

Employer Asset-backed Pension Contributions

Who is likely to be affected?

Sponsoring employers, scheme administrators and trustees of registered pension schemes that are using or considering using asset-backed pension contribution arrangements ('ABC arrangements').

Advisors for these employers, pension scheme administrators and trustees.

General description of the measure

The Government announced on 29 November 2011 that legislation, effective from the announcement, will be included under Finance Bill 2012 to ensure that the amount of tax relief given to employers using ABC arrangements reflects accurately the total amount of payments the employer makes to the pension scheme directly or through a special purpose vehicle (SPV) (for example a partnership).

Alongside an announcement, further Finance Bill 2012 legislation was published on 22 February 2012 to take effect from the same date. In line with the policy objective, this further legislation ensures that upfront relief will not be given unless the whole total of all asset-backed payments to the pension scheme are to be of fixed amounts at the outset.

Policy objective

The main purpose of this measure is to remove any unintended and excessive tax relief being given to an employer in respect of any asset-backed contributions (ABCs) made to their pension schemes. The Government is also keen to retain as much flexibility as possible for employers to continue to be able to use ABC arrangements to manage their pension deficits, while protecting the Exchequer from tax risks.

This measure is consistent with other measures the Government has already undertaken to ensure that pensions tax relief remains fair and sustainable in the long term. It maintains the principle that pension tax relief is provided for the actual value of contributions made by an employer to their pension scheme, but that tax relief beyond the value of such contributions at a cost to the Exchequer should not be allowed.

Background to the measure

The Government announced in Budget 2011 that it would consult on changing tax rules to remove unintended and excess relief on ABCs.

The consultation document 'Employer Asset-backed Pension Contributions' was published on 24 May 2011 and the consultation closed on 16 August 2011.

The Government announced on 29 November 2011 that legislation, effective from the date of the announcement, will be introduced in Finance Bill 2012 to change the tax rules for giving relief to employers in relation to asset-backed pension contribution arrangements. The draft Finance Bill 2012 legislation and a summary of responses to the consultation were published on 29 November 2011.

The Government announced on 22 February 2012 that further Finance Bill 2012 legislation, effective from the date of the announcement, will be introduced to limit the circumstances in

which upfront relief can be given to asset-backed arrangements in line with the intended effects of the November legislation. The draft legislation was published on 22 February 2012.

This Tax Information and Impact Note replaces the version published on 29 November 2011.

Detailed proposal

Operative date

The legislation published on 29 November 2011 will have effect on contributions paid on or after 29 November 2011.

The legislation published on 22 February 2012 will have effect on contributions paid on or after 22 February 2012

For arrangements where the contribution was paid before 29 November 2011, the November transitional provisions apply where that arrangement continues at 29 November 2011. Where these provisions do not apply, the transitional provisions in the February legislation apply to payments that arise on or after 22 February 2012.

For arrangements with the contribution paid between 29 November 2011 and 21 February 2012, the November legislation will apply to determine if any upfront relief should be given. The February transitional provisions apply to payments that arise on or after 22 February 2012.

Current law

All statutory references in this note relate to Finance Act (FA) 2004 unless otherwise specified.

The legislation covering pensions tax relief is in Part 4 of FA 2004. Tax relief on employer contributions to a registered pension scheme (under sections 196 to 200) is given by allowing contributions to be deducted as an expense in computing the profits of a trade, profession or investment business so reducing the amount of an employer's taxable profit. Tax relief is only given for contributions that have actually been paid. Any contributions must be monetary contributions although it is possible for an employer to enter into an offset arrangement so that the debt for the contribution is offset against a debt to purchase an asset from the employer. In such arrangements, the contribution is paid on the date when the employer and pension scheme offset the two debts.

Before the November announcement, the Government had been aware that certain funding arrangements were structured in such a way that the employer received a deduction for the contribution paid to a pension scheme upfront, but the pension scheme only received the cash payments over the term of the arrangement. Where the arrangement involved an asset and this asset generated an income stream to the pension scheme, it was possible for the employer to obtain both a deduction for the pension contribution upfront and then received another deduction for income payments derived from the asset. In other words, unintended and excessive tax relief could arise under such circumstances.

In addition, as highlighted in the consultation document, some asset-backed arrangements provided for a final payment ('final bullet payment') that would be made at the end of the

arrangement period but only if the pension deficit remained at that time. If the final bullet payment was not actually made, or if the value of the final bullet payment was less than the amount of tax relief received upfront, this could mean that the employer would have obtained excess relief at the start of the arrangement.

The structured finance regime is set out for corporation tax purposes in Chapter 2 of Part 16 of Corporation Tax Act 2010 with mirroring provisions for income tax in Chapter 5B of Part 13 of Income Tax Act 2007. It applies where a person enters into a “structured finance arrangement” (“SFA”). A structured finance arrangement is an arrangement where in accordance with Generally Accepted Accounting Practice¹, a person (“the borrower”) records in its account a financial liability in respect of the lump sum advance paid by “the lender”. The proposed changes announced on 29 November 2011 and 22 February 2012 aim to ensure that in the context of ABCs, where the funding arrangement meets the qualifying conditions set out in the draft February legislation and falls within the SFA rules, excessive tax relief should not arise.

Proposed changes

Legislation will be introduced in Finance Bill 2012 to make changes to FA 2004 as follows.

1. New arrangements - where the contribution is paid on or after 22 February 2012, then the February legislation will apply.
2. November-February arrangements - where an ABC arrangement is set up with the employer contribution paid on or after 29 November 2011 but before 22 February 2012, the November legislation applies to determine whether upfront relief is available. The transitional provisions in the February legislation will apply to payments that arise on or after 22 February 2012 under such arrangements and also in circumstances where such an arrangement comes to an end on or after 22 February 2012.
3. Pre-November 2011 arrangements - where an ABC arrangement is set up with the employer contribution paid before 29 November 2011, the November legislation applies if the arrangement continues at 29 November 2011. Where the November transitional rules do not apply, the transitional provisions in the February legislation will apply to payments that arise on or after 22 February 2012 and where such an arrangement comes to an end on or after 22 February 2012.

The main difference between the two sets of provisions is that the February legislation introduces new qualifying conditions that must be met in respect of arrangements in order to qualify for upfront relief. These conditions deliver the policy objective and the intended effects of the November legislation. The February provisions ensure that upfront relief will only be given when an ABC arrangement is an ‘acceptable SFA’. An arrangement is an acceptable SFA if it meets both these qualifying conditions and the SFA rules.

