

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Other reliefs

Overview

1056. This Part contains rules about a number of other reliefs.

Chapter 1: Interest payments

Overview

1057. [Chapter 1](#) contains the rules relating to relief for interest paid given by deduction in calculating net income. It is based on sections 353 to 368 of ICTA.

1058. The Mortgage Interest Relief At Source provisions in sections 369 to 379 of ICTA and the related provisions in section 365 of ICTA for relief for interest on a loan to purchase a life annuity are obsolescent. They are not rewritten in this Act, but remain in ICTA.

Section 383: Relief for interest payments

1059. This section is an introduction to the Chapter. It is based on sections 353, 359, 360, 361, 362 and 364 of ICTA.

1060. *Subsection (2)* lists the seven provisions about the purposes for which loans have to be used if the interest on them is to be eligible for relief. Those purposes do not include the generality of purposes for which loans are taken out in the course of a trade or property business, as interest will normally be an allowable deduction in computing the income from that source.

1061. Relief is given as a deduction in computing net income of the year in which payment is made. So if the interest exceeds the income from which it can be deducted, relief for the excess interest is generally lost. The exception from this rule in section 405 is signposted by *subsection (5)(e)*.

Section 384: General restrictions on relief under Chapter

1062. This section sets out two restrictions on relief for interest paid. It is based on section 353(3) of ICTA.

Section 385: General provisions about loans

1063. This section brings together some general rules which apply to the loan itself. It is based on sections 359, 360, 361, 362, 364 and 367 of ICTA.

1064. With the exception of section 367 of ICTA, the source legislation provides a condition in each of the rules that the loan must be to defray money applied for a particular purpose. The rewritten provisions simply refer to a loan being “used”.

1065. *Subsection (1)* expands on what “used” is to be taken to mean. In particular, with the exception of a loan to pay inheritance tax, it covers the case of expenditure already incurred.
1066. The restrictions in *subsections (2) and (3)* do not apply to loans to buy plant or machinery (sections 388 and 390 of this Act).

Section 386: Loans partly meeting requirements

1067. This section explains what happens if a loan (“the mixed loan”) is only partly used for a qualifying purpose. It is based on section 367(4) of ICTA.
1068. *Subsection (1)* explains that the qualifying part of the loan is itself treated as a loan within this Chapter.
1069. *Subsection (2)*, read with *subsection (4)*, provides that in respect of a mixed loan within *subsection (1)* only interest on the part of the loan used for qualifying purposes is eligible for relief. The apportionment is made in a way that reflects the application of the money at the time the loan is used.
1070. *Subsection (3)*, read with *subsection (4)*, provides that if part of the loan is repaid, then the qualifying and non-qualifying parts of the original loan are treated as repaid in the same proportions that the loan was first used. A stricter rule applies in a case where there is a recovery of capital which was the subject of a qualifying investment (see section 406(4)).
1071. The rule dealing with partial repayments is based on section 367(4) of ICTA, but modified so as to apply to all cases. See *Change 66* in Annex 1.

Section 387: Exclusion of double relief etc

1072. This section contains restrictions which ensure that relief is only given once for a particular interest payment, and penalise attempts to switch between claiming relief as a trade etc expense and as a deduction from income under this Chapter. It is based on section 368 of ICTA.
1073. *Subsection (1)* contains the main rule. It denies relief elsewhere for any payment of interest for which relief is given under this Chapter.
1074. *Subsections (2) to (6)* contain further rules which prohibit relief under this Chapter in cases where the interest or “connected” interest is claimed as a trading etc expense. They derive from section 368(3) and (5) of ICTA. Section 52 of ITTOIA, based on section 368(4) and (5) of ICTA, makes similar provision in relation to restricting relief for interest in calculating the profits of a trade.
1075. *Subsection (7)* is based on section 368(6) of ICTA but has been adapted to fit better with Self Assessment. See *Change 67* in Annex 1.
1076. Section 368(2) of ICTA is redundant and has not been rewritten. See the commentary on section 404.

Section 388: Loan to buy plant or machinery for partnership use

1077. This section is the first of two dealing with a loan used by a partner in providing plant or machinery for partnership use. It is based on section 359(1) of ICTA.
1078. The reference to a vocation being carried on by a partnership contained in the source legislation has not been included in this section, or elsewhere, because a partnership cannot carry on a vocation.
1079. *Subsection (2)* makes it clear that the plant or machinery must be in use and that the partnership must be entitled to a capital allowance or balancing charge in respect of

it for the period of account in which the interest is paid. The “in use” requirement is not explicitly specified in section 359(1) of ICTA, but is clear from section 359(2) and the wording of section 264 of CAA. The requirement in section 359(1) of ICTA that the plant or machinery must belong to the individual partner is not included as it is contained in section 264 of CAA.

- 1080. It is also made clear that ordinary property businesses (if carried on in partnership) are within the types of partnership business that qualify. See *Change 68* in Annex 1.
- 1081. *Subsection (3)* ensures that relief remains available where the plant remains within the capital allowances regime, even if no allowance or balancing charge arise in the period of account. See *Change 69* in Annex 1.
- 1082. *Subsection (4)* makes it explicit that the appropriate definitions of “capital expenditure” and “period of account” are those in sections 4 and 6 of CAA, which apply generally for capital allowances purposes, rather than the definitions in section 989 of this Act.

Section 389: Eligibility requirements for interest on loans within section 388

- 1083. This section contains two conditions which have to be met if the interest is to be eligible for relief. It is based on section 359(1) and (2) of ICTA.
- 1084. Both conditions relate to circumstances at the time the interest is paid.
- 1085. *Subsections (4)* and *(5)* provide an apportionment rule if the plant or machinery is used partly for the purposes of the trade, profession or ordinary property business and partly for other purposes. As regards the inclusion of ordinary property businesses, see *Change 68* in Annex 1 and the commentary on section 388.

Section 390: Loan to buy plant or machinery for employment use

- 1086. This section is the first of two dealing with a loan used by an individual to provide plant or machinery for use as an employee or office-holder. It is based on section 359(3) of ICTA.
- 1087. *Subsection (2)* makes it clear that the plant or machinery must be in use, that it must belong to the individual and that the individual must be entitled to a capital allowance or balancing charge in respect of it for the tax year in which the interest is paid. The “in use” requirement is explicitly specified in section 359(3) of ICTA. It is necessary to retain the “belonging to” test here as that is not a requirement of eligibility to capital allowances.
- 1088. *Subsection (3)* corresponds to section 388(3). See *Change 69* in Annex 1 and the commentary on section 388.
- 1089. Section 37 of CAA (exclusion where sums payable in respect of depreciation) may operate to deny entitlement to capital allowances in respect of the expenditure met by the employee. In such a case *subsection (4)* preserves entitlement to relief for the interest if a contribution to the expenditure has been made by the individual’s employer.

Section 391: Eligibility requirements for interest on loans within section 390

- 1090. This section contains two conditions which have to be met if the interest is to be eligible for relief. It is based on section 359(3) and (4) of ICTA.
- 1091. Both conditions relate to circumstances at the time the interest is paid.

Section 392: Loan to buy interest in close company

- 1092. This section deals with conditions for relief for interest on a loan to buy an interest in a close company. It is based on section 360(1), (3A) and (4) of ICTA.

