

Maintenance in case of separated spouses. FA83 s3; FA96 s132(1) and Sch5 Ptl par13(1) 1025.—(1) In this section—

“maintenance arrangement” means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of—

(a) the dissolution or annulment of a marriage, or

(b) such separation of the parties to a marriage as is referred to in section 1015 (2),

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

“payment” means a payment or part of a payment, as the case may be;

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to a deduction under section 465.

(2) (a) This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage for the benefit of his or her child, or for the benefit of the other party to the marriage, being payments—

(i) which are made at a time when the wife is not living with the husband,

(ii) the making of which is legally enforceable, and

(iii) which are annual or periodical;

but this section shall not apply to such payments made under a maintenance arrangement made before the 8th day of June, 1983, unless and until such time as one of the following events occurs, or the earlier of such events occurs where both occur—

(I) the maintenance arrangement is replaced by another maintenance arrangement or is varied, and

(II) both parties to the marriage to which the maintenance arrangement relates, by notice in writing to the inspector, jointly elect that this section shall apply,

and where such an event occurs in either of those circumstances, this section shall apply to all such payments made after the date on which the event occurs.

(b) For the purposes of this section and of section 1026 but subject to paragraph (c), a payment,

whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(c) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person.

(3) Notwithstanding anything in the Income Tax Acts but subject to section 1026, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage—

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and

(c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.

(4) Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child—

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,

(c) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and

(d) for the purposes of section 465 (7), the payment shall be deemed to be an amount expended on the maintenance of the child by the party to the marriage who makes the payment and, notwithstanding that the payment is made to the other party to the marriage to be applied for or towards the maintenance of the child and is so applied, it shall be deemed for the purposes of that section not to be an amount expended by that

other party on the maintenance of the child.

(5) (a) Subsections (1) and (2) of section 459 and section 460 shall apply to a deduction under subsection (3) (c) as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to section 458.

(b) Subsections (3) and (4) of section 459 and paragraph 8 of Schedule 28 shall, with any necessary modifications, apply in relation to a deduction under subsection (3) (c).