(1) New arrangements

If the contribution under an ABC arrangement is paid on or after 22 February 2012, tax relief in the form of an upfront deduction will be given for the contribution under the ABC arrangement only where the new qualifying conditions and SFA rules (as set out in the bullet points immediately below) are both met (this means the ABC arrangement is an acceptable SFA). Relief will also be available under the SFA rules for the element of subsequent income

¹ This is defined under section 1127 Corporation Tax Act 2010 to include both the UK Generally Accepted Accounting Practice and International Financial Reporting Standard.

payments that is accounted for as a finance charge in relation to the financial liability recorded in the accounts of the employer, or if used, the SPV.

The new conditions that must be met at the outset of the arrangement before it can qualify as an acceptable SFA are:

- The pension contribution promised upfront under the arrangement must be due to be paid to the pension scheme and is not intended to be held in a subsidiary structure.
- The pension scheme must be the direct lender giving an 'advance' (the pension scheme investment) to the employer directly or indirectly through a SPV.
- The advance must be wholly paid out of the promised contribution.
- The contribution must equal both the advance and the financial liability recorded in respect of the advance.
- From the outset, regular payments due to the pension scheme under the arrangement must reduce the financial liability to nil by the earlier of the completion day or 25 years.
- The payments must be of equal amounts due at intervals of no more than one year and must be received by the pension scheme to form part of the sums held for the purposes of the pension scheme.
- The total amount of the payments due to the pension scheme must not be less than the contribution.

If the arrangement does not meet these qualifying conditions, upfront tax relief will not be available. Relief will only be available for the subsequent income payments made to the pension scheme under the arrangement.

Under the February legislation, upfront relief will continue to be given provided that the new conditions are met. This does not preclude the employer from suspending the regular payments if the value of the pension scheme assets is greater than the value of the pension scheme liabilities. Any suspension or similar change (for example, in relation to the original value or schedule of payments) will trigger the application of the revenue protection rules in that a balancing tax charge will arise to recover tax relief from the employer by treating the outstanding financial liability immediately before the suspension or change as a profit on a loan relationship.

Where the contribution to an ABC arrangement was initially accounted for as a financial liability (see the fourth bullet above) and has gained upfront relief because the arrangement is an acceptable SFA, but subsequently changes so that the liability is reduced by an event other than the making of payments by the employer, then any excess relief will be recovered at the time when the event occurs. If the liability is no longer shown in the accounts, then a balancing tax charge will arise similar to the case of payment suspension as mentioned above.

A new supplementary provision provides that a reference to a disposal of an asset in the new legislation includes (a) anything constituting a disposal of an asset for the purposes of the Taxation of Chargeable Gains Act 1992 and (b) the taking of any step by virtue of which a person receives an asset, for example, the issuing of shares or any instrument creating or acknowledging indebtedness. This is to ensure all types of asset transfers in relation to asset-backed arrangements are covered.

(2) Arrangements with the contribution paid between 29 November 2011 and 21 February 2012

For contributions paid on or after 29 November 2011 but before 22 February 2012, if the arrangement is accounted for as a financial liability such that the SFA rules will apply then

tax relief in the form of an upfront tax deduction will be given for the contribution under the ABC arrangement in the period of account that it is paid. Relief will also be available under the SFA rules for the element of subsequent income payments that is accounted for as a finance charge.

The transitional provisions in the February legislation will apply to payments that arise on or after 22 February 2012 under such arrangements and in circumstances where such an arrangement comes to an end on or after 22 February 2012:

- If the ABC arrangement is an acceptable SFA, the tax treatment will remain unchanged at the commencement of the new legislation. However, if the financial liability recorded for the arrangement is reduced by an event other than the making of payments by the employer, the revenue protection provision in the February legislation will apply.
- If the ABC arrangement would not have qualified for upfront relief under the February legislation if it was carried out on or after 22 February 2012, deductions will not be available in relation to the income payments derived from the asset that are made on or after 22 February 2012.
- Where such an arrangement comes to an end, an adjustment will be made under the February legislation so that if the upfront relief allowed exceeds the actual value received by the pension scheme during the arrangement, then any excess of the upfront tax relief will be recovered.
- When there is a change to the original arrangement period, or the arrangement reaches the 25 year limit from the date when the contribution was paid under FA 2004, or when there is a significant change in the original position of the pension scheme as at 22 February 2012, then the original ABC arrangement will be treated as ended for tax purposes and any excess of the upfront tax relief will be recovered from the employer.

(3) Pre-November 2011 arrangements

Where an ABC arrangement has been set up with the employer contribution paid before 29 November 2011, the transitional provisions in the November legislation will apply to payments that arise from 29 November under such arrangements and in circumstances where such an arrangement comes to an end on or after 29 November 2011:

- If the ABC arrangement is an acceptable SFA, the tax treatment will remain unchanged at the commencement of the new legislation. However, if the financial liability recorded for the arrangement is reduced by an event other than the making of payments by the employer, the recovery provision in the November legislation will apply.
- If the ABC arrangement would not have qualified for upfront relief under the November legislation if it was carried out on or after 29 November 2011, deductions will not be available in relation to the income payments derived from the asset that are made on or after 29 November 2011.
- Where such an arrangement comes to an end, an adjustment will be made under the November legislation so that if the upfront relief allowed exceeds the actual value received by the pension scheme during the arrangement, then any excess of the upfront tax relief will be recovered.

- When there is a change to the original arrangement period or when there is a significant change in the original position of the pension scheme as at 22 February, then the original arrangement will be treated as ended for tax purposes and any excess of the upfront tax relief will be recovered from the employer.
- If the ABC arrangement would not have qualified for upfront relief under the February legislation if it was carried out on or after 22 February 2012, the transitional provisions in the February legislation will apply (detail in the last three bullets of the last section above).

Summary of impacts

There is no change to the summary of impacts published in the autumn.

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	+£450	+£450	+ £450	+ £450	+ £450
	These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Autumn Statement.				
Economic impact	The Government expects the economic impact to be limited as full tax relief will continue to be available to the employer on the value received by the pension scheme.				
Impact on individuals and households	This measure will have no impact on individuals and households as the changes relate only to the amount of tax relief employers should receive in respect of their asset-backed pension contributions.				
Equalities impacts	The measure only applies to businesses and their associated pension schemes and therefore it is not expected that the policy would impact on any equality groups or people with protected characteristics adversely or disproportionately.				
Impact on business including civil society organisations	The Government expects about a dozen large employers (including those in the civil society organisations) with associated (predominantly defined benefit) pension schemes would be affected by this measure each year. No new obligations have been placed on business as a result of the changes and when tax relief is given will be dependent on the normal accounting process. However, employers or pension schemes which may be affected may need to make some changes to their existing internal processes to ensure that any recovery of excessive relief arising from changes to their ABC arrangements can be made. The administrative cost is expected to be negligible.				
Operational impact (£m) (HMRC or other)	This measure will have no impact on HMRC's operating costs as the normal accounting and compliance processes would be followed.				

