only.
- (5) Subsection (3)(b) above does not apply if the living accommodation concerned is in whole or in part provided by—
  - (a) a company in which the borrower or his spouse has a material interest; or
  - (b) any person or persons together with whom the borrower or his spouse carries on a trade or business in partnership.
- (6) For the purposes of this section—
  - (a) a company is an associated company of another if one of them has control of the other or both are under the control of the same person; and
  - (b) “employment”, “director”, “full-time working director”, “material interest” and “control”, in relation to a body corporate, have the same meanings as they have for the purposes of Chapter II of Part V.

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

- (1) Interest on a loan (“the limited loan”) which (apart from this subsection) is eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1) shall be so eligible for relief only to the extent that the amount on which it is payable does not exceed the following limit, that is to say, the qualifying maximum for the year of assessment reduced by the amount on which interest is payable by the borrower under any earlier loans so eligible for relief, so that—
  - (a) if the amount on which interest is payable under the limited loan exceeds the limit, so much only of that interest is eligible for relief as bears to the whole of that interest the same proportion as that part of that amount which does not exceed the limit bears to the whole of that amount; and
  - (b) if the amount on which interest is payable under any earlier loans is equal to or exceeds the qualifying maximum for the year of assessment, none of the interest on the limited loan is eligible for relief.

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- (2) Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person, not being the borrower's husband or wife, then, if—
- (a) the land, caravan or house-boat concerned is used as the main or only residence of that other person, or of a dependent relative or former or separated spouse of his, and
    - (i) that other person owns an estate or interest in the land or the property in the caravan or house-boat, and
    - (ii) that other person pays part of the interest payable on the loan; or
  - (b) that other person falls within sub-paragraphs (i) and (ii) of paragraph (a) above and is by virtue of section 356 entitled to claim relief under section 353 in respect of that part of the interest,
- the amount on which interest is payable under the loan shall be treated for the purposes of this section as being such part only of that amount as bears to the whole thereof the same proportion as the amount of interest paid by the borrower bears to the whole of the interest paid on the loan.
- (3) For the purposes of this section—
- (a) any interest payable on a loan made to the borrower's husband or wife shall be treated as payable on a loan made to the borrower; and
  - (b) where interest is payable on more than one loan made or treated as made to the borrower and the loans were made simultaneously it shall be treated as payable on one loan.
- (4) Where section 354 continues to apply to a loan by virtue of section 354(5)(a), this section shall also continue to have effect in relation to the loan as if section 354 applied to it by virtue of section 355(1)(a).
- (5) References in this section to the borrower's husband or wife do not include references to a separated husband or wife.
- (6) In determining whether the amount on which interest is payable under a loan exceeds the limit in subsection (1) above, no account shall be taken of so much (if any) of that amount as consists of interest which has been added to capital and does not exceed £1000.

### **358 Relief where borrower deceased**

- (1) Where any interest paid by persons as the personal representatives of a deceased person or as the trustees of a settlement made by his will would, on the assumptions required by this section, be eligible for relief under section 353 by virtue of section 354 above and, in a case where subsection (3) below applies, one of the conditions in subsection (4) below is satisfied, that interest shall be so eligible notwithstanding sections 354 to 357.
- (2) For the purposes of subsection (1) above it shall be assumed that the deceased would have survived and been the borrower.
- (3) If, at his death,—
- (a) the land, caravan or house-boat concerned was used as his only or main residence, or

- (b) it was used by him as a residence or was intended to be used in due course as his only or main residence and, in either case, he resided in job-related living accommodation;

that shall be assumed for the purposes of subsection (1) above to have continued to be the case.

- (4) The conditions referred to in subsection (1) above are—
  - (a) that, at the time the interest is paid, the land, caravan or house-boat concerned is used as the only or main residence of the deceased's widow or widower or of any dependent relative of the deceased;
  - (b) that, at that time, it is used by the deceased's widow or widower as a residence or is intended to be used in due course as his or her only or main residence and, in either case, he or she resides in job-related living accommodation.
- (5) In this section "personal representatives" has the meaning given by section 701; and subsections (3) to (6) of section 356 apply in relation to this section as they apply in relation to that.

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

- (1) 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) 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) Where the holder of an office or employment—
  - (a) is under Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971 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) 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 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.

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

(1) 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 satisfying any of the conditions of section 424(4); 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) The conditions first referred to in subsection (1) above are—

- (a) that, when the interest is paid, the company continues to satisfy any of the conditions of section 424(4) 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) The conditions secondly referred to in subsection (1) above are—

- (a) that, when the interest is paid, the company continues to satisfy any of the conditions of section 424(4) 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 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).

(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—



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- (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.”

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

- (1) 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) 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) 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

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- (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) 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
  - (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) 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) 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;

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“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.

### **362 Loan to buy into partnership**

(1) 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) 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).

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

(1) 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) 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
- (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

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- (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) In the application of this section to Scotland for the word "assignment" wherever it occurs there shall be substituted the word "assignation".
- (4) 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) 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 Industrial Common Ownership Act 1976; and
  - "subsidiary" has the same meaning as for the purposes of section 2 of that Act.

### **364 Loan to pay inheritance tax**

- (1) 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);
 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) 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) 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.

### **365 Loan to buy life annuity**

- (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—
- (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 uses the land on which it was secured as his only or main residence at the time the interest is paid.
- (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.

### **366 Information**

- (1) 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 355(4) or 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) 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

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*Status: This is the original version (as it was originally enacted).*

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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.

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

- (1) In sections 354 to 366 as they apply throughout the United Kingdom and in relation to the Republic of Ireland—

“caravan” has the meaning given by section 29(1) of the Caravan Sites and Control of Development Act 1960;

“dependent relative” means, in relation to any person, a relative of his, or of his spouse, who is incapacitated by old age or infirmity from maintaining himself, or the mother of that person, or of his spouse, if the mother is widowed or living apart from her husband, or, in consequence of dissolution or annulment of marriage, a single woman;

“house-boat” means a boat or similar structure designed or adapted for use as a place of permanent habitation;

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

- (a) an overall length (excluding any draw bar) exceeding 22 feet;
- (b) an overall width exceeding seven feet six inches;

where “overall length” and “overall width” have the meanings given in Regulation 3 of the Motor Vehicles (Construction and Use) Regulations 1966;

“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; and

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

- (2) Sections 354(1) and 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) For the purposes of sections 354 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) Where part only of a debt fulfils the conditions required under sections 354 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) In sections 357(1) and 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.

### **368 Exclusion of double relief etc**

- (1) Interest in respect of which relief is given under section 353 shall not be allowable as a deduction for any other purpose of the Income Tax Acts.
- (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 profits or gains or losses for the purposes of 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 profits or gains or losses for the purposes of Case I or II of Schedule D for any year of assessment; and
  - (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.