

SCHEDULES

SCHEDULE 7

Section 160.

TAXATION OF BENEFIT FROM LOANS OBTAINED BY REASON OF EMPLOYMENT

PART I

MEANING OF “OBTAINED BY REASON OF EMPLOYMENT”

- 1 (1) Subject to sub-paragraph (5) below, the benefit of a loan is obtained by reason of a person’s employment if, in relation to that person, it is of a class described in sub-paragraphs (2), (3) or (4) below.
 - (2) A loan made by his employer.
 - (3) A loan made by a company—
 - (a) over which his employer had control;
 - (b) by which his employer (being a company) was controlled; or
 - (c) which was controlled by a person by whom his employer (being a company) was controlled.
 - (4) A loan made in any case where—
 - (a) his employer was, or had control over, or was controlled by, a close company; and
 - (b) the loan was made by a person having a material interest in that close company or, that company being controlled by another company, in that other company.
 - (5) Sub-paragraph (2) above does not apply to a loan made by his employer, being an individual, and shown to have been made in the normal course of his domestic, family or personal relationships.
- 2 In paragraph 1 above—
 - (a) references to a loan being made by any person include references to his assuming the rights and liabilities of the person who originally made the loan and to his arranging, guaranteeing or in any way facilitating the continuation of a loan already in existence;
 - (b) “employer” includes a prospective employer; and
 - (c) “company”, except in the expression “close company”, includes a partnership.

PART II

CALCULATION OF CASH EQUIVALENT OF LOAN BENEFIT

General

- 3 (1) The cash equivalent for any year of the benefit obtained from a loan is—
- (a) the amount of interest (calculated in accordance with paragraph 4 or 5 below) which would have been payable for that year had interest at the official rate been payable on the loan, less
 - (b) the amount of interest actually paid on the loan for that year.
- (2) Where an assessment for any year in respect of a loan has been made or determined on the footing that the whole or part of the interest payable on the loan for that year was not in fact paid, but it is subsequently paid, then on a claim in that behalf, the cash equivalent for that year shall be recalculated so as to take that payment into account and the assessment shall be adjusted accordingly.
- (3) All the loans between the same lender and borrower for which a cash equivalent falls to be ascertained and which are outstanding at any time, as to any amount, in any year are to be treated for the purposes of this Schedule as a single loan.

Normal method of calculation (averaging)

- 4 In the absence of a requirement or election that paragraph 5 below should apply, the amount of interest at the official rate payable on a loan for any year (“the relevant year”) shall be ascertained as follows—
- (a) take half the aggregate of—
 - (i) the maximum amount of the loan outstanding on 5th April preceding the relevant year or, if it was made in that year, on the date on which it was made, and
 - (ii) the maximum amount of the loan outstanding on 5th April in the relevant year or, if the loan was discharged in that year, the date of discharge;
 - (b) multiply that figure by the number of whole months during which the loan was outstanding in that year, and divide by 12;
 - (c) multiply the result by the official rate of interest in force during the period when the loan was outstanding in that year or, if the official rate changed during that period, the average rate during that period ascertained by reference to the number of days in the period and the number of days for which each rate was in force.

For the purposes of this paragraph, months begin on the sixth day of the calendar month.

Election for alternative method of calculation

- 5 (1) For any year of assessment (“the relevant year”) the alternative method of calculation set out in this paragraph applies if—
- (a) the inspector so requires, by notice given to the employee, for the purpose of any assessment to income tax (or the adjustment of any such assessment in consequence of an appeal); or

- (b) the employee so elects, by notice given to the inspector within the time allowed by sub-paragraph (2) below.
- (2) An election by the employee must be made—
- (a) in a case where an assessment including the emoluments in question has been made on the basis of the normal method of calculation, within the time allowed for appealing against that assessment or such further time as the inspector may allow;
 - (b) where no such assessment has been made, within six years after the end of the relevant year of assessment.
- (3) The alternative method of calculating the amount of interest at the official rate payable on a loan for the relevant year is as follows—
- (a) take each period in the relevant year during which the official rate of interest remains the same;
 - (b) for each such period take for each day in the period the maximum amount outstanding of the loan on that day, and add those amounts together;
 - (c) multiply that sum by the official rate in force during the period divided by 365; and
 - (d) add together the resulting figures for each period in the relevant year.

