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SCHEDULES

SCHEDULE 3

Section 35.

MARRIED COUPLES: MINOR AND CONSEQUENTIAL PROVISIONS

PART I

AMENDMENTS OF THE TAXES ACT 1988

Introductory

1 The Taxes Act 1988 shall have effect subject to the following amendments.

Commencement of trade etc.

2 In section 62 (special basis for early years following commencement of trade etc.) the following subsection shall be inserted after subsection (2)—

“(2A) Where—

- (a) the second year of assessment is the year 1989-90,
- (b) the person charged, or liable to be charged, for that year is a married man, and
- (c) the person charged, or liable to be charged, for the year 1990-91 is his wife,

subsection (2) above shall have effect as if it conferred the right to give notice on her and not on him.”

Discontinuance of trade etc.

3 In section 63 (special basis on discontinuance of trade etc.)—

- (a) in subsection (1)(b), for the words “that person” and the word “he”, in both places where it occurs, there shall be substituted the words “ income tax ”, and
- (b) in subsection (2), for the words “a person has been charged with income tax” there shall be substituted the words “ income tax has been charged ”.

Underpayments

4 In section 203 (PAYE) the following subsection shall be inserted after subsection (3)

“(3A) Regulations under this section may include provision for income tax in respect of any of a person’s income for the year 1989-90 or any earlier year of assessment to be collected and recovered (whether by deduction from

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income assessable under Schedule E or otherwise) from the person's spouse if—

- (a) the income was income to which section 279 applied, and
- (b) the tax has not been deducted or otherwise recovered before 6th April 1990.”

Additional relief in respect of children

5 (1) For the year 1990-91 and subsequent years of assessment section 259 (additional relief in respect of children) shall have effect with the following amendments.

(2) For subsection (1) there shall be substituted—

“(1) This section applies to—

- (a) any woman who is not throughout the year of assessment married and living with her husband;
- (b) any man who is neither married and living with his wife for the whole or any part of the year, nor entitled to a deduction from his total income by virtue of section 257F; and
- (c) any man who for the whole or any part of the year is married to and living with a wife who is totally incapacitated by physical or mental infirmity throughout the year.”

(3) In subsection (2), for the words “the difference between” onwards there shall be substituted the words “that specified in section 257A(1) for the year”.

(4) For subsection (4) there shall be substituted—

“(4) A woman shall not be entitled to relief under this section for a year of assessment during any part of which she is married and living with her husband unless the child in respect of whom the relief is claimed is resident with her during a part of the year when she is not married and living with her husband.”

6 For the year 1990-91 and subsequent years of assessment the following section shall be substituted for section 261 (year of marriage)—

“261 Claims under section 259 for year of marriage.

A man (but not a woman) who becomes married during a year of assessment may by notice to the inspector elect that his marriage shall be disregarded for the purposes of any claim that he makes for that year under section 259, and, in that case, the marriage shall also be disregarded for the purposes of any claim that he makes for that year under section 257A.”

Widow's bereavement allowance

7 (1) The section set out in sub-paragraph (2) below shall have effect in substitution for section 262 (widow's bereavement allowance) in relation to deaths occurring during the year 1989-90, and the section set out in sub-paragraph (3) below shall have effect

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in substitution for that section in relation to deaths occurring during the year 1990-91 or any subsequent year of assessment.

(2) The section first referred to in sub-paragraph (1) above is—

Widow's bereavement allowance.

“262 Where a man dies in the year 1989-90 and for that year he is entitled to the higher (married person's) relief under section 257(1), or would be so entitled but for an election under section 261 or 287, his widow shall be entitled—

- (a) for that year of assessment, to a deduction from her total income of an amount equal to the amount referred to in section 259(2), and
- (b) (unless she marries again before the beginning of it) for the year 1990-91, to a deduction from her total income of an amount equal to the amount specified in section 257A(1) for that year.”

(3) The section second referred to in sub-paragraph (1) above is—

Widow's bereavement allowance.