Other impacts	<p>Small Firms Impact Test: No responses were received from small firms, however the impact on small firms has been considered. It would not be appropriate for the policy to apply differently according to the size of firms although the measure is unlikely to impact any small businesses since, these arrangements have to date only been used by very large companies with defined benefit pension schemes due to the complexity and transaction costs involved.</p> <p>Impacts of the policy on the following have also been considered: competition, carbon, justice, sustainable development, the wider environment, health, rural proofing, and privacy. It is believed that the policy does not impact unduly on any of these areas.</p>
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Monitoring and evaluation

The measure will be monitored through information collected from tax returns, receipts and other statistics.

Further advice

If you have any questions about this measure, please contact Windy Kwok on 0207 147 2835 or Paul Cottis on 0115 974 2420 (email: pensions.policy@hmrc.gsi.gov.uk).

Declaration

Mark Hoban MP, Financial Secretary (FST) has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.

1 Employer asset-backed pension contributions

Schedule 1 contains provision about contributions paid by employers under registered pension schemes.

SCHEDULES

SCHEDULE 1

Section 1

EMPLOYER ASSET-BACKED PENSION CONTRIBUTIONS

PART 1

DENIAL OF RELIEF FOR CONTRIBUTIONS PAID DURING PERIOD 29 NOVEMBER 2011 TO 21 FEBRUARY 2012

- 1 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert –

“196B Employer asset-backed contributions: denial of relief (1)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A, B and C are met.
- (2) Condition A is that –
 - (a) under an arrangement (“the asset-backed arrangement”) –
 - (i) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
 - (ii) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
 - (iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,
 - (b) the borrower is E or a person connected with E, and
 - (c) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),and the case is not one in relation to which either condition A in section 196C or condition A in section 196D is met.
- (3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.
- (5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence,

the whole or a part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.

- (6) For the purposes of subsection (5) it does not matter –
- (a) that the repayment of the loan might be subject to any condition, or
 - (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,
- but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (7) For the purposes of this section –
- (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
 - (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
 - (c) “loan” includes any advance of money.

196C Employer asset-backed contributions: denial of relief (2)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that –
- (a) under an arrangement (“the asset-backed arrangement”) a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
 - (b) the transferor is E or a person connected with E,
 - (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
 - (d) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from a person (“the lender”) other than the transferor,
 - (e) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
 - (f) there is a relevant change in relation to the partnership (see section 196E), and
 - (g) under the asset-backed arrangement the share in the partnership’s profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.
- (4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership’s profits of the person

involved in the relevant change as mentioned is subject to any condition.

- (5) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

196D Employer asset-backed contributions: denial of relief (3)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that –
- (a) a partnership holds an asset (“the security”) at any time before an arrangement (“the asset-backed arrangement”) is made,
 - (b) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
 - (c) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
 - (d) there is a relevant change in relation to the partnership (see section 196E), and
 - (e) under the asset-backed arrangement the share in the partnership’s profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership’s profits of the person involved in the relevant change as mentioned is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

196E What is a “relevant change in relation to the partnership” etc?

- (1) For the purposes of sections 196C and 196D there is a relevant change in relation to the partnership if condition X or Y is met.
- (2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition Y is that –
- (a) in connection with the asset-backed arrangement, there is at any time a change in a member’s share in the partnership’s profits, and
 - (b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.
- (4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.

- (5) For the purposes of sections 196C and 196D references to the person involved in the relevant change are –
- (a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and
 - (b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

196F Employer asset-backed contributions: anti-avoidance

- (1) This section applies if –
- (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
 - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
 - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met,
 - (d) at any time (“the relevant time”) E, or a person connected with E, enters into an arrangement (“the avoidance arrangement”), and
 - (e) the main purpose, or one of the main purposes, of E or the person connected with E in entering into the avoidance arrangement is to secure that the total amount of the relevant payments will be less than the amount of E’s contribution.
- (2) If the relevant time is the same as the time at which the advance is received or earlier, section 196B, 196C or 196D (as the case may be) applies in relation to E’s contribution as if condition B in that section were met.
- (3) Otherwise, the amount of the relevant financial liability as at the relevant time is treated as follows –
- (a) if E is within the charge to corporation tax at the relevant time, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant time falls, or
 - (b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.
- (4) The amount treated as profit or income by subsection (3)(a) or (b) is not to exceed the total amount of relief given in respect of E’s contribution.
- (5) For the purposes of this section –
- (a) “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be),
 - (b) “the relevant financial liability” means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,

- (c) “the relevant payments” means the payments which reduce that liability as so mentioned, and
- (d) the amount of the relevant financial liability as at the relevant time is to be determined in accordance with generally accepted accounting practice.

196G Employer asset-backed contributions: reduction of financial liability under structured finance arrangement

- (1) This section applies if –
 - (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
 - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
 - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
 - (d) there occurs an event (“the relevant event”) –
 - (i) which is not the making of a relevant payment, but
 - (ii) by virtue of which, in accordance with generally accepted accounting practice, the amount of the relevant financial liability is reduced to nil or in part.
- (2) If the relevant financial liability is reduced to nil, Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as the case may be) is no longer to apply in relation to the asset-backed arrangement from when the relevant event occurs.
- (3) In any case, the amount of the reduction of the relevant financial liability mentioned in subsection (1)(d) is treated as follows –
 - (a) if E is within the charge to corporation tax when the relevant event occurs, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant event occurs, or
 - (b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant event occurs.
- (4) The amount treated as profit or income by subsection (3)(a) or (b) is not to exceed the total amount of relief given in respect of E’s contribution.
- (5) For the purposes of this section –
 - (a) “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be),
 - (b) “the relevant financial liability” means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,
 - (c) “relevant payment” means a payment which reduces that liability as so mentioned, and

- (d) the amount of the relevant financial liability before its reduction by virtue of the relevant event and the amount of the reduction are to be determined in accordance with generally accepted accounting practice.

