FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 48Schedule 13: Employer Asset-Backed Pension Contributions Etc

Details of the Schedule

Part 2 - Transitional rules (paragraphs 4 to 14)

62. Part 2 contains transitional provisions which apply the "relevant effect" of the SFA rules to any pre-November ABC arrangement that does not fall within the SFA rules. These rules apply to income amounts that arise on or after 29 November 2011. There are also rules to introduce a mechanism to make a tax adjustment at the end of any of these arrangements which ensures the employer receives tax relief in respect of the total amount of payments made to the pension scheme under the ABC arrangement.

63. The transitional provision that will apply to pre-November ABC arrangements which are acceptable SFAs is new section 196G. This section recovers any excess relief given where the relevant event occurs on or after 29 November 2011, with the exception of sub-section (3) where the relevant event occurs on or after 21 March 2012, as set out in the preceding section concerning Part 1 of the Schedule. Further detail can be found in that section and is not repeated in this part of the note.

Detail of transitional rules

Paragraphs 4 to 8 – application and interpretation

64. Paragraphs 4-8 provide for application and interpretation of the terms used in Part 2.

65. Paragraph 4 provides that transitional provisions will apply where an ABC arrangement with the contribution paid before 29 November 2011 would **not** have received relief under new sections 196B to 196D in Part 1 had the contributions been paid on or after 29 November 2011 and the arrangement is not 'completed' as determined under paragraph 6 before that date.

66. Paragraph 5 provides that for the purposes of Part 2, the terms used in new sections 196B to 196D in Part 1 have the same meaning as in those new sections and where necessary it is assumed that those new sections have effect in relation to the employer's contribution.

67. Paragraph 6 provides that an ABC arrangement that would be denied upfront relief under new sections 196B, 196C or 196D in Part 1 had the contribution been paid on or after 29 November 2011 is completed if :

- where the arrangement is a simple case, the lender etc is no longer entitled to payments in respect of the security; or
- where the arrangement is a complex case, the share in the partnership's profits of the person involved in the relevant change is no longer to be determined by reference to

payments in respect of the security, or, if earlier, when no "responsible authority" is any longer entitled to payments in connection with the arrangement.

"Responsible authority" is defined under paragraph 6(7) to mean those persons who from time to time are either the trustees of the relevant pension scheme or the persons controlling its management.

A responsible authority is entitled to a payment in connection with the ABC arrangement if it is entitled to the payment directly or indirectly in consequence of the arrangement or otherwise in connection with the arrangement.

Payments include drawings or distributions from a partnership, payments in respect of security and other payments in respect of an asset as read in accordance with section 776(4)(b) of CTA 2010.

68. Paragraph 7 provides that "the completion day" is the earliest of the day on which the ABC arrangement is to be completed as determined as at the beginning of 29 November 2011, or the day on which the arrangement is actually completed, or after 22 February 2012, the day on which a completion event takes place, or after 21 March 2012, an event as set out in paragraph 8 occurs. Only changes to payments made to the pension scheme in connection with an ABC arrangement will be taken into account in a completion event.

69. Paragraph 7(3) explains when a completion event occurs. This is where there is a change in the number of either payments or drawings/other payments, a significant change in the amount of either a payment or a drawing/other payment is to be made, or a significant change in the time at which either a payment or a drawing/other payment is to be made.

70. A "paragraph 8" event occurs when the employer ceases to be chargeable to tax. Paragraph 8 sets out the circumstances, similar to those set out in new sections 196H(4) and (5) in Part 1, surrounding such cessation (see paragraphs 48 to 50 above concerning Part 1).

71. These two paragraphs (7 and 8) prevent the employer seeking to extend the duration of the arrangement or make a material change to the original position as at 22 February or 21 March 2012 (depending on the type of events) to avoid the transitional provisions set out in paragraphs 12 to 14.

Paragraphs 9 to 11 – certain tax consequences not to have effect

72. Paragraphs 9-11 deem the relevant ABC arrangements not to have "the relevant effect" as set out in paragraphs 9(3), 10(3) and 11(2). This means that on or after 29 November 2011, no deduction will be given to any income payments that the borrower (the employer or a connected party or other relevant person) makes to the lender etc under the ABC arrangement and any income amounts that have been transferred to the lender etc will be bought back into tax charge on the employer etc or other relevant person.

73. Paragraph 9(1) provides that paragraph 9 applies to an ABC arrangement where, had the employer's contribution been paid on or after 29 November 2011, new section 196B in Part 1 would have applied so that the arrangement would have the "relevant effect". The "relevant effect" defined in paragraph 9(3) is that the borrower etc (the employer etc) would receive relief for payments to the lender etc (the pension scheme) made under the arrangement either by way of an income deduction or by an income amount which would otherwise have been charged to tax not being so charged.