1093. The section is the first of four dealing with this relief.
1094. *Subsection (2)* provides that the company in which the investment is made with the borrowed money must be a close company, but must not be a close investment-holding company within section 13A(1) of ICTA. In addition, the investment must either be in the ordinary shares of the company, or in the form of a loan (or a replacement loan) which is used for specified business purposes, or both.
1095. It is clear from section 363(4) of ICTA, under which a replacement loan and the original loan are treated as one, that a replacement loan only qualifies under this section if it replaces an earlier loan for the same qualifying purpose. This point has been made explicit in this section.
1096. *Subsection (3)* contains a further condition that the investment must not be in ordinary shares for which relief is given under the enterprise investment scheme income tax or capital gains tax provisions. See Schedule 2 Part 9 for transitional provisions where the shares were acquired before 6 April 1989.

Section 393: Eligibility requirements for interest on loans within section 392

1097. This section sets out conditions relating to circumstances at the time the interest is paid, or during the period of the loan. It is based on section 360(1), (2) and (3) of ICTA.
1098. The first such condition, in *subsection (1)(a)*, is that at the time the interest is paid, the company must not be a close investment-holding company. It says nothing about whether the company is to be a close company. This accords with Statement of Practice 3/78, which explains that section 360(2)(a) of ICTA does not require the company to be close at the time the interest is paid.
1099. The second condition, in *subsections (1)(b)* and *(2)*, is that during the period of the loan the borrower must not have recovered any capital from the company apart from any amount taken into account under section 406(2) of this Act.
1100. The final condition, in *subsections (1)(b)*, *(3)* and *(4)*, is in two parts, and it is sufficient that either part is satisfied.
1101. The first part is in subsection (3) and requires the borrower to hold some ordinary shares in the company and to have worked full time for the company during the period from the use of the loan to the payment of the interest.
1102. The second part, in subsection (4), requires the borrower to have a material interest in the company and also that, if the company exists for the purposes of holding investments or other property, none of that property is a residence of that individual, unless (broadly speaking) that individual has worked full time for the company. (For the meaning of “material interest” see section 394 and the commentary on that section.)
1103. The source legislation for the material interest condition does not specify over what period the individual has to have worked full-time for the company. The reference to subsection (3)(b) makes it explicit that regard is to be had to the same period as is referred to in the full-time working condition itself.

Section 394: Meaning of “material interest” in section 393

1104. This section defines “material interest” for the purposes of section 393(4)(a). It is based on section 360A(1) of ICTA.
1105. The source legislation does not give the meaning of “control”. *Subsection (5)* makes it clear that it is the definition in section 416 of ICTA which applies. The same definition is applied in section 395.

Section 395: Meaning of “associate” in section 394

- 1106. This section defines the term “associate”. It is based on section 360A(2), (4) to (7) and (10) of ICTA.
- 1107. The reference in section 360A(5) to Schedule 8 to ICTA has been replaced by a reference to the relevant provisions in ITEPA.
- 1108. Section 360A(8) and (9) of ICTA relate to loans made before 14 November 1986. Those rules are contained in Part 9 of Schedule 2 to this Act.
- 1109. Section 360A(3) of ICTA is redundant and has not been rewritten.

Section 396: Loan to buy interest in employee-controlled company

- 1110. This section deals with conditions for relief on interest on a loan to buy an interest in an employee-controlled company. It is based on section 361(3) to (8) of ICTA.
- 1111. This section deals with the conditions relating to the employee-controlled company and ways of investing in it. Section 397 deals with the conditions that relate to circumstances at the time the interest is paid.
- 1112. The condition in *subsection (2)* is that the loan is applied in acquiring part of the ordinary share capital of a company that has recently become or becomes an employee-controlled company. As with section 392, relief is available for a loan replacing one that met the conditions in this section.
- 1113. *Subsection (3)* defines when a company is “employee-controlled”. The definition requires more than 50% of the issued ordinary share capital and more than 50% of the voting power to be held by persons who are full-time employees of the company.
- 1114. *Subsection (4)* provides that, if an individual holds more than 10% of either the ordinary share capital or the voting power, the excess over 10% is regarded as owned by a person who is not a full-time employee of the company and so does not count towards the 50% test in subsection (3).

Section 397: Eligibility requirements for interest on loans within section 396

- 1115. This section sets out four conditions relating to circumstances at the time the interest is paid, or during the period of the loan. It is based on section 361(3), (4) and (8) of ICTA.
- 1116. Condition B requires the company to be employee-controlled for at least nine months in the tax year in which the interest is paid (or to become employee-controlled first in that year).
- 1117. Condition C is that the claimant is a full-time employee of the company throughout the period between the date on which the loan is used (“the use date”) and the date the interest is paid. If the individual ceased to be a full-time employee no more than 12 months before the interest payment date, then it is sufficient that the employee worked full time for the company from the use date until that date.

Section 398: Loan to invest in partnership

- 1118. This section deals with conditions for relief for interest on a loan to invest in a partnership. It is based on section 362(1) of ICTA.
- 1119. This section deals with the conditions relating to ways of investing in the partnership. Section 399 deals with the conditions that relate to circumstances at the time the interest is paid.
- 1120. *Subsection (2)* provides that the loan qualifies for relief if the proceeds are used in either buying a share in a partnership or contributing or advancing money to a partnership that is used for a trade or profession carried on by the partnership. As explained in the

commentary on section 388, no reference is made to “vocation” as a partnership cannot carry on a vocation. As with section 392, relief is available for a loan replacing one that met the conditions in this section.

Section 399: Eligibility requirements for interest on loans within section 398

- 1121. This section sets out two conditions relating to circumstances during the period of the loan, both of which must be met. It is based on section 362 of ICTA and, in relation to film partnerships, on section 75(1) of FA 2006.
- 1122. Condition A is that the individual to whom the loan is made must be a partner in the partnership throughout the period from the making of the investment to the payment of the interest. Relief is not available if the partnership is an investment LLP or a limited partnership in which the individual is a limited partner.
- 1123. Where the special rules for film partnerships in section 400 apply, *subsection (4)* provides that relief is restricted to 40% of the interest that would otherwise be eligible for relief.
- 1124. *Subsection (5)* provides that certain senior employees of the partnership may count as partners for the purposes of this section, enacting Statement of Practice SP A33. See *Change 70* in Annex 1.

Section 400: Film partnerships

- 1125. This section sets out the circumstances in which relief is restricted to 40% of the interest that would otherwise be eligible for relief. It is based on section 75 of FA 2006.
- 1126. The restriction applies only if the money is invested in a film partnership and secured on an asset or activity of a second partnership, the “investment partnership”, of which the individual is or has been a member. The individual must also be entitled to a lower proportion of the profits of the investment partnership than the proportion of capital that he or she contributed to that partnership.
- 1127. In relation to the calculation of the latter proportion, *subsection (3)* provides rules about what constitutes the partnership capital and *subsection (4)* provides rules for identifying which part of that capital has been contributed by the claimant. In *subsection (4)* it is made explicit that only amounts that actually form part of the total investment partnership’s capital are taken into account.

Section 401: Loan to invest in co-operative

- 1128. This section deals with conditions for relief for interest on a loan to invest in a co-operative. It is based on section 361(1) and 363(5) of ICTA.
- 1129. This section is the first of two dealing with this relief and deals with the conditions relating to the co-operative and ways of investing in it. Section 402 deals with the conditions that relate to circumstances at the time the interest is paid.
- 1130. *Subsection (2)* provides that the loan qualifies for relief if the proceeds are used in either buying shares in a co-operative or lending money to a co-operative or its subsidiary which is used for the business purposes of that body. As with section 392, relief is available for a loan replacing one that met the conditions in this section.
- 1131. The condition in section 361(2)(a) of ICTA that the loan only qualifies if it was made after 10 March 1981 has not been reproduced. So, if any loans made on or before that date still exist, the interest on them will now be eligible for relief. See *Change 71* in Annex 1.