196H Employer asset-backed contributions: “advances” under structured finance arrangements

- (1) This section applies if—
 - (a) an employer pays a contribution under a registered pension scheme,
 - (b) condition A in section 196B, 196C or 196D is met,
 - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
 - (d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).
- (2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).
- (3) For the purposes of this section “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be).

196I Employer asset-backed contributions: supplementary

- (1) This section applies for the purposes of sections 196B to 196H.
- (2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—
 - (a) the contribution being deducted in computing the amount of the employer’s profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),
 - (b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or
 - (c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.
- (4) “Structured finance arrangement” means an arrangement which is a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (structured finance arrangements).
- (5) Sections 774 to 776 of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act.”

2 In section 280(1) of FA 2004 (abbreviations) –

- (a) omit the “and” after the definition of “ITA 2007”, and

- (b) after the definition of “CTA 2009” insert “, and
“CTA 2010” means the Corporation Tax Act 2010”.
- 3 (1) The amendment made by paragraph 1 above has effect in accordance with sub-paragraphs (2) to (4); and the amendments made by paragraph 2 above have effect accordingly.
- (2) Sections 196B to 196I of FA 2004 have effect in relation to contributions paid by employers on or after 29 November 2011 but before 22 February 2012.
- (3) Section 196G of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 where the event mentioned in section 196G(1)(d) occurs on or after that date (and, for the purpose of applying section 196G in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).
- (4) Section 196H of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 (and, for the purpose of applying section 196H in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).

PART 2

TRANSITIONAL PROVISION RELATING TO PART 1

Application and interpretation

- 4 (1) This Part of this Schedule applies if—
- (a) before 29 November 2011, an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme (“the relevant scheme”),
- (b) at any time, relief is given in respect of E’s contribution,
- (c) if the reference in paragraph 3(2) above to 29 November 2011 were instead a reference to the date on which E’s contribution is paid, E would have no entitlement to relief in respect of E’s contribution by virtue of section 196B, 196C or 196D of FA 2004, and
- (d) the asset-backed arrangement is not completed before 29 November 2011.
- (2) For the purposes of sub-paragraph (1)(c) section 196F of FA 2004 is to be ignored.
- 5 For the purposes of this Part of this Schedule—
- (a) terms used in section 196B, 196C or 196D of FA 2004 (as the case may be) have the same meaning as in that section, and
- (b) as necessary, assume that section 196B, 196C or 196D of FA 2004 (as the case may be) has effect in relation to E’s contribution.
- 6 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.
- (3) The asset-backed arrangement is “completed” when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.

- (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (5) The asset-backed arrangement is “completed” when the share in the partnership’s profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security.
- 7 (1) In this Part of this Schedule “the completion day” means the earliest of the following –
- (a) the day on which the asset-backed arrangement is to be completed determined as at the beginning of 29 November 2011;
 - (b) the day on which the asset-backed arrangement is actually completed;
 - (c) the day on which a completion event occurs.
- (2) Sub-paragraphs (3) and (4) apply if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.
- (3) To determine if a completion event occurs for the purposes of sub-paragraph (1)(c) first determine, as at the beginning of 22 February 2012, the following –
- (a) the number of payments to be made after the beginning of 22 February 2012 to which the lender or a person connected with the lender is entitled under the asset-backed arrangement,
 - (b) what the amounts of those payments are to be, and
 - (c) the times at which those payments are to be made.
- (4) A completion event occurs for the purposes of sub-paragraph (1)(c) if, after the beginning of 22 February 2012 –
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise –
 - (i) there is a change in the number of payments to be made from that determined under sub-paragraph (3),
 - (ii) there is a significant change in the amount of a payment to be made from that so determined, or
 - (iii) there is a significant change in the time at which a payment is to be made from that so determined,
 - (b) a payment determined under sub-paragraph (3) is not made,
 - (c) a payment determined under sub-paragraph (3) is made but its amount is significantly different from the amount so determined for the payment, or
 - (d) a payment determined under sub-paragraph (3) is made but is made at a time significantly different from the time so determined for the payment.
- (5) Sub-paragraphs (6) and (7) apply if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (6) To determine if a completion event occurs for the purposes of sub-paragraph (1)(c) first determine, as at the beginning of 22 February 2012, the following –
- (a) what the amount of the share in the partnership’s profits of the person involved in the relevant change is to be so far as the share is

- to be determined under the asset-backed arrangement by reference to payments made after the beginning of 22 February 2012,
- (b) the number of drawings to be made from the partnership on account of the amount determined under paragraph (a) and the number of any other payments to be made after the beginning of 22 February 2012 to which the person involved in the relevant change, the lender or any other person connected with the lender is entitled under the asset-backed arrangement,
 - (c) what the amounts of those drawings or other payments are to be, and
 - (d) the times at which those drawings or other payments are to be made.
- (7) A completion event occurs for the purposes of sub-paragraph (1)(c) if, after the beginning of 22 February 2012 –
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise –
 - (i) there is a change in the number of drawings or other payments to be made from that determined under sub-paragraph (6),
 - (ii) there is a significant change in the amount of a drawing or other payment to be made from that so determined, or
 - (iii) there is a significant change in the time at which a drawing or other payment is to be made from that so determined,
 - (b) a drawing or other payment determined under sub-paragraph (6) is not made,
 - (c) a drawing or other payment determined under sub-paragraph (6) is made but its amount is significantly different from the amount so determined for the drawing or other payment, or
 - (d) a drawing or other payment determined under sub-paragraph (6) is made but is made at a time significantly different from the time so determined for the drawing or other payment.
- (8) In sub-paragraphs (3) and (4) and (6) and (7) references to payments are to payments of any type including payments in respect of the security or any other asset.
- (9) In sub-paragraphs (6) and (7) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.
- (10) For the purposes of sub-paragraphs (4)(b) to (d) and (7)(b) to (d) it does not matter if the event in question is authorised by a term of the asset-backed arrangement or results from the occurrence or non-occurrence of another event which is so authorised.

Certain tax consequences not to have effect

- 8 (1) This paragraph applies if –
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004, and
 - (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).
- (2) The asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that –

- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
 - (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).
- (4) But if the borrower is a partnership the relevant effect is that –
- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
 - (c) a member of the partnership becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).
- (5) In sub-paragraphs (3) and (4) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- 9 (1) This paragraph applies if –
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C of FA 2004, and
 - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) In such a case –
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that –
- (a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or
 - (c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).

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- (4) In sub-paragraph (3) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- (5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196C(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 10 (1) This paragraph applies if –
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196D of FA 2004, and
 - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) The relevant effect is that –
- (a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or
 - (c) a relevant member becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).
- (3) A relevant member is a person who –
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
 - (b) is not the lender.
- (4) In sub-paragraph (2) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- (5) If this paragraph applies –
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.

