
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 6. (See end of Document for details)

SCHEDULES

SCHEDULE 6

Section 18

PARTNERSHIPS

PART 1

BARE TRUSTS

1 In ITTOIA 2005, after section 848 insert—

“848A Bare trusts

(1) This section applies if—

- (a) a partner in a firm is partner as trustee for a beneficiary who is absolutely entitled to the partner's share of the profits of the firm, and
- (b) the beneficiary is chargeable to tax on those profits.

(2) References in this Part to a partner or member of the firm include references to the beneficiary.”

2 In CTA 2009, after section 1258 insert—

“1258A Bare trusts

(1) This section applies if—

- (a) a partner in a firm is partner as trustee for a beneficiary who is absolutely entitled to the partner's share of the profits of the firm, and
- (b) the beneficiary is chargeable to tax on those profits.

(2) References in this Part to a partner or member of the firm include references to the beneficiary.”

3 (1) TMA 1970 is amended as follows.

(2) In section 12AA (partnership returns), after subsection (10A) insert—

“(10B) If—

- (a) a partner in a partnership is partner as trustee for a beneficiary who is absolutely entitled to the partner's share of the profits of the partnership, and
 - (b) the beneficiary is chargeable to tax on those profits,
- references in this Act to the partner include references to the beneficiary.”

(3) In section 118(1) (interpretation), at the appropriate place insert—

““partner” is to be construed in accordance with section 12AA(10B) of this Act;”.

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- 4 (1) The amendment made by paragraph 1 has effect in relation to the tax year 2018-19 and subsequent tax years.
- (2) The amendment made by paragraph 2 has effect in relation to accounting periods beginning on or after 1 April 2018.
- (3) The amendments made by paragraph 3 have effect in relation to partnership returns relating to the tax year 2018-19 or any subsequent tax year.

PART 2

NOTIONAL TRADE AND BUSINESS OF INDIRECT PARTNER

- 5 (1) ITTOIA 2005 is amended as follows.
- (2) In section 847 (general provisions), after subsection (3) insert—
- “(4) For the purposes of this Part, a person is an indirect partner in a partnership (“the underlying partnership”) if the person is a partner in—
- (a) a partnership which is a partner in the underlying partnership, or
- (b) any partnership which is an indirect partner in the underlying partnership by virtue of the preceding application of this subsection.”
- (3) After section 852 insert—

“852A Notional trades: indirect partners

- (1) This section applies in relation to the notional trade of a partner in a firm if—
- (a) the firm consists of a partnership which is a partner or indirect partner in another partnership (“the underlying partnership”),
- (b) the members of the underlying partnership carry on a trade (the “underlying trade”),
- (c) the firm's trading profits or losses referred to in section 852(1) arise by virtue of profits or losses (“the underlying profits or losses”) arising in the carrying on of the underlying trade, and
- (d) the underlying profits or losses do not themselves arise by virtue of the underlying partnership's membership of a partnership.
- (2) Section 852 (carrying on by partner of notional trade) has effect as if for subsections (2) to (5) there were substituted—
- “(2) The partner starts to carry on the notional trade at the later of—
- (a) when the partner becomes an indirect partner in the underlying partnership, and
- (b) when the underlying partnership starts to carry on the underlying trade.

This is subject to subsection (3).

- (3) If the partner carries on the actual trade (whether alone or in partnership) before the underlying partnership starts to carry on the underlying trade, the partner starts to carry on the notional trade when the partner starts to carry on the actual trade.

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- (4) The partner permanently ceases to carry on the notional trade at the earlier of—
- (a) when the partner ceases to be an indirect partner in the underlying partnership, and
 - (b) when the underlying partnership permanently ceases to carry on the underlying trade.

This is subject to subsection (5).

- (5) If the partner carries on the actual trade (whether alone or in partnership) after the underlying partnership permanently ceases to carry on the underlying trade, the partner permanently ceases to carry on the notional trade when the partner permanently ceases to carry on the actual trade.””

