STATUTORY INSTRUMENTS

1988 No. 1347

INCOME TAX

The Income Tax (Interest Relief) (Housing Associations) Regulations 1988

Made - - - -	*29th July 1988*
Laid before the House of Commons	*29th July 1988*
Coming into force	*1st August 1988*

The Treasury, in exercise of the powers conferred on them by section 378(1) of the Income and Corporation Taxes Act 1988 (a), hereby make the following Regulations:

Citation, commencement and revocations

1.—(1) These Regulations may be cited as the Income Tax (Interest Relief) (Housing Associations) Regulations 1988 and shall come into force on 1st August 1988.

(2) The Regulations specified in the Schedule are hereby revoked.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires:–

"housing association" means a housing association for the time being approved for the purposes of section 488 or a self-build society for the time being approved for the purposes of section 489;

"the Principal Regulations" means the Income Tax (Interest Relief) Regulations 1982 (b);

"qualifying member" means a member of a housing association except a member who, or whose husband or wife, holds an office or employment in respect of the emoluments of which he or she would but for some special exemption or immunity from tax be chargeable to tax under Case I, Case II or Case III of Schedule E;

"section" means a section of the Income and Corporation Taxes Act 1988.

(2) In the application of these Regulations to Scotland–

(a) "a freehold or leasehold estate" means any interest in land; and

(b) any reference to a loan on the security of such an estate is a reference to a loan upon a heritable security within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c).

Introductory

3. Where a housing association borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that association on land in the United Kingdom sections 369 to 377 and the Principal Regulations shall apply but subject to such modifications and conditions as these Regulations provide and as if, with respect to relevant loan interest on any loan, housing associations were included as qualifying borrowers within section 376(1).

(a) 1988 c.1. (b) S.I. 1982/1236, amended by S.I. 1983/311 and 1985/1252. (c) 1970 c.35.

Modification of provisions of Income and Corporation Taxes Act 1988

4. Section 369(1) shall have effect as if at the end there were inserted the words–

"; and, accordingly sections 337(3) (companies beginning or ceasing to carry on a trade), 338 (allowance of charges on income and capital) and 486(2) (interest paid by registered industrial and provident societies) shall not apply to that payment of relevant loan interest".

5. Section 370 shall have effect as if for subsections (1) and (2) there were substituted the words–

"(1) Subject to this section and sections 371 to 376, in this Part "relevant loan interest" means interest which is paid and payable in the United Kingdom to a qualifying lender by a housing association and to which subsection (2) or (3) below applies.

(2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2)–

(a) it is interest falling within section 354(1); and

(b) apart from section 74(o) or 369(1) and, where applicable, section 356A or 373 the whole of the interest would be taken into account as a deduction, either in a computation of total income, or against total profits for the purposes of corporation tax; and

(c) it is interest on a loan to a housing association which is secured on a freehold or leasehold estate of land in the United Kingdom of which the housing association is the owner; and

(d) within 12 months of its becoming due, the land (and where it includes separate dwellings each of them) is occupied by the housing association or is used wholly or to a substantial extent as the only or main residence of a qualifying member or members of the association (including a qualifying member who resides in living accommodation which for him is job related within the meaning of section 356(3)), or, subject to section 44(6) of the Finance Act 1988, of a dependent relative or former or separated spouse (within the meaning of section 355(1)(a) or (b)) of a member.".

6. Section 373 shall have effect as if for subsections (1) to (5) there were substituted the words–

"(1) The provisions of this section have effect in relation to a loan or loans by a qualifying lender to a housing association the total amount of which, where applicable, in relation to a loan made on or after 1st August 1988, having regard to section 356A as if that section applied to the housing association, for the time being exceeds the limit ("the aggregate limit") found–

(a) in relation to a loan made on or after 1st August 1988 and where qualifying interest is paid by a housing association and another person in relation to a separate dwelling, by dividing the amount of the limit provided by section 357 (the tax relief limit) by the number of persons by whom qualifying interest is payable; and

(b) except where paragraph (a) applies, by multiplying the tax relief limit by the number of separate dwellings provided or to be provided on the land on which the loan is secured and to which the loan relates;

and in this section any such loan is referred to as a "limited loan".