Adjustments

- 11 (1) For the purposes of paragraphs 12 and 13 –
- (a) amount A is the total amount of relief given in respect of E’s contribution,
 - (b) amount B is the total of the following amounts –
 - (i) any amounts of income which are charged to tax by virtue of paragraph 8, 9 or 10 above (as the case may be),

- (ii) any amounts brought into account in calculating income for tax purposes by virtue of paragraph 8, 9 or 10 above (as the case may be) (so far as not reflected in sub-paragraph (i)), and
 - (iii) any amounts stopped from being the subject of an income deduction by virtue of paragraph 8, 9 or 10 above (as the case may be) (so far as not reflected in sub-paragraph (i) or (ii)), and
 - (c) subject to sub-paragraph (7), amount C is the amount of the payment mentioned in sub-paragraph (4) or (6) (as the case may be) so far as the payment –
 - (i) is made under the asset-backed arrangement on the completion day,
 - (ii) is not reflected in amount B,
 - (iii) is not the subject of an income deduction, and
 - (iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.
- (2) In sub-paragraph (1) “income deduction” means a deduction to which any person is entitled –
- (a) in calculating income for tax purposes, or
 - (b) from total income or total profits.
- (3) Sub-paragraph (4) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.
- (4) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire –
- (a) the security, or
 - (b) any asset substituted for the security under the asset-backed arrangement.
- (5) Sub-paragraph (6) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (6) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which E, or a person connected with E, makes to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership.
- (7) Amount C is to be taken to be nil if –
- (a) the completion day is on or after 22 February 2012,
 - (b) on or before the completion day, a commitment (whether or not legally enforceable and whether or not subject to any conditions) is given (directly or indirectly) to a relevant person, and
 - (c) the commitment –
 - (i) is a commitment to secure that a person receives money or another asset, and
 - (ii) is linked (directly or indirectly) to the making of the payment covered by amount C.
- (8) In sub-paragraph (7)(b) “relevant person” means –
- (a) E;
 - (b) a person connected with E;

- (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
 - (d) a person chosen (directly or indirectly) by E or a person connected with E;
 - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
 - (f) a partnership.
- 12 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.
- (2) The amount of the excess is treated as follows –
- (a) if E is within the charge to corporation tax on the completion day, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the completion day falls, or
 - (b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the completion day falls.
- 13 If the sum of amounts B and C exceeds amount A –
- (a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,
 - (b) the contribution is to be treated as having been paid on the completion day, and
 - (c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.

PART 3

DENIAL OF RELIEF FOR CONTRIBUTIONS PAID ON OR AFTER 22 FEBRUARY 2012

- 14 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert –

“196B Employer asset-backed contributions: denial of relief (1)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A, B and C are met.
- (2) Condition A is that –
 - (a) under an arrangement (“the asset-backed arrangement”) –
 - (i) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
 - (ii) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
 - (iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,
 - (b) the borrower is E or a person connected with E, and
 - (c) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),

and the case is not one in relation to which either condition A in section 196D or condition A in section 196F is met.

- (3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196C).
- (5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence, the whole or a part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.
- (6) For the purposes of subsection (5) it does not matter –
 - (a) that the repayment of the loan might be subject to any condition, or
 - (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,
 but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (7) For the purposes of this section –
 - (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
 - (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
 - (c) “loan” includes any advance of money.

196C Employer asset-backed contributions: “acceptable structured finance arrangement” (1)

- (1) For the purposes of section 196B the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that –
 - (a) in accordance with generally accepted accounting practice, the borrower’s accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
 - (b) the asset-backed arrangement is a type 1 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that –
 - (a) the lender is a responsible authority,
 - (b) the advance is money which is paid by the lender directly to the borrower wholly and directly out of E’s contribution, and

- (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) In subsection (3)(a) "responsible authority" means –
 - (a) the persons who from time to time are the trustees of the registered pension scheme, or
 - (b) the persons who from time to time control the management of the registered pension scheme.
- (5) Condition O is that, as at the time the advance is paid, the position of the lender is as follows –
 - (a) it is the lender (and not any person connected with the lender) who is entitled to the payments mentioned in section 196B(2)(a)(iii),
 - (b) the lender is to receive those payments at times which have been fixed and fall at intervals of no more than one year (but allowing for payments otherwise due to be received on a non-working day to be received on the next working day),
 - (c) on receipt by the lender, those payments are directly to become part of the sums held for the purposes of the registered pension scheme,
 - (d) ignoring negligible differences, those payments are all to be of the same amount,
 - (e) the total amount of those payments is not to be less than the amount of E's contribution, and
 - (f) all those payments are to be received by the lender within a period ("the payment period") ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (6) For the purposes of subsection (5), in determining the lender's position, regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (7) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the payment period by (and only by) the payments mentioned in section 196B(2)(a)(iii).
- (8) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (9) applies has been given.
- (9) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if –
 - (a) it is given (directly or indirectly) to a relevant person,
 - (b) it is a commitment to secure that a person receives money or another asset, and
 - (c) it is linked (directly or indirectly) to the receipt by the lender of a payment mentioned in section 196B(2)(a)(iii).
- (10) In subsection (9)(a) "relevant person" means –
 - (a) E;
 - (b) a person connected with E;

- (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
- (d) a person chosen (directly or indirectly) by E or a person connected with E;
- (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
- (f) a partnership.

196D Employer asset-backed contributions: denial of relief (2)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
 - (a) under an arrangement (“the asset-backed arrangement”) a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
 - (b) the transferor is E or a person connected with E,
 - (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
 - (d) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from a person (“the lender”) other than the transferor,
 - (e) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
 - (f) there is a relevant change in relation to the partnership (see section 196H), and
 - (g) under the asset-backed arrangement the share in the partnership’s profits of the person involved in the relevant change (see section 196H) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.
- (4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership’s profits of the person involved in the relevant change as mentioned is subject to any condition.
- (5) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196E).

