

SCHEDULES

SCHEDULE 11

Section 188.

RELIEF AS RESPECTS TAX ON PAYMENTS ON RETIREMENT OR REMOVAL FROM OFFICE OR EMPLOYMENT

PART I

GENERAL PROVISIONS

Preliminary

- 1 Relief shall be allowed in accordance with the following provisions of this Schedule in respect of tax chargeable by virtue of section 148, where a claim is made under section 188(6).
- 2 (1) A person shall not be entitled to relief under this Schedule in so far as such relief, together with any personal relief allowed to him, would reduce the amount of income on which he is chargeable below the amount income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person.
(2) In sub-paragraph (1) above “personal relief” means relief under Chapter I of Part VII.

Relief by reduction of sums chargeable

- 3 In computing the charge to tax in respect of a payment chargeable to tax under section 148, being a payment made in respect of an office or employment in which the service of the holder includes foreign service, there shall be deducted from the payment a sum which bears to the amount which would be chargeable to tax apart from this paragraph the same proportion as the length of the foreign service bears to the length of the service before the relevant date.

Relief by reduction of tax

- 4 (1) Subject to sub-paragraph (2) below, in the case of any payment in respect of which tax is chargeable under section 148, the following relief shall be allowed by way of deduction from the tax chargeable by virtue of that section, that is to say, there shall be ascertained—
 - (a) the amount of tax which would be chargeable apart from this paragraph in respect of the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income;
 - (b) the amount of tax which would have been so chargeable if the payment had not been made;and the amount to be deducted shall be half the difference between the amount ascertained at (a) and the amount ascertained at (b).

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- (2) In the case of a payment which exceeds £50,000, this paragraph applies as if it were a payment of £50,000 exactly.
- 5 (1) Subject to sub-paragraph (2) below, in the case of a payment which exceeds £50,000 and in respect of which tax is chargeable under section 148, the following relief shall be allowed by way of deduction from the tax chargeable by virtue of that section, that is to say, there shall be ascertained—
- (a) the amount of tax which would be chargeable apart from this paragraph and paragraph 4 above in respect of the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income; and
 - (b) the amount of tax which would have been so chargeable if the amount of the payment had been £50,000 exactly;
- and the amount to be deducted shall be one-quarter of the difference between the amount ascertained at (a) and the amount ascertained at (b).
- (2) In the case of a payment which exceeds £75,000, this paragraph applies as if it were a payment of £75,000 exactly.
- (3) Any relief allowed by virtue of this paragraph shall be in addition to that allowed by virtue of paragraph 4 above.
- 6 Where tax is chargeable under section 148 in respect of two or more payments to or in respect of the same person in respect of the same office or employment and is so chargeable for the same chargeable period, those payments shall be treated for the purposes of paragraphs 4 and 5 above as a single payment of an amount equal to their aggregate amount.
- 7 Where tax is chargeable under section 148 in respect of two or more payments to or in respect of the same person in respect of different offices or employments and is so chargeable for the same chargeable period, paragraphs 4 to 6 above shall apply as if those payments were made in respect of the same office or employment.

Supplemental

- 8 Any reference in this Schedule to the emoluments of an office or employment is a reference to those emoluments exclusive of any payment chargeable to tax under section 148; and in calculating for any purpose of this Schedule the amount of such emoluments—
- (a) there shall be included any balancing charge to which the holder of the office or employment is liable under section 33 of the 1968 Act or under Chapter I of Part III of the Finance Act 1971 (“the 1971 Act”), and
 - (b) there shall be deducted any allowances under Chapter II of Part I of the 1968 Act or Chapter I of Part III of the 1971 Act, and any allowances for expenses under section 198 or 201, to which he is entitled,
- and any such charges or allowances for a chargeable period shall, for the purpose of ascertaining the amount of the emoluments for any year of service, be treated as accruing from day to day, and shall be apportioned in respect of time accordingly.
- 9 In this Schedule “the relevant date” means, in relation to a payment not being a payment in commutation of annual or other periodical payments, the date of the termination or change in respect of which it is made and, in relation to a payment in commutation of annual or other periodical payments, the date of the termination or change in respect of which those payments would have been made.