“262 Where a married man whose wife is living with him dies, his widow shall be entitled—

- (a) for the year of assessment in which the death occurs, to a deduction from her total income of an amount equal to the amount specified in section 257A(1) for that year, and
- (b) (unless she marries again before the beginning of it) for the next following year of assessment, to a deduction of an amount equal to the amount specified in section 257A(1) for that year.”

Blind person's allowance

8 For the year 1990-91 and subsequent years of assessment the following section shall be substituted for section 265—

“265 Blind person's allowance.

(1) If the claimant proves that he is a registered blind person for the whole or any part of the year of assessment, he shall be entitled to a deduction of £540 from his total income.

(2) Where—

- (a) a person entitled to relief under subsection (1) above is a married man whose wife is living with him for the whole or any part of the year of assessment, but
- (b) the amount which he is entitled to deduct from his total income by virtue of that subsection exceeds what is left of his total income after all other deductions have been made from it,

his wife shall be entitled to a deduction from her total income of an amount equal to the excess.

(3) In determining for the purposes of subsection (2)(b) above the amount that is left of a person's total income for a year of assessment after other deductions have been made from it, there shall be disregarded any deduction made—

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- (a) on account of any payments of relevant loan interest which become due in that year and to which section 369 applies, or
 - (b) under section 257A or section 289.
- (4) Subsections (2) and (3) above shall have effect where a wife is entitled to relief under subsection (1) above as they have effect where the husband is entitled to that relief, but with the appropriate modifications (and in particular the omission from subsection (3) of the reference to section 257A).
- (5) Subsections (2) to (4) above shall not apply for a year of assessment unless the person entitled to relief under subsection (1) has given to the inspector written notice that they are to apply; and any such notice—
- (a) shall be given not later than six years after the end of the year of assessment to which it relates,
 - (b) shall be in such form as the Board may determine, and
 - (c) shall be irrevocable.
- (6) A notice given under subsection (5) above in relation to a year of assessment by a husband shall have effect also as a notice under section 257B(3).
- (7) In this section “registered blind person” means a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or, in the case of a person ordinarily resident in Scotland or Northern Ireland, a person who is a blind person within the meaning of section 64(1) of that Act.”

Life assurance premiums

- 9 For the year 1990-91 and subsequent years of assessment section 266 (life assurance premiums) shall have effect with the substitution—
- (a) in subsection (9), of the word “spouse” for the words “wife (but not the husband)”, and
 - (b) in subsection (11)(a), of the words “spouse, widow, widower or children or other dependants of any such employee or person,” for the word “wife” onwards.

Payments securing annuities

- 10 For the year 1990-91 and subsequent years of assessment the following section shall be substituted for section 273 (payments securing annuities)—

“273 Payments securing annuities.

Subject to sections 274, 617(3) and 619(6), if the claimant is, under any Act of Parliament or under any terms and conditions of employment, liable to the payment of any sum, or to the deduction from any salary or stipend of any sum, for the purpose of securing a deferred annuity to a widow or widower of the claimant or provision for the claimant’s children after the claimant dies, the claimant shall be entitled to a deduction from the amount of income tax on which he or she is chargeable equal to income tax at the basic rate on the amount of the sum which he or she has paid or which has been deducted from his or her salary or stipend.”

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Married couples living together

- 11 For the year 1990-91 and subsequent years of assessment the following section shall be substituted for section 282 (construction of references to married women living with their husbands)—

“282 Construction of references to husband and wife living together.

A husband and wife shall be treated for income tax purposes as living together unless—

- (a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or
- (b) they are in fact separated in such circumstances that the separation is likely to be permanent.”

Business expansion scheme

- 12 (1) For the year 1990-91 and subsequent years of assessment section 304 (business expansion scheme: husband and wife) shall have effect—
- (a) with the omission of subsections (1) to (4), and
 - (b) with the substitution of the following subsections for subsections (5) and (6)

“(5) Subsection (1) of section 299 shall not apply to a disposal made by a married man to his wife or a married woman to her husband at a time when they are living together; but where shares issued to one of them have been transferred to the other by a transaction inter vivos that subsection shall apply on the disposal of the shares by the transferee to a third person and any assessment for withdrawing relief in respect of the shares shall be made on the transferee.