74. Paragraph 9(2) deems the arrangement **not** to have the "relevant effect" which is set out in paragraph 9(3). This means that either no relief will be given for any income payments the borrower etc (the employer etc) makes to the lender etc (the pension scheme) under the ABC arrangement or any income amounts that would have been

charged to tax if not for the ABC arrangement will be brought back into tax as a charge on the employer etc.

75. Paragraph 9(4) defines the relevant effect if the borrower is a partnership.

76. Paragraph 9(5) provides that "amount" in sub-paragraphs 3 and 4 means an amount that arises on or after 29 November 2011 but on or before the completion day as set out in paragraph 7. This means that before the completion day, this paragraph prevents relief for income payments made on or after 29 November 2011 or brings back income amounts into charge from that date.

77. Paragraph 10(1) provides that paragraph 10 applies to an ABC arrangement where, had the employer's contribution been paid on or after 29 November 2011, new section 196C in Part 1 would have applied so that the ABC arrangement would have the "relevant effect". The "relevant effect", defined in paragraph 10(3), is that the transferor etc (the employer etc) would receive relief either by way of an income deduction or by an amount which would otherwise have been charged to tax not being so charged.

78. Paragraph 10(2) deems the arrangement **not** to have the "relevant effect". This means that either no relief will be given for any income payment made by the partnership to the lender etc (the pension scheme) under the arrangement or any amount that would have been charged to tax if not for the ABC arrangement will be brought back into tax as a charge on the transferor etc (the employer etc).

79. Paragraph 10(4) provides that for the purposes of sub-paragraph 3, "amount" means an amount that arises on or after 29 November 2011 but on or before the completion day as set out in paragraph 7. This means that before the completion day, this paragraph prevents relief for income payments made on or after 29 November 2011 or brings back income amounts into charge from that date.

80. Paragraph 10(5) provides that in determining whether the ABC arrangement would have the relevant effect, it is to be assumed that the amounts of income equal to the payments mentioned in new section 196C(2)(g) were payable to the partnership before the relevant change occurred.

81. Paragraph 11(1) provides that paragraph 11 applies to an ABC arrangement where had the employer's contribution been paid on or after 29 November 2011, new section 196D in Part 1 would have applied so that the ABC arrangement would have the "relevant effect". The "relevant effect", defined in paragraph 11(2), is that the "relevant member" would receive relief by way of an income deduction or by an income amount which would otherwise have been charged to tax not being so charged.

82. Paragraph 11(3) provides that a "relevant member" is a person who was a member of the partnership immediately before the relevant change in the partnership occurred and the person is not the lender.

83. Paragraph 11(4) provides that for the purposes of sub-paragraph 2, "amount" means an amount that arises on or after 29 November 2011 but on or before the completion day as set out in paragraph 7. This means that before the completion day, this paragraph prevents relief for income payments made on or after 29 November 2011 or brings back income amounts into charge from that date.

84. Paragraph 11(5) deems the arrangement **not** to have the "relevant effect" as set out in paragraph 11(2). This means no relief will be given for any income payments made from the partnership to the lender (the pension scheme) or any income amounts that would have been charged to tax if not for the ABC arrangement will be brought back into tax as a charge on the relevant member (the employer etc or other relevant person).

85. Paragraph 11(6) provides that in determining whether the ABC arrangement would have the relevant effect, it is to be assumed that the amounts of income equal to the

payments mentioned in new section 196D(2)(e) were payable to the partnership before the relevant change occurred.

Paragraphs 12 to 14 – adjustments

86. Paragraphs 12-14 provides for a tax adjustment on the employer when the ABC arrangement ends to ensure that the total amount on which relief is given to the employer will accurately reflect, but will not exceed, the total amount of payments actually given to the pension scheme under the arrangement.

87. This adjustment mechanism will take into account not just all the payments actually made to the pension scheme but also all the relief in the form of deductions against taxable profits or income given to the employer before and after 29 November 2011. Any deductions and payments given before 29 November 2011 will be cancelled out in the overall adjustment so the amounts set out in paragraphs 12-14 do not include these sums. The adjustment can result in either a charge on the employer or further tax relief.

88. The following example uses the facts as set out in Example 3 in the consultation document, *Employer Asset-backed Pension Contributions*[1] published on 24 May 2011 on both the HMRC and HM Treasury websites, and illustrates how the adjustment mechanism as set out in paragraphs 12-14 works.