- (4) After section 855 insert—

“855A Notional business: indirect partners

- (1) This section applies in relation to the notional business of a partner in a firm if—
- (a) the firm consists of a partnership which is a partner or indirect partner in another partnership (“the underlying partnership”),
 - (b) the members of the underlying partnership carry on a trade (“the underlying trade”),
 - (c) the firm's untaxed income or relievable losses referred to in section 854(1)(b) arise by virtue of untaxed income or relievable losses (“the underlying profits or losses”) arising to members of the underlying partnership—
 - (i) from sources other than the carrying on of a trade, and
 - (ii) otherwise than by virtue of the underlying partnership's membership of a partnership.
- (2) Section 854 (carrying on by partner of notional business) has effect as if—
- (a) for subsection (2) there were substituted—

“(2) The partner starts to carry on the notional business at the later of—

 - (a) when the partner becomes an indirect partner in the underlying partnership, and
 - (b) when the underlying partnership starts to carry on the underlying trade.”;
 - (b) for subsection (4) there were substituted—

“(4) The partner permanently ceases to carry on the notional business at the earlier of—

 - (a) when the partner ceases to be an indirect partner in the underlying partnership, and
 - (b) when the underlying partnership permanently ceases to carry on the underlying trade.”
- (3) Section 855 has effect as if for subsections (2) and (3) there were substituted
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- “(2) If the partner carries on the actual trade (whether alone or in partnership) before the firm starts to carry it on, the partner starts to carry on the notional business when the firm starts to carry on the actual trade.
- (3) If the partner carries on the actual trade (whether alone or in partnership) after the firm permanently ceases to carry it on, the partner permanently ceases to carry on the notional business when the firm permanently ceases to carry on the actual trade.”
- (4) In this section “untaxed income” has the same meaning as in section 854.”
- (5) The amendments made by this paragraph have effect in relation to the tax year 2018-19 and subsequent tax years.

PART 3

RETURNS: INFORMATION TO BE INCLUDED

- 6 (1) TMA 1970 is amended as follows.
- (2) In section 12AA (partnership returns) after subsection (1A) insert—
- “(1B) Where a partnership to which subsection (1) applies (“the reporting partnership”) includes a partner which is itself a partnership, references in subsections (1) and (1A) to a partner include an indirect partner in the reporting partnership.
- (1C) For the purposes of this section, a person is an indirect partner in the reporting partnership if the person is a partner in—
- (a) a partnership which is a partner in the reporting partnership, or
 - (b) any partnership which is an indirect partner in the reporting partnership by virtue of the preceding application of this subsection.”
- (3) In section 12AB (partnership statements), after subsection (1) insert—
- “(1A) Where at any time in a period mentioned in subsection (1)(a) the reporting partnership is a partner in another partnership which carries on a trade, profession or business—
- (a) income or loss that the reporting partnership accrues or sustains thereby is to be treated for the purposes of subsection (1)(a)(i) as from a source that is separate from any of its other sources of income or loss,
 - (b) consideration in respect of the disposal of partnership property that the reporting partnership accrues thereby is to be treated for the purposes of subsection (1)(a)(ia) as from a source that is separate from any of its other sources of consideration,
 - (c) income tax which has been deducted or treated as deducted from, or paid on, any income that the reporting partnership accrues thereby is to be treated for the purposes of subsection (1)(a)(ii) as being deducted or treated as deducted from, or paid on, a source of income that is separate from any of its other sources of income, and

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- (d) amounts specified in the partnership statement under subsection (1)(a) must include—
 - (i) each amount which is stated to be equal to the reporting partnership's share of income, loss, consideration or tax in any partnership statement made under this section in relation to the other partnership for the period for which the return is made or a period which includes that period or any part of it, and
 - (ii) a statement as to which of the assumptions in subsection (1B) was applied in calculating that amount.
- (1B) If at any time in a period mentioned in subsection (1)(a) the reporting partnership includes a partner which is itself a partnership (“the participating partnership”), the amounts referred to in subsection (1)(b) must be calculated and included in the partnership statement applying each of the following assumptions to the participating partnership—
 - (a) that it is a UK resident individual;
 - (b) that it is a non-UK resident individual;
 - (c) that it is a UK resident company;
 - (d) that it is a non-UK resident company.
- (1C) But subsection (1D) applies if the partnership return includes—
 - (a) the name of every person who was an indirect partner in the reporting partnership at any time in a period mentioned in subsection (1)(a), and
 - (b) at least some of the following information—
 - (i) whether a person named under paragraph (a) is an individual, company or partnership (or something else),
 - (ii) in the case of such a person who is an individual, whether the individual was or was not resident in the United Kingdom in the year of assessment for which the partnership return is made, and
 - (iii) in the case of such a person who is a company, whether the company was or was not resident in the United Kingdom for each accounting period of the company which includes all, or any part of, a period mentioned in subsection (1)(a).
- (1D) In subsection (1B)—
 - (a) ignore either or both of paragraph (a) and (b) if it is apparent from information provided under subsection (1C) that none of the indirect partners of the reporting partnership is a person of a description specified in that paragraph at any time in the year of assessment for which the return is made, and
 - (b) ignore either or both of paragraph (c) and (d) if it is apparent from that information that none of the indirect partners is a company of a description specified in that paragraph at any time in any of its accounting periods which include all, or any part of, a period mentioned in subsection (1)(a).”
- (4) In that section, in subsection (5), at the appropriate places insert—

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““indirect partner”, in relation to the reporting partnership, is to be construed in accordance with section 12AA(1C);”;

““reporting partnership” means the partnership to which the partnership statement referred to in subsection (1) relates;”.