- 10 In this Schedule, “foreign service”, in relation to an office or employment, means—
- (a) service before the year 1974-75 such that tax was not chargeable in respect of the emoluments of the office or employment—
 - (i) in the case of the year 1956-57 or any subsequent chargeable period, under Case I of Schedule E;
 - (ii) in the case of any preceding year of assessment, under Schedule E; or
 - (b) service after the year 1973-74 such that the emoluments from the office or employment were not chargeable under Case I of Schedule E (or would not have been so chargeable, had there been any) or that a deduction equal to their whole amount was or would have been allowable under paragraph 1 of Schedule 2 to the Finance Act 1974, paragraph 1 of Schedule 7 to the Finance Act 1977 or section 193(1) in charging them.
- 11 Any reference in this Schedule to the amount of tax to which a person is or would be chargeable is a reference to the amount of tax to which he is or would be chargeable either by assessment or by deduction.

PART II

PAYMENTS IN PURSUANCE OF PRE-10TH MARCH 1981 OBLIGATIONS

- 12 Where a payment is made in pursuance of an obligation incurred before 10th March 1981, the person chargeable to tax in respect of it may, by notice given to the inspector within six years after the year of assessment in which the payment is made, elect that Part I of this Schedule shall have effect in relation to the payment subject to the modifications contained in the following provisions of this Part, and those provisions shall have effect accordingly (and not otherwise).
- 13 The following paragraphs shall be inserted immediately before paragraph 3—
- “2A In computing the charge to tax in respect of a payment chargeable to tax under section 148, not being a payment of compensation for loss of office, there shall be deducted from the payment a sum equal to the amount (if any) by which the standard capital superannuation benefit for the office or employment in respect of which the payment is made exceeds £10,000.
- 2B (1) In this Schedule “the standard capital superannuation benefit”, in relation to an office or employment, means a sum arrived at as follows, that is to say—
- (a) there shall be ascertained the average for one year of the holder’s emoluments from the office or employment for the last three years of his service before the relevant date (or for the whole period of his service if less than three years);
 - (b) one-twentieth of the amount ascertained at (a) shall be multiplied by the whole number of complete years of the service of the holder in the office or employment; and
 - (c) there shall be deducted from the product at (b) a sum equal to the amount, or, as the case may be, to the value at the relevant date, of any lump sum (not chargeable to tax) received or receivable by the holder in respect of the office or employment in pursuance of any such scheme or fund as was described

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in section 221(1) and (2) of the 1970 Act or is described in section 596.

- (2) In sub-paragraph (1)(c) above the reference to a lump sum receivable by the holder includes a reference to a lump sum that would be receivable by him if he had exercised or refrained from exercising (with any necessary consent) any option or other right conferred on him by the rules of the scheme or fund.

2C Where tax is chargeable under section 148 in respect of two or more payments to which paragraph 2A above applies, being payments made to or in respect of the same person in respect of the same office or employment or in respect of different offices or employments held under the same employer or under associated employers, then—

- (a) paragraph 2A above shall apply as if those payments were a single payment of an amount equal to their aggregate amount and, where they are made in respect of different offices or employments, as if the standard capital superannuation benefit were an amount equal to the sum of the standard capital superannuation benefits for those offices or employments, and
- (b) where the payments are treated as income of different chargeable periods, the relief to be granted under that paragraph in respect of a payment chargeable for any such period shall be the amount by which the relief computed in accordance with the preceding provision in respect of that payment and any payments chargeable for previous chargeable periods exceeds the relief in respect of the last mentioned payments;

and where the standard capital superannuation benefit for an office or employment in respect of which two or more of the payments are made is not the same in relation to each of those payments, it shall be treated for the purpose of this paragraph as equal to the higher or highest of those benefits.”