196E Employer asset-backed contributions: “acceptable structured finance arrangement” (2)

- (1) For the purposes of section 196D the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—

- (a) in accordance with generally accepted accounting practice, the partnership's accounts for the period in which the advance is received record a financial liability ("the recorded financial liability") in respect of the advance, and
 - (b) the asset-backed arrangement is a type 2 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
- (a) the lender is a responsible authority,
 - (b) the advance is money which is paid by the lender directly to the partnership wholly and directly out of E's contribution, and
 - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) In subsection (3)(a) "responsible authority" means—
- (a) the persons who from time to time are the trustees of the registered pension scheme, or
 - (b) the persons who from time to time control the management of the registered pension scheme.
- (5) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is or is to be the person involved in the relevant change in relation to the partnership,
 - (b) the lender's share in the partnership's profits is to be determined wholly by reference to the payments mentioned in section 196D(2)(g),
 - (c) the lender is to make drawings from the partnership on account of its share in the partnership's profits at times which have been fixed and fall at intervals of no more than one year (but allowing for drawings otherwise due to be made on a non-working day to be made on the next working day),
 - (d) on their making, those drawings are directly to become part of the sums held for the purposes of the registered pension scheme,
 - (e) ignoring negligible differences, those drawings are all to be of the same amount,
 - (f) the total amount of those drawings is not to be less than the amount of E's contribution, and
 - (g) all of the lender's share in the partnership's profits is to be drawn by the lender from the partnership within a period ("the drawing period") ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (6) For the purposes of subsection (5)—
- (a) in determining the lender's position, regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement, and

- (b) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.
- (7) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the drawing period by (and only by) the payments mentioned in section 196D(2)(g).
- (8) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (9) applies has been given.
- (9) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if –
 - (a) it is given (directly or indirectly) to a relevant person,
 - (b) it is a commitment to secure that a person receives money or another asset, and
 - (c) it is linked (directly or indirectly) to any determination of the lender’s share in the partnership’s profits or any drawing from the partnership on account of that share.
- (10) In subsection (9)(a) “relevant person” means –
 - (a) E;
 - (b) a person connected with E;
 - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
 - (d) a person chosen (directly or indirectly) by E or a person connected with E;
 - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
 - (f) a partnership.

196F Employer asset-backed contributions: denial of relief (3)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that –
 - (a) a partnership holds an asset (“the security”) at any time before an arrangement (“the asset-backed arrangement”) is made,
 - (b) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
 - (c) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
 - (d) there is a relevant change in relation to the partnership (see section 196H), and
 - (e) under the asset-backed arrangement the share in the partnership’s profits of the person involved in the relevant change (see section 196H) is determined by reference (wholly or partly) to payments in respect of the security.

- (3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196G).

196G Employer asset-backed contributions: “acceptable structured finance arrangement” (3)

- (1) For the purposes of section 196F the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
 - (a) in accordance with generally accepted accounting practice, the partnership's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
 - (b) the asset-backed arrangement is a type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
 - (a) the lender is a responsible authority,
 - (b) the advance is money which is paid by the lender directly to the partnership wholly and directly out of E's contribution, and
 - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) In subsection (3)(a) “responsible authority” means—
 - (a) the persons who from time to time are the trustees of the registered pension scheme, or
 - (b) the persons who from time to time control the management of the registered pension scheme.
- (5) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
 - (a) it is the lender (and not any person connected with the lender) who is or is to be the person involved in the relevant change in relation to the partnership,
 - (b) the lender's share in the partnership's profits is to be determined wholly by reference to the payments mentioned in section 196F(2)(e),
 - (c) the lender is to make drawings from the partnership on account of its share in the partnership's profits at times which have been fixed and fall at intervals of no more than one year (but allowing for drawings otherwise due to be made on a non-working day to be made on the next working day),
 - (d) on their making, those drawings are directly to become part of the sums held for the purposes of the registered pension scheme,

- (e) ignoring negligible differences, those drawings are all to be of the same amount,
 - (f) the total amount of those drawings is not to be less than the amount of E's contribution, and
 - (g) all of the lender's share in the partnership's profits is to be drawn by the lender from the partnership within a period ("the drawing period") ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (6) For the purposes of subsection (5)–
- (a) in determining the lender's position, regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement, and
 - (b) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.
- (7) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the drawing period by (and only by) the payments mentioned in section 196F(2)(e).
- (8) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (9) applies has been given.
- (9) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if–
- (a) it is given (directly or indirectly) to a relevant person,
 - (b) it is a commitment to secure that a person receives money or another asset, and
 - (c) it is linked (directly or indirectly) to any determination of the lender's share in the partnership's profits or any drawing from the partnership on account of that share.
- (10) In subsection (9)(a) "relevant person" means–
- (a) E;
 - (b) a person connected with E;
 - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
 - (d) a person chosen (directly or indirectly) by E or a person connected with E;
 - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
 - (f) a partnership.

196H Employer asset-backed contributions: "relevant change in relation to the partnership" and "person involved in the relevant change"

- (1) For the purposes of sections 196D and 196F there is a relevant change in relation to the partnership if condition X or Y is met.
- (2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.

- (3) Condition Y is that—
- (a) in connection with the asset-backed arrangement, there is at any time a change in a member's share in the partnership's profits, and
 - (b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.
- (4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) For the purposes of sections 196D to 196G references to the person involved in the relevant change in relation to the partnership are—
- (a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and
 - (b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

196I Employer asset-backed contributions: change in lender's original position under acceptable structured finance arrangement etc

- (1) This section applies if—
- (a) an employer ("E") pays a contribution ("E's contribution") under a registered pension scheme,
 - (b) conditions A and C in section 196B are met or condition A in section 196D or 196F is met,
 - (c) the asset-backed arrangement is an acceptable structured finance arrangement for the purposes of section 196B, 196D or 196F (as the case may be) and, accordingly, condition B in that section is not met, and
 - (d) at any time ("the relevant time") after the advance is paid—
 - (i) the lender's position changes from the lender's original position in any respect (whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise),
 - (ii) an event occurs or does not occur and the occurrence or non-occurrence of the event does not accord with the lender's original position in any respect,
 - (iii) in accordance with generally accepted accounting practice, the recorded financial liability is reduced to nil other than by a payment mentioned in section 196B(2)(a)(iii), 196D(2)(g) or section 196F(2)(e) (as the case may be), or
 - (iv) a commitment to which section 196C(9), 196E(9) or 196G(9) (as the case may be) applies is given.
- (2) This section also applies if—
- (a) the requirements of subsection (1)(a) to (c) are met, and
 - (b) at any time ("the relevant time") after the advance is paid, in accordance with generally accepted accounting practice, the recorded financial liability is reduced in part other than by a

payment mentioned in section 196B(2)(a)(iii), 196D(2)(g) or section 196F(2)(e) (as the case may be).

