

SCHEDULES

SCHEDULE 9

Section 58(2).

PAYMENTS AND OTHER BENEFITS IN CONNECTION WITH TERMINATION OF EMPLOYMENT ETC

PART I

SCHEDULE 11 TO THE TAXES ACT 1988

The Schedule substituted for Schedule 11 to the Taxes Act 1988 is as follows:—

“SCHEDULE 11

PAYMENTS AND OTHER BENEFITS IN CONNECTION WITH TERMINATION OF EMPLOYMENT, ETC.

Introductory

- 1 The provisions of this Schedule supplement the provisions of section 148 with respect to the taxation of payments and other benefits received in connection with—
- (a) the termination of a person’s employment, or
 - (b) any change in the duties of or emoluments from a person’s employment.

Payments and other benefits to which section 148 applies

- 2 (1) Section 148 applies to all payments and other benefits received directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination or change—
- (a) by the employee or former employee,
 - (b) by the spouse or any relative or dependant of the employee or former employee, or
 - (c) by the personal representatives of the former employee.
- (2) For the purposes of section 148 a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee.

Payments and other benefits excluded from charge under section 148

- 3 Tax is not charged under section 148 on a payment or other benefit provided—
- (a) in connection with the termination of the employment by the death of the employee, or
 - (b) on account of injury to or disability of the employee.
- 4 (1) Tax is not charged under section 148 on a payment or other benefit provided in pursuance of any such scheme or fund as was described in section 221(1) and (2)

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of the 1970 Act or as is described in section 596(1) (approved retirement benefits schemes, etc) in the following cases.

- (2) The first case is where the payment or other benefit is by way of compensation for loss of employment, or for loss or diminution of emoluments, and the loss or diminution is due to ill-health.
- (3) The second case is where the payment or other benefit is properly regarded as earned by past service.
- 5 Tax is not charged under section 148 on a payment or other benefit provided—
- (a) under a Royal Warrant, Queen’s Order or Order in Council relating to members of Her Majesty’s forces, or
 - (b) by way of payment in commutation of annual or other periodical payments authorised by any such Warrant or Order.
- 6 (1) Tax is not charged under section 148 on—
- (a) any benefit provided under a superannuation scheme administered by the government of an overseas territory within the Commonwealth, or
 - (b) any payment of compensation for loss of career, interruption of service or disturbance made in connection with any change in the constitution of any such overseas territory to a person who, before the change, was employed in the public service of that territory.
- (2) In sub-paragraph (1) references to an overseas territory, to the government of such a territory, and to employment in the public service of such a territory have the same meaning as in the Overseas Development and Cooperation Act 1980; see sections 10(2) and 13(1) and (2) of that Act.
- 7 (1) This paragraph specifies how the £30,000 threshold in section 148(1) applies.
- (2) Tax is charged only on the excess over £30,000, but the threshold applies to the aggregate amount of payments and other benefits provided in respect of the same person—
- (a) in respect of the same employment, or
 - (b) in respect of different employments with the same employer or associated employers (see paragraph 8).
- (3) If payments and other benefits are received in different tax years, the £30,000 is set against the amount of payments and other benefits received in earlier years before those of later years.
- (4) If more than one payment or other benefit is received in a tax year in which the threshold is exceeded—
- (a) the £30,000 (or the balance of it) is set against the amounts of cash benefits as they are received, and
 - (b) any balance at the end of the year is set against the aggregate amount of non-cash benefits received in the year.
- 8 (1) For the purposes of paragraph 7(2)(b) employers are associated if on the date which is the relevant date in relation to any of the payments or other benefits—
- (a) one of them is under the control of the other, or
 - (b) one of them is under the control of a third person who controls or is under the control of the other on that or any other such date.

- (2) In sub-paragraph (1)—
- (a) “control” has the meaning given by section 840, and
 - (b) references to an employer, or to a person controlling or controlled by an employer, include the successors of the employer or person.

Exclusion or reduction of charge in case of foreign service

- 9 (1) If the employee’s service in the employment in respect of which the payment or other benefit is received included foreign service, then—
- (a) in certain cases, tax is not charged under section 148 (see paragraph 10);
 - (b) in other cases the amount charged to tax is reduced (see paragraph 11).

- (2) “Foreign service” for this purpose means—

- (a) service in or after the tax year 1974-75 such that—
 - (i) the emoluments from the employment were not chargeable under Case I of Schedule E (or would not have been so chargeable, had there been any), or
 - (ii) a deduction equal to the whole amount of the emoluments from the employment 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 192A or 193(1) of this Act (foreign earnings deduction);
- (b) service before the tax year 1974-75 such that tax was not chargeable in respect of the emoluments of the employment—
 - (i) in the tax year 1956-57 or later, under Case I of Schedule E;
 - (ii) in earlier tax years, under Schedule E.

- 10 Tax is not charged under section 148 if foreign service comprises—
- (a) three-quarters or more of the whole period of service down to the relevant date, or
 - (b) if the period of service down to the relevant date exceeded ten years, the whole of the last ten years, or
 - (c) if the period of service down to the relevant date exceeded 20 years, one-half or more of that period, including any ten of the last 20 years.

- 11 (1) Where there is foreign service and paragraph 10 does not apply, the person chargeable to tax under section 148 may claim relief in the form of a proportionate reduction of the amount charged to tax.