(6) If any relief given for the year 1989-90 or any earlier year of assessment in respect of shares for which a married man or married woman has subscribed and which were issued while they were living together falls to be withdrawn in the year 1990-91 or any subsequent year of assessment by virtue of a disposal of those shares by the person who subscribed for them, any assessment for withdrawing that relief shall be made on the person making the disposal and shall be made by reference to the reduction of tax flowing from the amount of the relief regardless of any allocation of that relief under section 280 or of any allocation of the reduction under section 284 for the year of assessment for which the relief was given.”

- (2) Sub-paragraph (3) below applies where—

- (a) an amount is subscribed for shares in the year 1990-91 by one of a married couple who are living together,
- (b) the couple were married and living together throughout the year 1989-90, and
- (c) the subscriber claims that relief in respect of the amount be given partly by way of deduction from total income for the year 1989-90 in accordance with section 289(6).

- (3) Where this sub-paragraph applies—

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- (a) the deduction shall be made from the husband's total income (references in Chapter II of Part VII to the relief to which an individual is entitled in respect of any shares being construed accordingly), and
- (b) the limits in sections 289(7) and 290 shall apply jointly to the husband and wife for the year 1989-90 as respects the amount subscribed.

Qualifying maintenance payments

- 13 For the year 1990-91 and subsequent years of assessment section 347B(3) (qualifying maintenance payments) shall have effect with the substitution of the words "specified in section 257A(1) for the year" for the words "of the difference between" onwards.

Home loans

- 14 For the year 1990-91 and subsequent years of assessment the following section shall be substituted for section 356B—

“356B Residence basis: married couples.

- (1) A husband and wife who are not separated may jointly elect—
 - (a) that qualifying interest payable or paid by one of them for a year of assessment (or a period within a year), or such part of that interest as may be specified in the election, shall be treated for the purposes of sections 353 to 356A and 369 to 379 as payable or paid by the other, and
 - (b) that the sharer's limit under section 356A for the year (or period) in the case of one of them shall be reduced by such amount as may be specified in the election and the sharer's limit under that section for the year (or period) in the case of the other shall be correspondingly increased.
- (2) An election under subsection (1) above—
 - (a) shall be made before the end of the period of twelve months beginning with the end of the first year of assessment for which it is made or such longer period as the Board may in any particular case allow,
 - (b) shall, subject to subsection (4) below, have effect not only for the year of assessment for which it is made but also for subsequent years of assessment, and
 - (c) shall be in such form, and be made in such manner, as the Board may prescribe.
- (3) Where a husband and wife have made an election under subsection (1) above for any year of assessment either of them may give, for any subsequent year, a notice to withdraw that election; and, if he or she does so, the election shall not have effect (in relation to either of them) for the year for which the notice is given or any subsequent year.
- (4) A notice of withdrawal under subsection (3) above—

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- (a) shall be in such form, and be given in such manner, as the Board may prescribe,
- (b) shall not be given after the end of the period of twelve months beginning with the end of the year of assessment for which it is given or such longer period as the Board may in any particular case allow, and
- (c) shall not prejudice the making of a fresh election for any subsequent year.

(5) Where—

- (a) a husband and wife are not separated,
- (b) the husband pays interest in relation to a residence used or to be used as his only or main residence, and
- (c) the wife pays interest in relation to some other residence used or to be used as her only or main residence,

the residence which was purchased first shall be treated for the purposes of sections 355(1)(a) and 356 as used or to be used as the only or main residence of both of them and the other residence shall be treated as used or to be used as the only or main residence of neither.”