Example A

The ABC arrangement does not fall within the SFA rules.

Pension scheme deficit = £400m

Contribution paid under the ABC arrangement = £400m

Yearly payment = £22.5m (of which £2.5m could be a finance charge if the arrangement were a SFA) payable for 20 years.

Two yearly payments were made before 29 November 2011.

Assume that the ABC arrangement will be completed on the day on which it is to be completed at the beginning of 29 November 2011.

Using Amounts A, B and C as defined in paragraph 12(1)

Amount A (relief for E's contribution) = £400m

Amount B (total amount of denied deductions on yearly payments under paragraph 9, 10 or 11) = £405m (including the last payment at year 20)

Amount C = 0 (as the last payment falls within the meaning of "income deduction" as set out in paragraph 12(2) and so paragraph 12(1)(c)(iii) is not met)

Pre-November deductions on yearly payments = pre-November yearly payments = Amount D (which is **not** included in this Schedule) = £22.5m x 2 years = £45m.

As Amount B + Amount C exceeds Amount A by £5m, additional relief arises under paragraph 14 of the Schedule.

So the total relief given to the employer is the sum of Amount A (£400m) and Amount D (£45m), plus the adjustment relief of £5m (see the item above). This is equal to £450m.

Total payments received by the pension scheme = Amount D + Amount B + Amount C = £45m + £405m + 0 = £450m which equals the total amount of relief given.

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1 http://www.hmrc.gov.uk/budget-updates/march2011/index.htm#24may

This means that the employer relief accurately reflects the payments actually received by the pension scheme.

89. Paragraph 12(1) defines Amount A, Amount B and Amount C for the purposes of making tax adjustment as set out in paragraphs 13 and 14:

- Amount A is the total amount of relief given in respect of the employer's contribution paid under the ABC arrangement;
- Amount B is the total of any amounts in respect of which the employer has been denied relief under paragraphs 9, 10 or 11. These are the payments for which a deduction has been denied or the amounts brought back to charge on the employer etc or other relevant person; and
- Amount C is the amount of the payment made under the ABC arrangement before the completion day which is not reflected in Amount B, is not the subject of an income deduction and is not a contribution paid by the employer to the pension scheme, but it nevertheless becomes part of the sums held by the pension scheme.

90. Paragraph 12(2) defines "income deduction" for the purposes of sub-paragraph 1.

91. Paragraphs 12(3) and (4) provide that where, had the employer's contribution been paid on or after 29 November 2011, new section 196B in Part 1 would have applied, Amount C is the payment (if any) which the borrower etc makes to the lender etc in order to acquire the security or an asset in place of the security under the ABC arrangement.

92. Paragraphs 12(5) and (6) provide that where, had the employer's contribution been paid before 29 November 2011, new sections 196C or 196D in Part 1 would have applied, Amount C is the payment (if any) which the employer etc makes to the lender etc in order to reverse the relevant change in relation to the partnership or any payment made by the employer etc to the responsible authority to buy back its interest in any partnership involved in an arrangement.

93. Paragraphs 12(7) provides that Amount C is to be taken to be nil where, between 22 February 2012 and the day before the completion day, a commitment is given to a "relevant person" directly or indirectly and the commitment is to secure that a person receives money or another asset that is linked to the making of the payment covered by Amount C.

94. Paragraph 12(8) defines "relevant person" as the employer, a person connected with the employer, a person acting at the direction or request, or with the agreement of the employer or the connected person, a person chosen by the employer or the connected person or a class of person so chosen, or a partnership. However, as set out in paragraph 12(9), the relevant person does not include the persons who from time to time are the trustees of the pension scheme or the persons controlling the management of the scheme.

95. Paragraph 13 provides that at the end of the completion day, if the amount of tax relief that has been given to the employer in respect of the contribution paid under an ABC arrangement is greater than the total amount of payments made to the pension scheme, then the excess tax relief in the form of the difference between the two amounts will be recovered from the employer.

96. Paragraphs 13(1) and (2) provide that where amount A is greater than the sum of Amount B and Amount C, the excess will be either treated as a profit or income arising on the employer in the period of accounts (see footnote 4) in which the completion day falls.

97. Paragraph 14 provides that that at the end of the completion day, if the amount of tax relief that has been given to the employer in respect of the contribution paid under the ABC arrangement is less than the total amount of payments made to the scheme, then

the employer will be entitled to additional relief. Where the sum of Amount B and Amount C exceeds Amount A, the excess is treated as an employer contribution paid on the completion day for which the employer is to be given relief in accordance with section 196 FA 2004.