(2) None of the interest on a limited loan is relevant loan interest unless–

(a) the loan is made on or after 6th April 1987; or

(b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have limited loans of a description which includes that limited loan brought within the tax deduction scheme.

(3) If, in a case where subsection (2) above applies, the total amount of loans to a housing association exceeds the aggregate limit provided by subsection (1) above, none of the interest on the loan which, taken with the amounts of any earlier loans, first exceeds that limit, or on subsequent loans, is relevant loan interest unless it is a

loan which was made by the qualifying lender who first gave notice under subsection (2) above or the interest is so designated by the Board.

(4) The reference in subsection (1) above to a loan only part of the interest on which would (apart from section 353(2)) be eligible for relief under section 353 includes a reference to each of two or more loans if, by virtue of subsection 3(b) of section 357, the interest on the loans falls to be treated for the purposes of that section as payable on one loan; but, notwithstanding that each of those loans is accordingly a limited loan for the purposes of this section, none of the interest on any of them is relevant loan interest unless each of the loans was made by the same qualifying lender.

(5) Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled and, if subsection (3) or (4) above also applies, the condition in that subsection is also fulfilled only the interest on so much of the total amount to which subsection (1) refers as does not exceed the aggregate limit provided by that subsection is relevant loan interest.".

7. Section 374(1) shall have effect as if for paragraph (c) there were substituted the words–

"(c) it is interest to which section 370(3) applies in respect of which–

(i) the housing association has given to the lender a certificate in a form prescribed or authorised by the Board that it is a qualifying borrower and that the interest payable on the loan is relevant loan interest; and

(ii) the lender has sent to the Board (or the Board is satisfied that it will send) a copy of the certificate;".

Modification of Principal Regulations

8. For the purposes of Regulation 3 of the Principal Regulations a housing association is a borrower to whom only paragraph (3) of that Regulation applies.

9. Regulation 4 of the Principal Regulations shall have effect as if at the end there were inserted the words–

"*(c)* a loan to a housing association the interest on which is relevant loan interest in respect of which the housing association has given a certificate to the Board that it is a qualifying borrower and that the interest is relevant loan interest.".

10. For Regulation 16 of the Principal Regulations there shall be substituted the words–

"*Information to be provided to the Board*

16. The Board may by notice in writing require any person who is a party to a loan agreement to which sections 369 to 376 of the Income and Corporation Taxes Act 1988 apply, or could in the opinion of the Board apply, or a member or tenant of a housing association which is a party to such a loan agreement, to furnish them, within such time (not being less than 14 days) as may be provided by the notice, such information (including copies of any relevant documents or records) as they may reasonably require for the purposes of those sections including, in the case of a loan to a housing association, a certificate that all or any specified conditions of the tax deduction scheme are satisfied.".

Mark Lennox-Boyd
David Lightbown

29th July 1988 — Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 1(2)

REVOCATIONS

Regulations revoked	*References*
The Income Tax (Interest Relief) (Housing Associations) Regulations 1983	S.I. 1983/368
The Income Tax (Interest Relief) (Housing Associations) (No. 2) Regulations 1984	S.I. 1984/1653
The Income Tax (Interest Relief) (Housing Associations) (No. 3) Regulations 1987	S.I. 1987/404

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Income Tax (Interest Relief) (Housing Associations) Regulations 1983, as amended.

Apart from minor and drafting amendments, including amendments consequential on the consolidation of the Income Tax Acts by the Income and Corporation Taxes Act 1988, the principal changes of substance made are that–

(a) in consequence of amendments made to the Income and Corporation Taxes Act 1988 by section 42 of the Finance Act 1988 (c.39) (home loans: restriction of relief), provision is made so that in ascertaining whether a loan or loans to a housing association exceeds "the aggregate limit" regard is to be had to the number of persons by whom qualifying interest is payable (regulation 6); and

(b) in consequence of subsection (6) of section 44 of the Finance Act 1988 (loans for residence of dependent relative etc.) provision is made so that in determining whether interest is "relevant loan interest" regard is to be had to that subsection (regulation 5).

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