Loans for shares in employee-controlled company

15 (1) In section 361 (relief for interest on loans to acquire shares in employee-controlled company)—

- (a) the words “or his spouse” in subsection (4)(d) and “, or whose spouses,” in subsection (5) shall cease to have effect, and
- (b) the following subsection shall be substituted for subsections (6) and (7)—

“(6) Where an individual owns beneficially more than 10 per cent. of the issued ordinary share capital of, or voting power in, a company, the excess shall be treated for the purposes of subsection (5) above as being owned by an individual who is not a full-time employee of the company.”

(2) Sub-paragraph (1) above shall have effect in relation to payments of interest made on or after 6th April 1990 unless the proceeds of the loan were used before that date to defray money applied as mentioned in section 361(3).

(3) Interest paid on a loan made on or after 6th April 1990 to defray money applied in paying off another loan shall not be eligible for relief by virtue of paragraph (b) of subsection (3) of section 361 unless—

- (a) the proceeds of the loan paid off were used on or after 6th April 1990 to defray money applied as mentioned in that subsection, or
- (b) those proceeds were so used before that date but interest on the loan paid off would have been eligible for relief had they been so used on or after that date.

Close company loans

16 (1) In section 420(2)(a)(i) (exception from charge in case where close company loans to borrower and spouse do not exceed £15,000) the words “or the wife or husband of the borrower” shall cease to have effect.

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- (2) This paragraph shall apply where the loan first mentioned in section 420(2) is made on or after 6th April 1990.

Trade unions and employers' associations

- 17 (1) In section 467(2) (tax exemption in respect of income of trade unions and employers' associations applied for provident benefits) for the word "wife" there shall be substituted the word "spouse".
- (2) This paragraph shall apply for any chargeable period beginning on or after 6th April 1990.

Retirement benefit schemes

- 18 (1) In section 590 (conditions for approval of retirement benefit schemes)—
- (a) after the word "widow," in subsection (2)(a) there shall be inserted the word "widower," and
- (b) after the word "widow" in both places where it occurs in subsection (3)(b) there shall be inserted the words "or widower".
- (2) This paragraph shall have effect on and after 6th April 1990.

Partnership retirement annuities

- 19 For the year 1990-91 and subsequent years of assessment section 628(1) (partnership retirement annuities) shall have effect with the substitution of the words "a widow, widower or dependant of the former partner" for the words "his widow or a dependant of his".
- 20 (1) For the year 1990-91 and subsequent years of assessment section 683 (settlements) shall have effect with the following amendments.
- (2) In subsection (1)(a), after the word "widow" there shall be inserted the word "widower".
- (3) In subsection (6)(a), for the words "he is dead, to or for the benefit of his widow" there shall be substituted the words "that individual is dead, to or for the benefit of that individual's widow, widower".
- (4) In subsection (6)(b), after the word "widow", in the first place where it occurs, there shall be inserted the word "widower" and for the words "he is dead" onwards there shall be substituted the words "such an individual is dead, to or for the benefit of that individual's widow, widower or dependants."
- (5) In subsection (9), after the word "widow" there shall be inserted the word "widower".

Earned income

- 21 For the year 1990-91 and subsequent years of assessment section 833(4)(a) (meaning of "earned income") shall have effect with the substitution of the word "spouse" for the word "husband", in both places where it occurs.

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Total income

- 22 For the year 1990-91 and subsequent years of assessment section 835(5) (meaning of “total income”) shall have effect with the insertion of “, 257A(5)” after “257(5)”.

PART II

OTHER PROVISIONS

Capital allowances

- F1²³

Textual Amendments

- F1 Sch. 3 para. 23 repealed by Capital Allowances Act 1990 (c. 1, SIF 63:1), s. 164(4), Sch. 2 (with ss. 82 and 164(5))

- F2²⁴

Textual Amendments

- F2 Sch. 3 para. 24 repealed by Capital Allowances Act 1990 (c.1, SIF 63:1), s. 164(4), Sch. 2 (with ss. 82 and 164(5))

The transition

- 25 The operation of section 279(1) of the Taxes Act 1988 for a year of assessment earlier than the year 1990-91 in the case of a married woman shall not affect the question whether there is any income of hers chargeable to income tax for the year 1990-91 or any subsequent year of assessment or, if there is, what is to be taken to be its amount for income tax purposes.