The amount charged to tax means the amount after any reduction under paragraph 7 (application of £30,000 threshold).

- (2) The proportion is that which the length of the foreign service bears to the whole length of service in the employment before the relevant date.
- (3) A person is not entitled to relief under this paragraph in so far as the relief, together with any personal relief allowed to him, would reduce the amount of income on which he is chargeable below the amount of income tax which he is entitled—
 - (a) to charge against any other person, or
 - (b) to deduct, retain or satisfy out of any payment which he is liable to make.
- (4) For the purposes of sub-paragraph (3)—

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- (a) “personal relief” means relief under Chapter I of Part VII; and
- (b) the amount of tax to which a person is or would be chargeable means the amount of tax to which he is or would be chargeable either by assessment or by deduction.

Valuation of benefits

- 12 (1) For the purposes of section 148, the amount of a payment or other benefit is taken to be—
- (a) in the case of a cash benefit, the amount received, and
 - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (2) The cash equivalent of a non-cash benefit is whichever is the greater of—
- (a) the amount which would be chargeable to tax under section 19(1) if the benefit were an emolument of the employment chargeable to tax under Case I of Schedule E, or
 - (b) the cash equivalent determined in accordance with the provisions of section 596B (cash equivalent of benefits in kind for purposes of charge to tax on benefits under non-approved retirement benefits scheme).

Notional interest treated as paid if amount charged in respect of beneficial loan

- 13 (1) This paragraph applies where a person is chargeable to tax under section 148 in any tax year on an amount which consists of or includes an amount representing the cash equivalent of the benefit of a loan determined in accordance with Part II of Schedule 7.
- (2) Where this paragraph applies, the person chargeable is treated as having paid interest on the loan of the same amount as the cash equivalent so determined.
- This is subject to application of the £30,000 threshold: see sub-paragraph (5) below.
- (3) The interest is treated as paid for all the purposes of the Tax Acts (other than section 148 and this Schedule), but not so as to make it—
- (a) income of the person making the loan, or
 - (b) relevant loan interest to which section 369 applies (mortgage interest payable under deduction of tax).
- (4) The interest is treated as accruing during and paid at the end of the tax year or, if different, the period in the tax year during which the loan is outstanding.
- (5) No amount of interest is treated as paid under this paragraph in a tax year in which, after applying the £30,000 threshold in section 148(1), no amount falls to be charged to tax.

If in any tax year the effect of the £30,000 threshold is that some but not all of the amount otherwise chargeable is charged to tax, the amount of interest treated as paid is limited to the amount charged to tax.

Giving effect to the charge to tax

- 14 (1) Tax under section 148 is charged on the employee or former employee, whether or not he is the recipient of the payment or other benefit.

- (2) After the death of the employee or former employee, any amount chargeable to tax under section 148 shall be assessed and charged upon his personal representatives and is a debt due from and payable out of the estate.

Reporting requirements

- 15 Provision may be made by regulations under section 203(2) requiring an employer or former employer to provide such information as may be prescribed by the regulations, within such time as may be so prescribed, as to payments or other benefits provided or to be provided in connection with the termination of a person's employment or a change in the duties of or emoluments from a person's employment.

Interpretation

- 16 In this Schedule—
 “the relevant date” means the date of the termination or change in question; and
 “tax year” means a year of assessment.”.

PART II

CONSEQUENTIAL AMENDMENTS

Income and Corporation Taxes Act 1988 (c. 1)

- 1 (1) Section 189 of the Taxes Act 1988 (exemption from Schedule E charge of lump sum payments under approved retirement benefits schemes, etc) is amended as follows.
- (2) Make the existing provision subsection (1).
- (3) In paragraph (a) of that subsection for the words from “and is neither” to “section 600” substitute “and is not excepted from this paragraph by subsection (2) or (3) below”.
- (4) After that subsection insert—
- “(2) Subsection (1)(a) above does not apply to a payment of compensation for loss of office or employment, or for loss or diminution of emoluments, unless—
- (a) the loss or diminution is due to ill-health, or
- (b) the payment is properly regarded as earned by past service.
- (3) Subsection (1)(a) above does not apply to a payment chargeable to tax under section 600 (payments not authorised by rules of scheme).”.
- 2 In section 190 of the Taxes Act 1988 (payments to MPs and others exempt from tax as emoluments), for the words from “but without prejudice” to the end substitute “but without prejudice to any charge to tax under section 148”.
- 3 In section 202B(8) of the Taxes Act 1988 (receipts basis of assessment), for “143(1) (a) or 148(4)” substitute “or 143(1)(a)”.

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- 4 In section 833(3)(a) of the Taxes Act 1988 (calculation of top slice of a person's income), after "payment" insert "or other benefit".

Finance Act 1995 (c. 4)

- 5 In section 92 of the Finance Act 1995 (post-employment deductions), for subsection (10) substitute—

- “(10) Tax shall not be charged under section 148 of the Taxes Act 1988 (payments and other benefits in connection with termination of employment etc) in respect of a payment or other benefit received by an individual, or an individual's executors or administrators, in so far as—
- (a) in the case of a cash benefit, it is provided for meeting the cost of an amount to which this subsection applies, or
 - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of defraying such an amount.

This subsection applies to an amount which, without being an amount to which this section applies, would fall to be treated as such an amount if subsection (4) of this section were omitted and, where the individual has died, he had not died but had himself defrayed any amounts defrayed by his executors or administrators.”.