Section 402: Eligibility requirements for interest on loans within section 401

1132. This section sets out three conditions relating to circumstances at the time the interest is paid or during the period of the loan, all of which must be met. It is based on section 361(2) of ICTA.

Section 403: Loan to pay inheritance tax

1133. This section provides relief for interest on money borrowed by personal representatives to pay certain amounts of inheritance tax. It is based on section 364(1), (3) and (4) of ICTA.
1134. In order for the personal representatives to obtain a grant of representation or confirmation, they have to pay the inheritance tax for which they are liable on delivery of their account under section 226(2) of IHTA. Relief is available for interest on a loan to pay this tax. Relief is not available for interest on a loan to pay inheritance tax that falls due at a later date. The source legislation in section 364(1)(a) of ICTA is written in language relating to estate duty. It has been brought up to date in *subsection (2)*. See *Change 72* in Annex 1.
1135. *Subsection (3)* clarifies that a document from an officer of Revenue and Customs giving details of inheritance tax payable will be accepted in support of a claim under this section. The source legislation refers to a certificate from the Board. See *Change 5* in Annex 1.

Section 404: Eligibility requirements for interest on loans within section 403

1136. This section provides that interest on loans to pay inheritance tax is eligible for relief only if it is paid in respect of a period ending within 12 months of the loan being made. It is based on section 364(1) and (4) of ICTA.
1137. Section 364(4)(b) of ICTA states that “references to interest in respect of a period ending with a given time apply whether or not interest continues to run after that time”. This has been rewritten by using the words “so far as”.
1138. Section 368(2) of ICTA is redundant and has not been rewritten. See *Change 73* in Annex 1.

Section 405: Carry back and forward of relief for interest on loans within section 403

1139. This section provides for the carry back or forward of interest eligible for relief by virtue of section 403. It is based on section 364(2) of ICTA.
1140. Relief for interest on a loan to pay inheritance tax is the only interest relief that may be deducted from income of a tax year other than the year in which it was paid.

Section 406: Effect of recovery of capital in the case of some loans

1141. This section deals with what happens if an individual to whom the loan was made recovers any capital from the business entity in which the investment was made. It is based on section 363(1) of ICTA.
1142. Rules in the particular provisions concerned (eg section 393(2)) disallow relief completely if any capital is recovered unless this section applies. If this section applies, (and it applies to most recoveries), then relief is only reduced in the proportion that the amount of the recovery bears to the amount of the loan (or, where only part of the loan qualified, to the qualifying part of the loan).
1143. The source legislation restricted the application of this rule to cases where the recovered capital was not applied in making a loan repayment. In cases where the recovered capital

was so applied relief was, in strictness, lost completely. The rule has been rewritten to ensure that it applies in all cases where capital is recovered. See *Change 74* in Annex 1.

1144. *Subsection (6)* makes it clear that this provision applies only if section 407 treats an amount of capital as having been recovered from the business entity.

Section 407: Events counting as recovery of capital for section 406

1145. This section explains which events count as the recovery of capital for the purposes of section 406. It is based on section 363(2) of ICTA.
1146. *Subsection (1)* identifies the cases relating to an investment in a company (whether a close company or employee-controlled), *subsection (2)* identifies the cases relating to an investment in a partnership and *subsection (3)* identifies the cases relating to an investment in a co-operative.
1147. *Subsection (4)* provides that if there is a sale or assignment that is not at arm's length, market value consideration is used instead of actual proceeds. Section 1008(1) provides that in Scotland "assignment" means "assignation".

Section 408: Replacement loans

1148. This section makes provision for cases where a loan, interest on which would be eligible for relief under some provisions of this Chapter, is used in repaying another qualifying loan. It is based on section 363(4) of ICTA.
1149. *Subsection (3)* ensures that the two loans are treated as a single loan for the purposes of this Chapter. In order that this rule works correctly when looking at how the proceeds are applied, it is subject to *subsection (5)* under which references to the use of a loan are generally taken as referring to the use of the original loan.
1150. *Subsection (4)* makes it clear that any restriction under section 406 (recovery of capital) applies if capital is recovered while the second loan is in place.

Section 409: Business successions between partnerships

1151. This section ensures continuity of relief in certain cases where, in law, a partnership is dissolved. It is based on ESC A43.
1152. Under section 362 of ICTA, relief for interest paid is only available for so long as the individual is a partner in the partnership in which the investment is made. In strictness, the admission or departure of a partner results in a new partnership, but it has never been the practice to refuse relief in these circumstances. Indeed, ESC A43 goes further and allows relief to continue when there is a partnership reconstruction involving a merger or demerger.
1153. *Subsections (1)* and *(2)* of this section gives statutory effect to current practice and ESC A43 to the extent that they relate to partnership changes and reconstructions. See *Change 75* in Annex 1.
1154. *Subsection (3)* builds into the section the extended meaning of "member of a partnership" that is explained in *Change 70* in Annex 1. See also the commentary on section 399.
1155. ESC A43 also deals with other types of business successions including the incorporation of a partnership. These cases are addressed in section 410.

Section 410: Other business successions and reorganisations

1156. This section ensures continuity of relief in certain cases where a partnership is incorporated into another of the business entities covered by this Chapter. It is based on ESC A43.

1157. Under each of the sections in the source legislation dealing with investments in (including loans to) qualifying business entities, relief for interest paid is only available for so long as the shares are held in or the loan is made to the original business entity. In the case where the investment is in a partnership, the individual must remain a partner in the partnership in which the investment is made.
1158. It follows that relief strictly ceases to be available if a partnership is incorporated into one of the other types of qualifying business entity or there is a reconstruction in which the individual's original shares are replaced by shares in a different qualifying business entity. This rule is relaxed by ESC A43 which allows relief to continue if this sort of business succession occurs. This section legislates that part of ESC A43. See *Change 75* in Annex 1 and the commentary on section 409.
1159. This section only applies to genuine business successions. It is not considered to apply if an investment in one entity is replaced by another investment within the same entity. An example is the conversion of convertible loan stock into ordinary shares.

Section 411: Ineligibility of interest where business is occupation of commercial woodlands

1160. This section rules out relief if certain of the business entities covered by this Chapter carry on the business of the commercial occupation of woodlands. It is based on paragraph 3 of Schedule 6 to FA 1988.
1161. The section applies if the loan is invested in a close company, an employee-controlled company or a partnership, and excludes relief for what is in effect an investment into an entity carrying on a tax-exempt activity. This section also provides rules that apply if only part of the business is the exempt activity.

Section 412: Information

1162. This section makes provision for the lender of a loan covered by this Chapter to provide information to the borrower on request. It is based on section 366 of ICTA.
1163. The source legislation requires the person claiming relief to submit to an officer of Revenue and Customs a written certificate from the lender containing details of the debt and interest. Under Self Assessment, such statements are not generally required. Such a certificate will only be required when an officer raises enquiries into the return or the claim. The provision has therefore been recast in terms of the claimant being able to obtain a certificate from the lender if he or she needs or wants to do so. Lenders will no longer need to issue certificates routinely.