14 In paragraph 3, after the words “from the payment” there shall be inserted the words “(in addition to any deduction allowed under the preceding provisions of this Schedule)”.

15 In paragraph 4(1), for the words following sub-paragraph (b) there shall be substituted the following words—

“(c) the difference between the respective amounts of tax which would be so chargeable on the assumptions—

(i) that the appropriate fraction only of the payment (after deducting any relief applicable thereto under the preceding provisions of this Schedule) had been made, and

(ii) that no part of the payment had been made,

and disregarding, in each case, any other emoluments of the office or employment,

and the amount to be deducted shall be the difference between the amount ascertained at (a) and the sum of the amount ascertained at (b) and the appropriate multiple of the difference ascertained at (c).”

16 The following paragraphs shall be inserted after paragraph 5—

- “5A (1) Where the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income includes income, income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person, the amounts referred to in sub-paragraphs (a) to (c) of paragraph 4 above shall be calculated as if that tax were not chargeable in respect of that income.
- (2) Where for any year of assessment an individual claims relief under paragraph 4 above, and also under section 550 or Schedule 2, or under both that section and that Schedule, then, in computing the relief under paragraph 4 above, his income shall be deemed to include—
- (a) in respect of any amount which would otherwise be included therein by virtue of section 547(1)(a), no greater amount than the appropriate fraction thereof within the meaning of section 550, and
 - (b) in respect of any chargeable sum within the meaning of Schedule 2 (including two or more sums treated for the purposes of paragraph 3 of that Schedule as one chargeable sum), no greater amount than the balance (if any) of the yearly equivalent thereof remaining after the making of any deduction required by that paragraph.

5B In this Schedule “the appropriate fraction” (except in paragraph 5A(2)(a)) and “the appropriate multiple”, in relation to any payment, mean respectively—

- (a) where the payment is not a payment of compensation for loss of office, one-sixth and six, and
- (b) where the payment is a payment of compensation for loss of office, one divided by the relevant number of years of unexpired service, and that number of years,

and for the purposes of this paragraph “the relevant number of years of unexpired service” means the number of complete years taken into account in calculating the amount of the payment, being years for which the holder of the office or employment would have been entitled (otherwise than by virtue of arrangements made in contemplation of his retirement or removal or of any relevant change in the functions or emoluments of the office or employment) to retain the office or employment or its full emoluments, and where the period so taken into account is less than one complete year or exceeds an exact number of years, it shall be treated for the purposes of this paragraph as one complete year or as the next higher number of complete years, as the case may be.”

17 The following proviso shall be added at the end of paragraph 6—

“Provided that, where the appropriate fraction and the appropriate multiple are not the same for each of the payments, the calculations of relief under paragraph 4 above shall be made separately in relation to each payment or payments having a different appropriate fraction and multiple, and in any such calculation—

- (a) any payment for which the appropriate multiple is lower shall be left out of account for all the purposes of that paragraph, and

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- (b) in ascertaining the difference at (c) of that paragraph it shall be assumed that the appropriate fraction only of any payment for which the appropriate multiple is higher had been made,

and the relief to be allowed shall be the sum of the reliefs so calculated in respect of the payments respectively.”

18 The following words shall be added at the end of paragraph 7—

“and as if any emoluments of any of those offices or employments were emoluments of the same office or employment.”

19 The following paragraph shall be inserted after paragraph 8—

“8A In this Schedule “payment of compensation for loss of office” means a payment made—

- (a) in pursuance of an order of a court in proceedings for wrongful dismissal or otherwise for breach of contract of employment, or by way of settlement of such proceedings or of a claim in respect of which such proceedings could have been brought, or

- (b) by way of compensation for the extinguishment of any right the infringement of which would be actionable in such proceedings,

and any question whether, and to what extent, a payment is or is not a payment of compensation for loss of office shall be determined according to all the circumstances and not (or not exclusively) by reference to the terms on which it is expressed to be made.”