(5) The amendments made by this paragraph have effect in relation to partnership returns relating to the tax year 2018-19 or any subsequent tax year.

7 (1) F(No.2)A 2017 is amended as follows.

(2) In section 60, in paragraph 17 of Schedule A1 to be inserted into TMA 1970—

- (a) the existing provision becomes sub-paragraph (1);
- (b) after that sub-paragraph insert—

“(2) Where a partnership (“the reporting partnership”) includes a partner which is itself a partnership, references in this Schedule to a partner include an indirect partner in the reporting partnership.

Section 12AA(1C) (meaning of “indirect partner”) applies for the purposes of this sub-paragraph.”

(3) In Schedule 14 (amendments relating to digital reporting etc), after paragraph 10 insert—

“10A In section 12AB(1C) (further information to be included in partnership return in certain cases), before “partnership return” insert “section 12AA ”.”

PART 4

RETURNS: OVERSEAS PARTNERS IN INVESTMENT PARTNERSHIPS ETC

8 (1) TMA 1970 is amended as follows.

(2) In section 12AA(6) (partnership return to include information about partners), at the end (and on a new line) insert—

“But see section 12ABZA.”

(3) After section 12AB (partnership return to include partnership statement) insert—

“12ABZA Partnership returns: overseas partners in investment partnerships etc

(1) There is no requirement for a partnership return to include a declaration of the tax reference of a person (see section 12AA(6)(a)) if—

- (a) the person is not chargeable to income tax or corporation tax for the period, or for a period which includes any part of the period, in respect of which the partnership return is made,
- (b) the partnership does not carry on a trade or profession or a UK property business at any time during the period in respect of which the partnership return is made,
- (c) the whole of that period is a period in respect of which the partnership is required to set out information about the person in one or more relevant returns, and

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- (d) the partnership return includes a statement that the condition in paragraph (c) is met.
- (2) In subsection (1)(c) “relevant return” means a return under the International Tax Compliance Regulations 2015 (S.I. 2015/878).
- (3) If, in reliance on this section, the partnership return does not include a declaration of the tax reference of a person but the partnership does not comply with the requirement mentioned in subsection (1)(c), the partner required to make and deliver the partnership return, or that partner's successor, must give notice to HMRC specifying the tax reference.
- (4) The notice must be given within the period of 12 months beginning with the filing date for the partnership return.
- (5) The Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument amend the definition of “relevant return” in subsection (2).
- (6) A statutory instrument containing regulations under subsection (5) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In this section “filing date” has the same meaning as in section 12ABA.”
- (4) In section 98 (special returns, etc), in column 2 of the Table, at the appropriate place insert “ section 12ABZA(3) of this Act ”.
- (5) The amendments made by this paragraph have effect in relation to returns—
- (a) made after the passing of this Act, and
- (b) whether relating to periods before or after the passing of this Act.
- 9 In Schedule 14 to F(No.2)A 2017 (amendments relating to digital reporting etc), after paragraph 10A (as inserted by this Schedule) insert—
- “10B In section 12ABZA (partnership returns: overseas partners in investment partnerships etc)—
- (a) in the heading, before “Partnership returns” insert “ Section 12AA ”;
- (b) in subsections (1), (3), and (4), before every “partnership return” insert “ section 12AA ”.”

PART 5

RETURNS CONCLUSIVE AS TO SHARES OF PROFITS AND LOSSES

- 10 (1) TMA 1970 is amended as follows.
- (2) After section 12ABZA (as inserted by this Act) insert—

“12ABZB Partnership return conclusive as to partnership shares

- (1) A partnership return is conclusive for tax purposes as to—
- (a) whether a person does or does not have a share in the profits or losses of the partnership for any period, and
- (b) what the share of any person in those profits or losses is.