Chapter 2: Gift aid

Overview

1164. This Chapter gives relief for some gifts of money by individuals to charities. It is based on section 25 of FA 1990, section 98 of FA 2002 and section 83 of FA 2004.

Section 413: Overview of Chapter

1165. This section provides an overview of the Chapter. It is new.
1166. *Subsection (2)* points to section 414, which sets out how the relief works.
1167. Under section 414(2)(a), the gift is treated as paid after deduction of income tax. If the tax treated as deducted from the gift is greater than the income tax and capital gains tax to which the individual is liable, the excess is recovered. Under these rules, signposted by *subsection (3)*:

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- the donor may suffer the restriction of certain other reliefs (including personal allowances); and
- if the tax treated as deducted from gifts exceeds the income tax and capital gains tax to which the donor is liable, additional income tax will be charged.

1168. The position of the charity receiving the gift is not addressed in this Chapter. The rules about charitable trusts are in Part 10 of this Act. The rules about charitable companies remain in the source legislation, as indicated by *subsection (5)*.

Section 414: Relief for gifts to charity

1169. This section sets out the relief. It is based on section 25(6) of FA 1990.

1170. *Subsection (1)* sets out the basic requirement for the relief, which is that the gift should be a “qualifying donation” (see section 416).

1171. *Subsection (2)(b)* provides that the individual’s basic rate limit is increased by the amount of the gift grossed up at the basic rate of income tax. As a result, an amount of income up to that amount is taxed at either the dividend ordinary rate, the savings rate or the basic rate, rather than at the higher rate or the dividend upper rate.

1172. If “top slicing relief” is claimed on gains under life assurance policies etc (sections 535 to 537 of ITTOIA), relief under this Chapter is ignored for the purposes of the computations required by section 535(1) of ITTOIA. See section 535(7) of ITTOIA, inserted by Schedule 1 to this Act.

Section 415: Meaning of “grossed up amount”

1173. This section provides the meaning of references to “the grossed up amount” of a gift. It is based on section 25(12)(d) of FA 1990.

Section 416: Meaning of “qualifying donation”

1174. This section sets out the meaning of “qualifying donation”. It is based on section 25(1) and (2) of FA 1990.

1175. Condition C excludes the possibility of a double claim for relief under these provisions and also under the payroll deduction scheme.

1176. Condition D enacts the principle that, to be a qualifying donation, the payment must not also be deductible in arriving at the individual donor’s income from any source. See *Change 76* in Annex 1.

1177. Condition E denies relief if the donor, or any person associated with the donor, disposes of any property to the charity for any consideration. This prevents any overlap between this relief and the relief for gifts of assets in Chapter 3 of this Part.

Section 417: Meaning of “benefits associated with a gift”

1178. This section defines what is meant by one or more benefits being “associated with” a gift. It is based on section 25(2) and (4) of FA 1990.

Section 418: Restrictions on associated benefits

1179. This section sets out two conditions which, if either is met, mean that the restrictions on benefits associated with a gift are breached (condition F of section 416). It is based on section 25(2), (4), (5) and (5A) of FA 1990.

1180. The two conditions are:

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- a stepped scale, depending on the amount of each gift (Condition A) – the “benefit per gift” test; and
 - an overall monetary limit on benefits associated with the total of any gifts to a single charity in the course of a tax year – the “benefit per year” test (Condition B). This is unrelated to the size of any particular gift.
1181. Both these restrictions apply to any benefit “associated with” a gift. Sections 420 and 421 remove certain benefits consisting of admission rights from the application of both restrictions.

Section 419: Gifts and benefits linked to periods of less than 12 months

1182. This section modifies the application of section 418(2) where gifts or benefits are linked to periods of less than 12 months. It is based on section 25(5B) to (5D) of FA 1990.
1183. The section provides, according to the case, for annualising:
- the actual amount of the gift; or
 - both the amount of the gift and the value of the benefit(s) associated with the gift.
1184. Only the annualised amount in each case is to be compared with the cash limits given in section 418(2). This prevents periods of less than 12 months being used to exploit the cash limits.
1185. *Subsection (8)* states the formula for annualising in each case. In the source legislation some of the conditions in the section could overlap, so that more than one condition could apply to the gift(s) and associated benefit(s) concerned. A priority rule is, therefore, provided. See *Change 77* in Annex 1.

Section 420: Disregard of certain admission rights

1186. This section ensures that a benefit consisting of a relevant admission right is ignored for the purposes of the Chapter, so that a donation to a charity with which such a benefit is associated may be a qualifying donation regardless of the value of the benefit. It is based on section 25(5E) to (5I) of FA 1990.
1187. Condition B contains no general qualification relating to the purposes of the recipient charity. But property, as defined in *subsection (6)*, must be preserved, maintained, kept or created by the charity for those charitable purposes.
1188. In Condition C (further provisions about which are in section 421(2) to (4)), the right of admission must apply for at least 12 months whenever admission is available to members of the public who have not made such a gift.
1189. But in Condition D there is no time period. For the meaning of the “same right of admission” see section 421(5).

Section 421: Admission rights: supplementary

1190. This section provides supplementary material about Conditions C and D in section 420. It is based on section 25(5I) and (5J) of FA 1990.
1191. *Subsections (2) to (4)* deal with cases when event days could be held to interrupt the availability of a right of admission, reducing it to a period of less than 12 months and thus breaching Condition C. The applicable period is not regarded as broken if there are no more than five event days in it.

Section 422: Disqualified overseas gifts

1192. This section provides the rules for Condition G in section 416(8). It is based on section 25(2) of FA 1990.
1193. In addition to the other conditions for a qualifying donation in sections 416 to 421, this section imposes a specific test that must be met in the case of a gift (an “overseas gift”) made by a donor who is neither UK resident nor in Crown employment.
1194. The source legislation provides that, for the gift to be a qualifying donation, its grossed up amount would, if paid, be “payable out of profits or gains brought into charge to income tax or capital gains tax”. This is rewritten as a reference to the gift being disqualified if it results in the sum of the grossed up amounts of any overseas gifts being more than the individual’s charged amount (see section 427) for the tax year. This is in keeping with the approach adopted towards the parallel rule in the source legislation for charges on income in its application to individuals (see *Change 81* in Annex 1 and the commentary on section 425).

Section 423: Restriction of certain reliefs

1195. This section restricts certain reliefs, where necessary to ensure that the individual pays enough tax to match any tax which might be refunded to the charities receiving the gifts. It is based on section 25(6)(c) of FA 1990.
1196. The section operates if the amount of income tax treated as deducted from an individual’s gifts, “amount A” in *subsection (2)*, is greater than “amount B”.
1197. The source legislation does not expressly say how “amount B” is to be calculated. This section makes clear that the only difference between “amount B” (from section 25(6)(c) of FA 1990) and “amount C” in section 424 (from section 25(9) of that Act) is that “amount B” is calculated before any restriction of personal reliefs under this section. See *Change 78* in Annex 1 and the commentary on section 425.
1198. So “amount B” is:
- the income tax liability as defined in section 425 but *before* applying any reduction in reliefs under this section; plus
 - the capital gains tax liability.
1199. Section 25(6)(b) and (7) of FA 1990 are not rewritten. These provisions relate to certain of the tax reductions listed in section 27(5) of this Act. The effect of the relevant provisions in section 25(6)(b) and (7) of FA 1990 is achieved by the operation of sections 23 and 425(2) of this Act.
1200. The reliefs listed in *subsection (5)* are to be reduced only to the extent necessary. If all such available reliefs are extinguished and the liability still falls short of amount A, a charge to income tax arises under section 424.