- (3) Subject to subsection (4), the relevant amount is treated as follows –
 - (a) if E is within the charge to corporation tax at the relevant time, the relevant amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant time falls, or
 - (b) otherwise, the relevant amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.
- (4) The amount treated as profit or income by subsection (3)(a) or (b), together with any amounts so treated on any previous applications of this section in relation to the asset-backed arrangement, is not to exceed the total amount of relief given in respect of E’s contribution.
- (5) If this section applies by virtue of subsection (1), from the relevant time Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as relevant) is no longer to apply in relation to the asset-backed arrangement.
- (6) For the purposes of subsection (1)(d)(ii) it does not matter if the occurrence or non-occurrence of the event is authorised by a term of the asset-backed arrangement or results from the occurrence or non-occurrence of another event which is so authorised.
- (7) In this section –
 - “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196D or 196F (as the case may be),
 - “the lender’s original position” means the lender’s position as at the time the advance is paid set out in the paragraphs of section 196C(5), 196E(5) or 196G(5) (as the case may be),
 - “the recorded financial liability” has the same meaning as in section 196C, 196E or 196G (as the case may be), and
 - “the relevant amount” means –
 - (a) if this section applies by virtue of subsection (1), the outstanding amount of the recorded financial liability immediately before the relevant time determined in accordance with generally accepted accounting practice, or
 - (b) if this section applies by virtue of subsection (2), the amount of the reduction of the recorded financial liability.

196J Employer asset-backed contributions: “advances” under acceptable structured finance arrangements

- (1) This section applies if –
 - (a) an employer pays a contribution under a registered pension scheme,
 - (b) condition A in section 196B, 196D or 196F is met,

- (c) the asset-backed arrangement is an acceptable structured finance arrangement for the purposes of section 196B, 196D or 196F (as the case may be) and, accordingly, condition B in that section is not met, and
 - (d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).
- (2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).
 - (3) In this section “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196D or 196F (as the case may be).

196K Employer asset-backed contributions: supplementary

- (1) This section applies for the purposes of sections 196B to 196J.
- (2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—
 - (a) the contribution being deducted in computing the amount of the employer’s profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),
 - (b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or
 - (c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.
- (4) Sections 774, 775 and 776(2) and (4) of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act.
- (5) A reference to a disposal of an asset includes—
 - (a) anything constituting a disposal of an asset for the purposes of TCGA 1992, and
 - (b) so far as not covered by paragraph (a), the taking of any step by virtue of which a person receives an asset.
- (6) Section 776(2) of CTA 2010 applies for the purposes of subsection (5)(b).
- (7) “Non-working day” means—
 - (a) a Saturday or Sunday,
 - (b) a Christmas Eve, Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom,
 and “working day” is to be read accordingly.”

- 15 In section 280(1) of FA 2004 (abbreviations)—
 - (a) omit the “and” after the definition of “ITA 2007”, and

- (b) after the definition of “CTA 2009” insert “, and
 “CTA 2010” means the Corporation Tax Act 2010”.

16 The amendments made by paragraphs 14 and 15 above have effect in relation to contributions paid by employers on or after 22 February 2012.

PART 4

TRANSITIONAL PROVISION RELATING TO PART 3

Application and interpretation

- 17 (1) This Part of this Schedule applies if –
- (a) before 22 February 2012, an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme (“the relevant scheme”),
 - (b) Part 2 of this Schedule does not apply in relation to E’s contribution,
 - (c) at any time, relief is given in respect of E’s contribution,
 - (d) if the reference in paragraph 16 above to 22 February 2012 were instead a reference to the date on which E’s contribution is paid, E would have no entitlement to relief in respect of E’s contribution by virtue of section 196B, 196D or 196F of FA 2004, and
 - (e) the asset-backed arrangement is not completed before 22 February 2012.
- (2) For the purposes of sub-paragraph (1)(d) assume that Parts 1 and 2 of this Schedule were never enacted.
- 18 For the purposes of this Part of this Schedule –
- (a) terms used in section 196B, 196D or 196F of FA 2004 (as the case may be) have the same meaning as in that section, and
 - (b) as necessary, assume that section 196B, 196D or 196F of FA 2004 (as the case may be) has effect in relation to E’s contribution.
- 19 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196B of FA 2004.
 - (3) The asset-backed arrangement is “completed” when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.
 - (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196D or 196F of FA 2004.
 - (5) The asset-backed arrangement is “completed” when the share in the partnership’s profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security.
- 20 (1) In this Part of this Schedule “the completion day” means the earliest of the following –
- (a) the day on which the asset-backed arrangement is to be completed determined as at the beginning of 22 February 2012;

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- (b) the day on which the asset-backed arrangement is actually completed;
 - (c) the day which is the last day of the period of 25 years beginning with the day on which E's contribution is paid;
 - (d) the day on which a completion event occurs.
- (2) Sub-paragraphs (3) and (4) apply if the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196B of FA 2004.
- (3) To determine if a completion event occurs for the purposes of sub-paragraph (1)(d) first determine, as at the beginning of 22 February 2012, the following—
- (a) the number of payments to be made after the beginning of 22 February 2012 to which the lender or a person connected with the lender is entitled under the asset-backed arrangement,
 - (b) what the amounts of those payments are to be, and
 - (c) the times at which those payments are to be made.
- (4) A completion event occurs for the purposes of sub-paragraph (1)(d) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—
 - (i) there is a change in the number of payments to be made from that determined under sub-paragraph (3),
 - (ii) there is a significant change in the amount of a payment to be made from that so determined, or
 - (iii) there is a significant change in the time at which a payment is to be made from that so determined,
 - (b) a payment determined under sub-paragraph (3) is not made,
 - (c) a payment determined under sub-paragraph (3) is made but its amount is significantly different from the amount so determined for the payment, or
 - (d) a payment determined under sub-paragraph (3) is made but is made at a time significantly different from the time so determined for the payment.
- (5) Sub-paragraphs (6) and (7) apply if the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196D or 196F of FA 2004.
- (6) To determine if a completion event occurs for the purposes of sub-paragraph (1)(d) first determine, as at the beginning of 22 February 2012, the following—
- (a) what the amount of the share in the partnership's profits of the person involved in the relevant change is to be so far as the share is to be determined under the asset-backed arrangement by reference to payments made after the beginning of 22 February 2012,
 - (b) the number of drawings to be made from the partnership on account of the amount determined under paragraph (a) and the number of any other payments to be made after the beginning of 22 February 2012 to which the person involved in the relevant change, the lender or any other person connected with the lender is entitled under the asset-backed arrangement,
 - (c) what the amounts of those drawings or other payments are to be, and
 - (d) the times at which those drawings or other payments are to be made.

