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SCHEDULES

FOURTH SCHEDULE

Section 38.

RELIEFS IN RESPECT OF TAX UNDER SECTION THIRTY-SEVEN

Preliminary

- 1 Relief shall be allowed in accordance with the following provisions of this Schedule in respect of tax chargeable by virtue of section thirty-seven of this Act, where a claim is duly made in accordance with subsection (4) of section thirty-eight of this Act.
- 2 A person shall not be entitled to relief under this Schedule in so far as such relief, together with any relief allowed under Part VIII of the Act of 1952, would reduce the amount of income on which he is chargeable at the standard rate below the amount 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.

Relief by reduction of sums chargeable

- 3 In computing the charge to tax in respect of a payment chargeable to tax under section thirty-seven of this Act, 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 five thousand pounds.
- 4 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 of 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 for 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 is referred to in paragraph (d) of subsection (1) of section thirty-eight of this Act:

Provided that no account shall be taken for the purposes of this paragraph of the service of any person as an officer or employee of a body corporate at any time while he was a controlling director (as defined by section three hundred and ninety of the Act of 1952) of that body.

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- 5 Where tax is chargeable under section thirty-seven of this Act in respect of two or more payments to which paragraph 3 of this Schedule 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) the said paragraph 3 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 ;
 - (b) where the payments are treated as income of different years of assessment, the relief to be granted under that paragraph in respect of a payment chargeable for any year of assessment shall be the amount by which the relief computed in accordance with the foregoing provision in respect of that payment and any payments chargeable for previous years of assessment 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 purposes of this paragraph as equal to the higher or highest of those benefits.
- 6 In computing the charge to tax in respect of a payment chargeable to tax under section thirty-seven of this Act, being a payment made in respect of an office or employment in which the service of the holder includes foreign service and not being a payment of compensation for loss of office, there shall be deducted from the payment (in addition to any deduction allowed under the foregoing provisions of this Schedule) 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

- 7 In the case of any payment in respect of which tax is chargeable under section thirty-seven of this Act, 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 year of assessment of which the payment is treated as income ;
 - (b) the amount of tax which would be so chargeable if the payment had not been made;
 - (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 foregoing 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;

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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).

8 Where the income of the holder or past holder of the office or employment for the year of assessment of which the payment is treated as income includes 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 7 of this Schedule shall be calculated as if that tax were not chargeable in respect of that income.

9 In this Schedule " the appropriate fraction" 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 ;

(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 taken into account as aforesaid 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.

10 Where tax is chargeable under section thirty-seven of this Act 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 year of assessment, those payments shall be treated for the purposes of paragraph 7 of this Schedule as a single payment of an amount equal to their aggregate amount:

Provided that where the appropriate fraction and appropriate multiple are not the same for each of the payments, the calculations of relief under the said paragraph 7 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 the said paragraph 7; and

(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.

11 Where tax is chargeable under section thirty-seven of this Act 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 year of assessment, paragraphs 7 to 10 of this Schedule shall apply as if those payments were made in respect of the same office or employment and as if any emoluments of any of those offices or employments were emoluments of the same office or employment.

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Supplemental

- 12 Any reference in the foregoing provisions of this Schedule to a payment in respect of which tax is chargeable under section thirty-seven of this Act is a reference to so much of that payment as is chargeable to tax after deduction of the relief applicable thereto under subsection (3) of section thirty-eight of this Act.
- 13 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 a 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.
- 14 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 thirty-seven of this Act; 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 two hundred and ninety-two of the Act of 1952 ;
 - (b) there shall be deducted any allowances under Chapter II of Part X of that Act, and any allowances for expenses under paragraph 7 of the Ninth Schedule to that Act, to which he is entitled ;
- and any such charges or allowances as aforesaid for a year of assessment 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.
- 15 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.
- 16 In this Schedule " foreign service ", in relation to an office or employment, means service such that tax was not chargeable in respect of the emoluments of the office or employment—
- (a) in the case of the year 1956-57 or any subsequent year, under Case I of Schedule E ;
 - (b) in the case of any preceding year of assessment, under Schedule E.
- 17 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.