Section 424: Charge to tax

1201. This section operates to charge the donor with income tax in the amount of any remaining shortfall after the operation of section 423. It is based on section 25(8) of FA 1990.
1202. Instead of “amount B” as in section 423, the comparison is now with “amount C”, which is the tax liability *after* applying section 423. That liability includes the income tax liability as adjusted in accordance with section 425.
1203. The charging provision operates directly in terms of an amount of tax, rather than (as in the source legislation) by way of charging an amount of deemed income.

Section 425: Total amount of income tax to which individual charged for a tax year

1204. This section provides for the adjustments to the individual donor's income tax liability in order to arrive at "amount B" in section 423 and "amount C" in section 424. It is based on section 25(9) of FA 1990.
1205. As part of the clarification of how these amounts are calculated, section 25(9)(c) of FA 1990 has been dropped as anomalous. See *Change 78* in Annex 1 and the commentary on section 423.
1206. Section 25(9)(a) of FA 1990 is not rewritten. That provision dealt with tax charged at the basic rate by virtue of sections 348 or 349 of ICTA. As a result of the new approach to charges on income such tax is no longer dealt with as part of a person's liability. See *Change 81* in Annex 1.

Section 426: Election by donor: gift treated as made in previous tax year

1207. This section provides that an individual may elect that a qualifying donation made in one tax year be treated as having been made in the preceding tax year ("year P"). It is based on section 98 of FA 2002.
1208. A test similar to that in section 422 must be met in year P for an election to be valid. Because of the possibility that other qualifying donations will have been made in year P, and will not themselves have been carried back to "year P minus 1", the language in which the test is expressed differs slightly from that in section 422. Hence the references to the "increased total of gifts".
1209. *Subsection (4)*, concerning the increased total of gifts, also has to take into account the possibility that elections are made when a notice under section 8 of TMA has not been issued and there is no other legal duty to notify liability to tax or file a self-assessment return. In that case, instead of being included in the self-assessment return under section 42(2) of TMA, elections may be made otherwise (under Schedule 1A to TMA), which opens up the possibility of a number of elections being made in respect of separate donations in the same year.
1210. In the case of non-residents to whom section 422 applies, if a donation does not meet the test set out in section 422(3) in the tax year in which the gift is made, it cannot be carried back in this way. In such a case the donation would not be "qualifying" and so would fail the condition in *subsection (1)(a)* of this section.
1211. An election must be made before the actual filing date of the self-assessment tax return for year P (if a self-assessment return is made for that year), and in any case before the normal self-assessment filing date for year P. The requirement in section 98(2) of FA 2002 that the election "be made by notice in writing to an officer of the Inland Revenue" is catered for by paragraph 2(1) of Schedule 1A to TMA.
1212. In all cases the charity is treated as receiving the donation, not in year P, but in the tax year of payment. It is in respect of the year of payment that the charity will, if appropriate, be entitled to an income tax repayment in respect of the donation.

Section 427: Meaning of "charged amount"

1213. This section provides the basic calculation rules to establish the individual's charged amount for the purposes of the tests in sections 422 and 426. It is based on section 25(2) of FA 1990 and section 98(3) of FA 2002.
1214. The detailed rules for establishing the individual's modified net income are contained in section 1025 in Part 17, which defines this term (as used in *subsection (2)* of this section) for this and certain other purposes. See the commentary on that section.
1215. The basic rule is to add together the "modified net income" established under section 1025 and the amount on which the individual is chargeable to capital gains tax.

This amount is then compared with the “overseas gifts total” in section 422(4), or the “increased total of the gifts” in section 426(4), as appropriate.

Section 428: Meaning of “gift aid declaration”

1216. This section provides the definition of “gift aid declaration” in section 416(1)(b), and states the powers under which the Commissioners for Her Majesty’s Revenue and Customs may make related regulations. It is based on section 25(3) and (3A) of FA 1990.
1217. The regulations currently in force for these provisions are:
- the [Donations to Charity by Individuals \(Appropriate Declarations\) Regulations 2000 \(SI 2000/2074\)](#); and
 - the [Donations to Charity by Individuals \(Appropriate Declarations\) \(Amendment\) Regulations 2005 \(SI 2005/2790\)](#), which remove the requirement on charities to send to donors a written record of their oral declarations.

Section 429: Giving through self-assessment return

1218. This section makes provision for individuals to require all or part of any tax repayment arising as a result of a self-assessment return to be paid to a listed charity. It is based on section 83 of FA 2004.
1219. For the effect of this provision where the gift is received by a charitable trust, see section 538(3) and the commentary on that section.

Section 430: “Charity” to include exempt bodies

1220. This section provides that the bodies mentioned in *subsection (1)* are to be treated as charities for the purposes of this Chapter. It is based on section 507(1) of ICTA, section 25(12) of FA 1990 and paragraph 9 of Schedule 18 to FA 2002.
1221. References to the Trustees of the British Museum and of the Natural History Museum appear in section 507(1) of ICTA along with the other three bodies named in subsection (1)(a) to (c) of this section. Section 507 gives exemption to all the bodies named there from corporation tax in line with the exemptions afforded to charities under section 505 of ICTA.
1222. By contrast, the ability to receive gift aid donations is given to any charity if the purposes for which it is established are fully charitable. In the case of the British Museum and the Natural History Museum this is so: see the relevant sections of the British Museum Act 1963. But in the other cases it is more doubtful whether their functions as set out in their foundation Acts are solely charitable. So it is only the names of those bodies which are included in this section. See *Change 79* in Annex 1.
1223. Similar provisions apply in the case of gifts of shares, securities and land to charities: see section 446 in Chapter 3 of this Part.

Chapter 3: Gifts of shares, securities and real property to charities etc

Overview

1224. This Chapter gives relief to individuals making gifts of shares, securities and real property to charities, or disposing of such assets to charities at an undervalue. It is based on sections 587B and 587C of ICTA 1988.

Section 431: Relief for gifts of shares, securities and real property to charities etc

1225. This section sets out the relief. It is based on section 587B(1) and (2) of ICTA.

1226. *Subsection (1)* provides that relief is available if an individual disposes of the whole of the beneficial interest in a qualifying investment to a charity and makes a claim. The rule in section 587B(2) of ICTA that the claim must “be made to an officer of the Inland Revenue” is catered for by paragraph 2(1) of Schedule 1A to TMA.
1227. *Subsection (2)* provides that relief for the “relievable amount” is given as a deduction in calculating net income.
1228. If “top slicing relief” is claimed on gains under life assurance policies etc (sections 535 to 537 of ITTOIA), relief under this Chapter is ignored for the purposes of the computations required by section 535(1) of ITTOIA. See section 535(7) of ITTOIA, inserted by Schedule 1 to this Act.