- (7) A completion event occurs for the purposes of sub-paragraph (1)(d) if, after the beginning of 22 February 2012 –
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise –
 - (i) there is a change in the number of drawings or other payments to be made from that determined under sub-paragraph (6),
 - (ii) there is a significant change in the amount of a drawing or other payment to be made from that so determined, or
 - (iii) there is a significant change in the time at which a drawing or other payment is to be made from that so determined,
 - (b) a drawing or other payment determined under sub-paragraph (6) is not made,
 - (c) a drawing or other payment determined under sub-paragraph (6) is made but its amount is significantly different from the amount so determined for the drawing or other payment, or
 - (d) a drawing or other payment determined under sub-paragraph (6) is made but is made at a time significantly different from the time so determined for the drawing or other payment.
- (8) In sub-paragraphs (3) and (4) and (6) and (7) references to payments are to payments of any type including payments in respect of the security or any other asset.
- (9) In sub-paragraphs (6) and (7) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.
- (10) For the purposes of sub-paragraphs (4)(b) to (d) and (7)(b) to (d) it does not matter if the event in question is authorised by a term of the asset-backed arrangement or results from the occurrence or non-occurrence of another event which is so authorised.

Certain tax consequences not to have effect

- 21 (1) This paragraph applies if –
- (a) the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196B of FA 2004, and
 - (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).
- (2) The asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that –
- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
 - (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or

- (ii) from total income or total profits (as the case may be).
 - (4) But if the borrower is a partnership the relevant effect is that –
 - (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
 - (c) a member of the partnership becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).
 - (5) In sub-paragraphs (3) and (4) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- 22 (1) This paragraph applies if –
- (a) the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196D of FA 2004, and
 - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) In such a case –
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that –
- (a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or
 - (c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).
- (4) In sub-paragraph (3) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- (5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 23 (1) This paragraph applies if –
- (a) the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196F of FA 2004, and

- (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) The relevant effect is that –
- (a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or
 - (c) a relevant member becomes entitled to deduct an amount –
 - (i) in calculating income for tax purposes, or
 - (ii) from total income or total profits (as the case may be).
- (3) A relevant member is a person who –
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
 - (b) is not the lender.
- (4) In sub-paragraph (2) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- (5) If this paragraph applies –
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196F(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 24 (1) This paragraph applies if, apart from this Part of this Schedule, a relevant charging provision applies in relation to the asset-backed arrangement.
- (2) The relevant charging provision is to apply in relation to the asset-backed arrangement instead of paragraph 21, 22 or 23 above (as the case may be) to the extent of any overlap.
- (3) In this paragraph “relevant charging provision” means –
- (a) section 809BZB, 809BZC, 809BZH or 809BZK of ITA 2007, or
 - (b) section 759, 760, 765 or 768 of CTA 2010.
- 25 (1) This paragraph applies if, apart from this Part of this Schedule –
- (a) a relevant interest provision applies in relation to the asset-backed arrangement, and
 - (b) as a result of the application of the relevant interest provision in relation to the asset-backed arrangement, an amount is or may be treated as interest under that provision.
- (2) Without prejudice to the generality of paragraphs 21(3) and (4), 22(3) and 23(2), the amount is not to be treated as interest if the amount arises on or after 22 February 2012 but on or before the completion day.
- (3) In this paragraph “relevant interest provision” means –

- (a) section 809BZD, 809BZE, 809BZI or 809BZL of ITA 2007, or
 - (b) section 761, 762, 766 or 769 of CTA 2010.
- 26 Section 196G of FA 2004 (as inserted by Part 1 of this Schedule) does not apply in relation to the asset-backed arrangement (if it would otherwise do so) if the relevant event occurs on or after 22 February 2012.

Adjustments

- 27 (1) For the purposes of paragraphs 28 and 29 –
- (a) amount A is the total amount of relief given in respect of E’s contribution,
 - (b) amount B is the total of the following amounts –
 - (i) any amounts of income which are charged to tax by virtue of a relevant provision,
 - (ii) any amounts brought into account in calculating income for tax purposes by virtue of a relevant provision (so far as not reflected in sub-paragraph (i)), and
 - (iii) any amounts stopped from being the subject of an income deduction by virtue of a relevant provision (so far as not reflected in sub-paragraph (i) or (ii)), and
 - (c) subject to sub-paragraph (8), amount C is the amount of the payment mentioned in sub-paragraph (5) or (7) (as the case may be) so far as the payment –
 - (i) is made under the asset-backed arrangement on the completion day,
 - (ii) is not reflected in amount B,
 - (iii) is not the subject of an income deduction, and
 - (iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.
- (2) In sub-paragraph (1)(b) “relevant provision” means –
- (a) paragraph 21, 22 or 23 above (as the case may be);
 - (b) a relevant charging provision (as defined in paragraph 24 above) as applied in relation to the asset-backed arrangement for amounts arising on or before the completion day;
 - (c) paragraph 25 above (if applicable).
- (3) In sub-paragraph (1) “income deduction” means a deduction to which any person is entitled –
- (a) in calculating income for tax purposes, or
 - (b) from total income or total profits.
- (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196B of FA 2004.
- (5) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire –
- (a) the security, or
 - (b) any asset substituted for the security under the asset-backed arrangement.

- (6) Sub-paragraph (7) applies if the section which would have applied as mentioned in paragraph 17(1)(d) above is section 196D or 196F of FA 2004.
- (7) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which E, or a person connected with E, makes to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership.
- (8) Amount C is to be taken to be nil if –
- (a) on or before the completion day, a commitment (whether or not legally enforceable and whether or not subject to any conditions) is given (directly or indirectly) to a relevant person, and
 - (b) the commitment –
 - (i) is a commitment to secure that a person receives money or another asset, and
 - (ii) is linked (directly or indirectly) to the making of the payment covered by amount C.
- (9) In sub-paragraph (8)(a) “relevant person” means –
- (a) E;
 - (b) a person connected with E;
 - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
 - (d) a person chosen (directly or indirectly) by E or a person connected with E;
 - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
 - (f) a partnership.
- 28 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.
- (2) The amount of the excess is treated as follows –
- (a) if E is within the charge to corporation tax on the completion day, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the completion day falls, or
 - (b) otherwise, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the completion day falls.
- 29 If the sum of amounts B and C exceeds amount A –
- (a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,
 - (b) the contribution is to be treated as having been paid on the completion day, and
 - (c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.