PART III

EXCEPTIONS WHERE INTEREST ELIGIBLE FOR RELIEF

- 6 Interest is eligible for relief for the purposes of this Part of this Schedule if it is eligible for relief under section 353 or would be eligible for such relief apart from subsection (2) of that section.
- 7 Section 160(1) does not apply to a loan in any year—
- (a) for which interest is paid on the loan and the whole of that interest is eligible for relief, or
 - (b) for which no interest is paid on the loan but had interest been paid on it at the official rate the whole of that interest would have been eligible for relief.
- 8 Where for any year interest is paid on a loan and part of that interest is eligible for relief, the calculation of the cash equivalent under Part II of this Schedule is modified as follows—
- (a) where paragraph 4 applies, the maximum amounts referred to in subparagraph (a)(i) and (ii) of that paragraph shall be proportionately reduced by reference to the proportion which so much of that interest paid for that year as is not eligible for relief bears to the whole of the interest so paid;
 - (b) where paragraph 5 applies, the maximum amounts referred to in subparagraph (3)(b) of that paragraph shall be proportionately reduced by reference to the proportion which so much of the interest paid on each such amount for the day in question as is not eligible for relief bears to the whole of the interest so paid; and
 - (c) the amount of interest eligible for relief shall be left out of account in ascertaining for the purposes of paragraph 3(1)(b) above the amount of interest paid for that year.
- 9 (1) Where for any year—

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- (a) no interest is paid on a loan, but
- (b) had interest been paid on it at the official rate part of that interest would have been eligible for relief,

then the calculation of the cash equivalent under Part II of this Schedule shall be modified as provided by paragraph 8(a) or (b) above with the substitution for the references to the amounts of interest paid or not eligible for relief of references to the amounts (ascertained in accordance with the following provisions of this paragraph) which would have been paid or would not have been eligible for relief.

- (2) For the purposes of paragraph 8(a) above as applied by this paragraph, the whole amount of interest at the official rate which would have been paid for any year shall be taken to be the amount payable for that year calculated in accordance with paragraph 4 above (disregarding paragraph 8); and the amount of that interest which would not have been eligible for relief shall be ascertained—
 - (a) by finding that amount on the assumption that the amount referred to in paragraph 4(a)(i) was the amount outstanding for the whole year;
 - (b) by finding that amount on the assumption that the amount referred to in paragraph 4(a)(ii) was the amount outstanding for the whole year; and
 - (c) by adding together the resulting figures and dividing by 2.
 - (3) For the purposes of paragraph 8(b) above as applied by this paragraph, the amount of interest which would have been paid and the amount of it which would not have been eligible for relief shall be ascertained on the assumption that interest at the official rate was paid daily throughout the year on the maximum amount outstanding on each day.
- 10 (1) If—
- (a) a person has a loan on which no interest is paid and of which the benefit was obtained by reason of his or any other person's employment ("the employer's loan"); and
 - (b) that person or his wife or her husband has another loan which was made later than, or at the same time as, the employer's loan and interest on which is, in whole or in part, eligible for relief;
- then, for the purposes of determining whether, had interest been paid on the employer's loan at the official rate, the whole or any part of that interest would have been eligible for relief, sections 354(5) and (6), 355(1) to (4), 356 to 358 and 360 to 365 shall have effect as if the employer's loan were made after any other loan which falls within paragraph (b) above and which, in the context of the application of sections 354(1) to (4) and 355(5), relates to the same land, caravan or house boat as does the employer's loan.
- (2) Where such a loan is made as is mentioned in paragraph (b) of sub-paragraph (1) above, sections 354(5) and (6), 355(1) to (4), 356 to 358 and 360 to 365 have effect in accordance with that sub-paragraph with respect to so much of the interest referred to therein as would be paid on and after the day on which the loan is made; and paragraph 9(3) above shall have effect for the purpose of determining how much of that interest would have been eligible for relief.
- 11 (1) Where in any year a person has, alone or together with his wife or her husband, two or more loans—
- (a) on which no interest is paid, and

- (b) which, assuming the application of sections 354(1) to (4) and 355(5), would relate, in the context of those sections, to the same land, caravan or house boat,

then, for the purpose of determining whether, had interest been paid on any of those loans, it would, in whole or in part, have been eligible for relief, it shall be assumed in the first instance that those loans constitute a single loan (equal in amount to the aggregate of the actual loans) and to the extent that, had interest been paid on that single loan, it would have been eligible for relief, the relief shall then be attributed first to the earliest of the actual loans and, if all the relief is not thereby attributed, the balance shall be attributed to the next in time and so on with any of the balance remaining until the relief is wholly attributed.

- (2) Nothing in sub-paragraph (1) above affects the operation of paragraph 10 above in relation to the priority which it gives to a loan falling within sub-paragraph (1) (b) of that paragraph, but any question which of two or more loans falling within sub-paragraph (1) above is the earlier shall be determined without regard to that paragraph.

- 12 References in paragraphs 10 and 11 above to a husband or wife do not include references to a separated husband or wife.