Section 432: Meaning of “qualifying investment”

1229. This section lists the types of investment that can attract relief. It is based on section 587B(9) of ICTA.

Section 433: Meaning of “qualifying interest in land”

1230. This section defines “qualifying interest in land”. It is based on section 587B(9A) to (9E) of ICTA.
1231. *Subsections (2) and (3)* clarify the position where an individual with a beneficial interest in an estate in land gives that beneficial interest to a charity along with any easement, servitude or right that benefits the land. For example, A’s land may only be accessible by way of an easement over B’s land. If A gives the charity both the land and the right over B’s land, the disposal of the right is treated as a separate disposal.
1232. If an individual with a freehold or leasehold interest carves out of that interest a lease for the benefit of the charity, the retention of a freehold or leasehold reversion will not prevent the disposal from being “of the whole of the beneficial interest”. But an agreement to acquire a freehold, or an agreement for a lease, is not enough to constitute a disposal.

Section 434: The relievable amount

1233. This section sets out how to calculate the relievable amount, firstly in cases where the qualifying investment is transferred to the charity by way of gift (*subsection (1)*), and then where there is consideration for the transfer (*subsection (2)*). It is based on section 587B(4) to (7) of ICTA.
1234. In each case, the computation starts with the value of the net benefit to the charity (V), either directly (as in subsection (1)) or in arriving at E (the excess of V over the consideration for the disposal) in subsection (2).
1235. The detail of how V is calculated is in sections 437 to 440. But it is emphasised in the definition of V in subsection (1) that V must be considered both at, and immediately after, the time of the disposal.
1236. *Subsection (3)* makes it explicit that if the amount given by either formula is negative the relievable amount is nil.
1237. The treatment of incidental costs of disposal depends on whether the transfer is by way of gift or at an undervalue. If it is a gift, all the incidental costs are added in arriving at the relievable amount. But if there is consideration for the disposal, there is an interplay between the capital gains tax treatment and the incidental costs.
1238. Under section 257(2)(a) of TCGA a gift of a qualifying investment to a charity is treated as being for such a consideration as will result in neither a loss nor a gain to the donor. Incidental costs are added only if that deemed consideration is greater than the actual

consideration. But the amount added must not be greater than that excess. C is defined (in *subsection (4)*) to achieve this result.

Section 435: Incidental costs of making disposal

1239. This section defines “the incidental costs of making the disposal to the individual making it”. It is based on section 587B(9) of ICTA.
1240. The section reproduces the material in section 38(2) of TCGA to which section 587B(9) cross-refers, with the exception of the reference to stamp duty and stamp duty land tax, which do not apply to transactions within this Chapter.

Section 436: Consideration

1241. This section defines “consideration”. It is based on section 587B(7)(b) of ICTA.
1242. The section reproduces the relevant material in section 48 of TCGA (consideration due after time of disposal), to which section 587B(7)(b) cross-refers. The main thrust of section 48 of TCGA is that full value is to be introduced into the computation of the gain. Only on a subsequent claim is the consideration to be reduced, either because the right to receive any amount is contingent or because any part of the consideration proves to be irrecoverable.

Section 437: Value of net benefit to charity

1243. This section is the first of four sections concerned with defining the value of the net benefit to the charity. It is based on section 587B(8A) and (8B) of ICTA.
1244. In the simple case, where there are no disposal-related obligations, the value of the net benefit to the charity is the market value of the qualifying investment. As indicated in section 434, this has to be considered both at, and immediately after, the disposal.
1245. If the charity is, or becomes, subject to an obligation that is connected with the disposal of the qualifying investment to the charity, the market value of the investment is reduced by the amount of the disposal-related liabilities (see section 440) brought about by the obligation. These obligations also must be considered both at, and immediately after, the disposal.

Section 438: Market value of qualifying investments

1246. This section sets out how the market value of qualifying investments is to be determined. It is based on section 587B(10) and (11) of ICTA.
1247. The methods are those laid down in sections 272 to 274 of TCGA. If an offshore fund publishes buy and sell prices, it is in effect subject to the same treatment as a unit trust scheme as laid down by section 272(5) of TCGA. The provisions of that subsection are reproduced here.

Section 439: Meaning of “disposal-related obligation”

1248. This section defines “disposal-related obligation”. It is based on section 587B(8B) to (8D) and (9) of ICTA.
1249. The obligation undertaken by the charity may be any scheme, arrangement or understanding of any kind, regardless of whether it is legally enforceable. The word “obligation” also includes a reference to a series of obligations, whether or not between the same persons. It may also be contingent (see section 440(2)).

Section 440: Meaning and amount of “disposal-related liability”

1250. This section defines “disposal-related liability”. It is based on section 587B(8E) to (8G) of ICTA.

1251. *Subsection (2)* deals with contingent disposal-related obligations.
1252. It is in the nature of a contingency that it may occur after the time of disposal; hence the words “at any time”. If a contingency occurs later than immediately after the disposal, but existed as a possibility at the time of disposal, the value of the net benefit to the charity at the time of, or immediately after, the disposal must be reduced; and all necessary adjustments must be made to give effect to this. Conversely, if the contingency does not occur, to that extent there will be no obligation and no liability.

Section 441: Certificate required from charity

1253. This section, which is the first of four that deal specifically with qualifying interests in land, requires any claim for relief in relation to a qualifying interest in land to be supported by a certificate from the charity. It is based on section 587C(1), (4) and (5) of ICTA.

Section 442: Qualifying interests in land held jointly

1254. This section deals with land held by joint tenants or by tenants in common. It is based on section 587C(1) to (3) of ICTA.
1255. Relief is given only if each joint tenant, or tenant in common, disposes of the whole of that person’s beneficial interest in the land. This applies whether the relief is claimed by an individual under this Chapter, or by a company under sections 587B and 587C of ICTA.
1256. It is provided that there must be an agreement between all the tenants eligible for relief (whether individuals or not, and whether joint or in common) as to the share of the relief attributable to each tenant. To the extent that there is no such agreement between the owners entitled to relief, there is no relief under this Chapter, or under sections 587B and 587C of ICTA.
1257. The relief is available to individuals under this Chapter and to companies under sections 587B and 587C of ICTA, but not to other persons. So it is necessary in the case of joint disposals to set out a method to determine whether all beneficial interests have been disposed of. To that end, and to ensure that the total relief given under this Chapter and the corresponding provisions of ICTA is not excessive, it is provided that, for this purpose only, the rules defining “qualifying interest in land” in section 433(2) to (4) are to apply to all owners as if they were individuals. See also *Change 80* in Annex 1 and the commentary on section 443.

Section 443: Calculation of relievable amount where joint disposal of interest in land

1258. This section provides details of the method of calculation of the “relievable amount” in cases where there is a joint disposal of an interest in land. It is new.
1259. The method involves calculating the relievable amount as if there is a disposal by a single person, and then adjusting the amount to take account of only those owners who qualify for relief. See *Change 80* in Annex 1.

Section 444: Disqualifying events

1260. This section provides for the recovery of relief if a “disqualifying event” occurs within the “provisional period”. It is based on section 587C(1) and (6) to (10) of ICTA.
1261. In the simplest case, such an event occurs if any of the persons who made the disposal are entitled to buy the land back from the charity at an undervalue.

Section 445: Prohibition against double relief

1262. This section establishes the priority of this Chapter over any other provisions under which relief might be claimed. It is based on section 587B(2)(b) of ICTA.
1263. *Subsection (2)* is a signpost to the effect on the chargeable gains position of the charity of the rules in section 587B(3) of ICTA. See section 257 of TCGA as amended by Schedule 1 to this Act.