Returns

- 26 Where a man is required under section 8 of the ^{M1}Taxes Management Act 1970 to deliver a return which is—
- (a) so far as relates to certain sources of income, a return of income chargeable to income tax for the year 1990-91, and
 - (b) so far as relates to the remaining sources of income, a return of income chargeable to income tax for the year 1989-90,
- the same particulars shall be included in the return as would have been required had section 279 of the Taxes Act 1988 not been repealed by this Act.

Marginal Citations

- M1 1970 c. 9.

- 27 Where a man delivers a return such as is mentioned in paragraph 26 above, the reference in sections 93(2) and 95(2) of the Taxes Management Act 1970 (penalties)

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to tax charged on or payable by him shall include a reference to tax charged on or payable by his wife in respect of any income of hers.

- 28 Where a woman is liable to a penalty under section 93(1) or 95(1) of the Taxes Management Act 1970, section 93(2) or 95(2) shall apply as if the reference to tax charged on or payable by her included a reference to any tax which is charged on or payable by her husband by virtue of section 279 of the Taxes Act 1988.

Time limits for assessments

F³29

Textual Amendments

- F3** Sch. 3 para. 29 repealed (with respect to notices given, or warrants issued on or after 27.07.1989) by Finance Act 1989 (c. 26, SIF 63:1), s. 187(1), Sch. 17 Pt. VIII.

Transfers of allowances

- 30 For the year 1990-91 and subsequent years of assessment the Taxes Management Act 1970 shall have effect with the insertion of the following section after section 37—

“37A Effect of assessment where allowances transferred.

Where an assessment is made on any person for the purpose of making good a loss of tax wholly or partly attributable to fraud, wilful default or neglect, the fact that the person’s total income for any year of assessment is assessed as greater than it was previously taken to be shall not affect the validity of any deduction made from the total income of the person’s spouse by virtue of section 257B, 257D or 265 of the principal Act; and where any such deduction has been made in such a case, the total amount which the first-mentioned person is entitled to deduct from total income for the year in question shall be correspondingly reduced.”

Class 4 social security contributions

- 31 For the year 1990-91 and subsequent years of assessment Schedule 2 to the ^{M2}Social Security Act 1975 and the ^{M3}Social Security (Northern Ireland) Act 1975 (Class 4 contributions) shall have effect with the substitution of the following for paragraph 3(3)—

“(3) Where in a year for which a person claims and is allowed relief by virtue of sub-paragraph (1) above there falls to be made in computing his total income for income tax purposes a deduction in respect of any loss in any relevant trade, profession or vocation—

- (a) the amount of the deduction shall, as far as may be, be treated for the purpose of the charge to Class 4 contributions as reducing the person’s profits or gains for that year of any relevant trade, profession or vocation, and

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- (b) any excess shall be treated for that purpose as reducing such profits or gains for subsequent years (being deducted as far as may be from those of the immediately following year, whether or not the person claims or is entitled to claim relief under this paragraph for that year, and, so far as it cannot be so deducted, then from those of the next year, and so on).”

Marginal Citations

M2 1975 c. 14.

M3 1975 c. 15.

Annual payments

- 32 Section 36 of this Act shall have effect in relation to a payment which is due from a husband to his wife or from a wife to her husband at a time after 5th April 1990 when they are living together, notwithstanding that the payment is made in pursuance of an obligation which is an existing obligation for the purposes of subsection (3) of that section.

Maintenance payments

- 33 For the year 1990-91 and subsequent years of assessment section 38(5) of this Act shall have effect with the substitution of the words “specified in section 257A(1) of the Taxes Act 1988 for the year” for the words “of the difference between” onwards.

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