Section 446: “Charity” to include exempt bodies

1264. This section extends the relief given by the Chapter to certain bodies set up by Act of Parliament even though they are not charities. It is based on section 587B(9) of ICTA.
1265. The references to the British Museum and the Natural History Museum (originally in section 507(1) of ICTA, to which section 587B(9) of that Act cross-refers) are no longer required, since those bodies are established for charitable purposes. Their omission does not affect the exemption from corporation tax given by section 507 of ICTA. See *Change 79* in Annex 1 and the commentary on section 430.

Chapter 4: Annual payments and patent royalties

Overview

1266. This Chapter provides for relief for certain annual payments and patent royalty payments by deduction in calculating net income. These rules are coupled with those providing for deduction of tax at source from the payments: see Chapter 6 of Part 15 and the related commentary.
1267. The scheme of the source legislation relating to charges on income (which owes its origins to the historic concept of alienation of income) is replaced with a deduction in calculating net income. See *Change 81* in Annex 1.
1268. This Chapter distinguishes between individuals and other persons. One reason for this is that section 347A of ICTA provides that, with certain exceptions, an annual payment made by an individual (or personal representatives) is not to be a charge on the income of the person liable to make it. And there is a similar rule concerning the recipient in section 727 of ITTOIA. But those rules do not apply to payments by other persons. See the commentary on sections 900, 901, and 903.
1269. In addition, the rules about when payments are regarded as being, or not being, made out of profits or gains brought into charge to income tax distinguish between the position of individuals and other persons in the light of the case law.

Section 447: Overview of Chapter

1270. This section provides an overview of the Chapter. It is new.

Section 448: Relief for individuals

1271. This section provides for relief by deduction from income if an individual pays an annual payment for commercial purposes (see section 900) or pays a patent royalty (see section 903). It is based on section 348 of ICTA.
1272. The income tax in respect of the payment is collected as part of the individual’s self-assessment by way of Chapter 17 of Part 15. See *Change 81* in Annex 1 and the overview commentary on this Chapter.
1273. The term “gross amount of the payment” is defined in section 452.
1274. In the source legislation a number of types of income are treated as not brought into charge to income tax and so are not available to cover charges on income. To preserve

the effect of the source legislation, it is necessary to prevent the deduction being given against such “non-qualifying income”. *Subsection (3)* introduces these by referring to *subsection (4)* and to section 451.

1275. *Subsection (4)* gives a signpost to section 1025 which, together with section 1026, provides that such income cannot form part of “modified net income”. So it cannot give occasion for relief. See the commentary on section 1025.

Section 449: Relief for other persons

1276. This section provides for relief by deduction from income in the case of persons other than individuals. It is based on section 348 of ICTA.
1277. *Subsection (1)(c)* works together with the repeal of section 51 of ITTOIA to align the approach to patent royalties with that for annual payments. See *Change 81* in Annex 1.
1278. *Subsection (5)* mirrors the rule about “modified net income” in the previous section.

Section 450: Other persons: payments ineligible for relief

1279. This section rewrites the rule in the source legislation about when payments are regarded as being, or not being, made out of profits or gains brought into charge to income tax. It is new.
1280. In the case of an individual one need go no further than ask whether the individual has income, as noted in *Change 82* in Annex 1. But the position is more complex in the case of persons other than individuals.
1281. *Subsection (2)* provides that if a payment can lawfully only be made out of capital, or out of exempt income, relief will not be given: see *Change 82* in Annex 1 in connection with *Sugden v Leeds Corporation (1913)*, 6 TC 211 HL.
1282. *Subsection (3)* provides that, if a person other than an individual makes a payment within this Chapter that is charged to capital, it is to that extent denied relief. This principle appears in *Chancery Lane Safe Deposit and Offices Co Ltd v CIR (1965)*, 43 TC 83 HL and related cases: see *Change 82* in Annex 1.
1283. *Subsection (4)* provides for cases where the taxpayer has treated a payment as having been made out of exempt income, and this has had an effect on the actual or contingent rights or obligations of any person. Relief in such cases is denied on the authority of *CIR v Ayr Town Council (1938)*, 22 TC 381 CS: see *Change 82* in Annex 1 concerning that and related cases.
1284. *Subsection (5)* deals with subsidy cases, where payment is made but the payer is reimbursed for the gross amount in a form that is not taxable in the payer’s hands. To permit such cases would in effect give double relief: see *Change 82* in Annex 1 as regards *Corporation of Birmingham v CIR (1930)*, 15 TC 172 HL and related cases.

Section 451: Special rule for persons affected by section 733 of ICTA

1285. This section is based on section 733(2) of ICTA.
1286. Sections 731 to 735 of ICTA are anti-avoidance provisions. They are concerned with cases where:
- a person (“the first buyer”) buys securities and subsequently sells them to someone else; and
 - the first buyer becomes entitled to receive any interest payable on them.
1287. *Section 733(2)* addresses the case where:
- interest (the “affected income”) is payable to the first buyer;

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

- that interest, or some part of it, would be exempt, but is not so, because section 733(1) cancels the exemption; and
 - the first buyer makes an annual payment in the same tax year as that in which the interest arises.
1288. The source legislation provides that an annual payment is to be treated as paid out of profits or gains not brought into charge. It follows that, even though the exemption is cancelled by section 733(1), leaving interest in charge to income tax, the annual payment must not be treated as paid out of that interest.
1289. This is rewritten so that relief is only given if, and to the extent that, the person has “non-affected income” equal to the annual payment. Non-affected income is defined as modified net income less affected income. On modified net income, see the commentary on sections 448 and 1025.
1290. Because this is a rule relating to a very specific type of income, it is necessary to apply it before applying the provisions referred to in *subsection (4)*.

Section 452: The gross amount of a payment

1291. This section provides, for the purposes of this Chapter, that the gross amount of a payment is the amount of the payment before deduction of income tax. It is new.

Chapter 5: Qualifying maintenance payments

Overview

1292. This Chapter provides relief as a tax reduction at Step 6 of the tax calculation (see section 23) for individuals who make qualifying maintenance payments. It is based on section 347B of ICTA.
1293. Maintenance payments have been exempt from income tax since 6 April 2000. And in general no relief is available for those who pay them. But a measure of relief remained available if at least one party to a marriage was 65 or over before 6 April 2000, in line with corresponding changes made at the same time to married couple’s allowance.
1294. Since 5 December 2005, when the Tax and Civil Partnership Regulations 2005 came into force, relief has been extended to civil partners. And, in relation to payments for children, it was also extended to cover payments between parents who were never married and payments between any two individuals if the child was treated as a child of their family.
1295. The transitional arrangements in section 38 of FA 1988 for maintenance paid under obligations that existed in 1988 came to an end on 5 April 2000 (see section 36 of FA 1999) and are spent. Accordingly, they are repealed by this Act.

Section 453: Tax reduction for qualifying maintenance payments

1296. This section provides for a tax reduction if an individual makes qualifying maintenance payments. It is based on section 347B(2), (3) and (5A) of ICTA.
1297. Relief has to be claimed and is given for the year in which the payments are due. The relief is 10% of the amount of the payments, but is capped by reference to the minimum amount of married couple’s allowance for the year. For 2006-07 that amount is £2,350 so the maximum tax reduction is £235.
1298. The rules in section 347(5A) and (5B) of ICTA giving the priority between this relief and other tax reductions, and providing that relief cannot reduce liability below nil, are not set out here. They are contained in the general rules applying to all tax reductions in Chapter 3 of Part 2.

Section 454: Meaning of “qualifying maintenance payment”

1299. This section sets out the conditions that must be satisfied for relief to be due. It is based on section 347B(1), (1A), (7), (8) and (11) of ICTA.
1300. Condition A requires that the payment be paid either for the maintenance of a party to the marriage or civil partnership or for the maintenance of a child.
1301. In relation to payments for the maintenance of the other party to the marriage or civil partnership, they must be made to the other party.
1302. In relation to payments for the maintenance of a child, they must be made by one parent to the child’s other parent or be between any two persons for the maintenance of a relevant child of theirs. “Relevant child” is defined in *subsection (9)*. Relief is not due if the order or agreement provides for payments direct to a child.
1303. Condition C requires the payment to be made under certain types of court order or written agreement that apply in member States. Later subsections provide that payments under child support legislation are also included.
1304. Condition D specifies that, in relation to a payment for the other spouse or civil partner, the parties must not be a married couple living together or civil partners living together. If the marriage or civil partnership has formally ceased, the recipient must not have remarried or entered into a new civil partnership (whether or not that new marriage or civil partnership has since come to an end). If the payment is for a child, the condition is that the payer and the recipient are not living together.
1305. Condition E specifies that relief must not be due for the payment under any other provision. This caters for the possibility that the payment of interest on a loan to buy an annuity for the other party (and for which relief is due under section 365 of ICTA) may constitute maintenance.
1306. *Subsections (7) and (8)* provide that maintenance calculations made under the Child Support Act 1991 and maintenance assessments made under the [Child Support \(Northern Ireland\) Order 1991 \(SI 1991/2628\(NI 23\)\)](#) are treated as made under a court order. The transitional provision in Part 9 of Schedule 2 ensures that maintenance assessments in the rest of the United Kingdom which have not yet been replaced by maintenance calculations are treated in the same way.
1307. In the source legislation for subsection (7) the reference was to an order made by a court in the United Kingdom. It is here replaced by a reference to a court in a member state to tie in with the wording in subsection (4). This is not a change in the law.

Section 455: Child support maintenance payments

1308. This section ensures that condition A in section 454 is treated as satisfied in certain cases where the maintenance payment for a child is not made to the other party. It is based on section 347B(9) and (10) of ICTA.
1309. In certain circumstances, the maintenance for a child may be paid instead to the Secretary of State or the Department of Health, Social Services and Public Safety for Northern Ireland. This section treats condition A as satisfied in those cases.

Section 456: Payments under orders for recovery of benefit etc

1310. This section treats condition A in section 454 as satisfied in relation to certain maintenance payments under “recovery of benefit orders”. It is based on section 347B(12) and (13) of ICTA.
1311. In certain circumstances, the party entitled to the maintenance may receive income support or jobseeker’s allowance which is recovered from the party liable to pay the

maintenance under a “recovery of benefit order” (see *subsection (2)*). Such payments are treated as satisfying condition A.

Chapter 6: Miscellaneous other reliefs

Overview

- 1312. The first three sections of this Chapter concern relief for certain payments of an insurance-related nature, either by deduction in calculating net income or as a tax reduction. They are based on sections 266(7), 273, 274 and 278 of ICTA.
- 1313. Relief is given for parts of certain payments made to trade unions or police service organisations that go to provide life insurance, superannuation or funeral benefits. This relief is given by deduction in calculating net income.
- 1314. Relief is given for certain payments an individual is required to make to secure an annuity for a spouse or to provide for children after the individual’s death. This relief is given as a tax reduction.
- 1315. The fourth section is the residence condition relating to those reliefs.
- 1316. The final section in this Chapter is a relief that may be claimed by the recipient of patent royalties. It is based on section 527 of ICTA.
- 1317. Section 266(6) and (6A) of ICTA provided relief for premiums paid under certain policies issued by friendly societies. These provisions are obsolete. Accordingly they are repealed by this Act.
- 1318. The remaining provisions of sections 266 to 274 of, and Schedule 14 to, ICTA are obsolescent. They have not been rewritten, and remain in ICTA.

Section 457: Payments to trade unions

- 1319. This section provides a deduction in calculating net income if an individual makes a payment to a trade union of which part is attributable to the provision of superannuation, life insurance or funeral benefits. It is based on section 266(7) of ICTA.
- 1320. *Subsection (1)(c)* requires a claim to be made. The general rule in section 266(1), in the context of the relief given at source, is that claims are not required. This section brings the position in relation to section 266(7) of ICTA, which is administered through the self-assessment return, into line with practice. See *Change 83* in Annex 1.
- 1321. *Subsections (2) and (3)* provide that the amount of relief is one half of the qualifying part of the payment, subject to a maximum of £100. This simplifies many of the complexities of the existing limits provided by section 274(1) and (2) of ICTA. See *Change 84* in Annex 1.
- 1322. *Subsection (5)* defines a trade union. The 1974 Act referred to in section 266(7) of ICTA was repealed in 1992.

Section 458: Payments to police organisations

- 1323. This section is based on section 266(7) of ICTA.
- 1324. The section is similar to section 457. But there is an additional requirement that the qualifying part of all the payments made in a particular tax year must be at least £20.
- 1325. *Changes 83 and 84* also apply to this section. See the commentary on section 457.

Section 459: Payments for benefit of family members

1326. This section provides relief as a tax reduction for certain payments an individual is required to make to provide benefits for a surviving spouse, civil partner or children after the individual's death. It is based on section 273 of ICTA.
1327. *Subsection (1)* explains that a tax reduction may be claimed if an individual is required under an Act or the conditions of employment to pay a sum or suffer a deduction from earnings to secure an annuity for a surviving spouse or civil partner or make provision for the individual's surviving children.
1328. The residence requirement from section 278 of ICTA is contained in subsection (1) (c) without any special provision for claims by non-residents to be made to the Commissioners for Her Majesty's Revenue and Customs. Claims may be made to any officer and appeals are not reserved to the Special Commissioners. This is achieved here by not specifying to whom claims are to be made. See *Change 5* in Annex 1.
1329. *Subsections (2) to (4)* specify that the relief operates as a tax reduction of an amount equal to income tax at the basic rate on the amount of all of the payments (or sums deducted) in the tax year, subject to a maximum of £100. The limit provided by section 274(1) and (2) of ICTA requires account to be taken of other qualifying insurance related payments in the year. That requirement has been removed. See *Change 84* in Annex 1 and the commentary on section 457.
1330. *Subsection (7)* defines the term "earnings" in subsection (1). The term "stipend" in the source legislation is interpreted in the context of the terms "salary" and "employment" and is therefore covered by the term "earnings". "Stipend" does not embrace income in the nature of a pension.

Section 460: Residence etc of claimants

1331. This section sets out the residence-related requirement referred to in each of the previous three sections. It is based on section 278 of ICTA. *Subsections (2) and (3)* are the same as in section 56.
1332. Individuals who, under the source legislation, were able to claim the reliefs only by virtue of meeting the condition in section 278(2)(a) of ICTA are catered for by provisions remaining in ICTA, as amended by this Act. See the overview commentary on Part 3.

Section 461: Spreading of patent royalty receipts

1333. This section allows the recipient of a lump sum patent royalty to claim a tax reduction if the royalty was for the use of the patent over a period of two years or more. It is based on section 527 of ICTA.
1334. The amount of the royalty is notionally spread equally over the number of complete years for which the use of the patent extended (up to a maximum of six). The total additional tax that would have been due on that basis is compared to the tax attributable to the whole royalty in the year of receipt. If it is less, a tax reduction equal to the difference is given.