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- (2) That applies even where the person would not otherwise be chargeable to tax on profits of the partnership.
- (3) If there is a dispute between the person mentioned in subsection (1)(a) or (b) and any one or more partners in the partnership about whether what is given in a partnership return is correct as to the matters mentioned in that subsection, a party to the dispute may refer it to the tribunal for determination.
- (4) That does not include a dispute to the extent that it is in substance about the amount (before sharing) of the partnership's profits or losses for a period.
- (5) A referral under subsection (3) must be made before the end of the period of 12 months beginning with the day after—
- (a) the day on which the partnership return was delivered, or
 - (b) if the dispute relates to an amendment to the return made under section 12ABA (amendment of partnership return by taxpayer), the day on which the amendment was made.
- (6) Where a dispute is referred to the tribunal under subsection (3)—
- (a) the party referring it must at the same time give notice of the referral to—
 - (i) HMRC, and
 - (ii) the reporting partner, and
 - (b) the reporting partner must give notice of the referral to—
 - (i) every other partner in the partnership, and
 - (ii) any other person appearing to the reporting partner to be a party to the dispute.
- But notice need not be given under this subsection to anyone who referred the dispute.
- (7) Where the tribunal determines that what is given in the partnership return as to the matters referred to in subsection (1)(a) or (b) is not correct—
- (a) the tribunal must determine what the return should have given, and
 - (b) HMRC must amend the return accordingly.
- (8) Where a partnership return is amended under subsection (7)(b), HMRC must by notice to any party to the proceedings or any partner in the partnership amend—
- (a) their return under section 8 or 8A of this Act, or
 - (b) their company tax return,
- if the amendments are necessary to give effect to the consequences of the amendment of the partnership return.
- (9) Where at any time after a referral is made under subsection (3) but before the tribunal determines the dispute the reporting partner gives notice to HMRC that all the partners in the partnership (whether or not party to the proceedings) have agreed in writing that the partnership return—
- (a) is correct without variation, or
 - (b) requires correcting in a particular manner,

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the like consequences shall ensue for all purposes as would have ensued if, at the time the agreement was made, the tribunal had determined the dispute in accordance with the terms of the agreement.

- (10) Subsection (9) does not apply if—
- (a) within the period of 30 days beginning with the date of the agreement, a party to the agreement gives notice to the other parties to the agreement that the party wishes to repudiate or resile from the agreement, or
 - (b) within the period of 30 days beginning with the date on which it receives notice of the agreement, HMRC gives notice to the reporting partner of its objection to the agreement.
- (11) A partnership return which has been the subject of a referral under subsection (3) may not be the subject of another referral under that subsection, unless that other referral—
- (a) relates to a dispute arising in consequence of an amendment of the partnership return under section 12ABA (amendment of partnership return by taxpayer), and
 - (b) is the first referral following the amendment.
- (12) In this section—
- “reporting partner” means the partner who made and delivered the partnership return or that partner's successor;
- references to a partner in a partnership are to a person who was a partner in it at any time during the period in respect of which the partnership return was made.”
- (3) In section 12ABA(1) (amendment of partnership return by taxpayer), after “partnership return” insert “ (including anything included in the return by virtue of section 12ABZB(7)(b) (amendment of partnership return following referral to tribunal)) ”.
- (4) In section 12AC (enquiry into partnership return)—
- (a) in subsection (2), after paragraph (c) insert—
 - “(d) if a dispute in relation to the return is referred to a tribunal under section 12ABZB(3) of this Act, up to and including the quarter day next following the first anniversary of the day on which HMRC received notification of the referral.”;
 - (b) in subsection (3), at the end insert “ or in consequence of the referral of a dispute about the return under section 12ABZB(3) of this Act ”;
 - (c) in subsection (4), for “, subject to the following limitation” substitute “ and including anything included in the return by virtue of section 12ABZB(7)(b), subject to the following limitations ”;
 - (d) after subsection (5) insert—
 - “(5A) If the notice of enquiry is given as a result of the referral of a dispute under section 12ABZB(3) of this Act—
 - (a) at a time when it is no longer possible to give notice of enquiry under subsection (2)(a) or (b) above,
 - (b) after a final closure notice has been issued in relation to an enquiry into the return, or

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- (c) after a partial closure notice has been issued in such an enquiry in relation to the matters to which the dispute relates or which are affected by it,
the enquiry into the return is limited to the matters to which the dispute relates or which are affected by it.”
- (5) In section 12AD (amendment of partnership return by taxpayer during enquiry)—
- (a) in the heading, after “taxpayer” insert “, or referral of dispute,”;
 - (b) in subsection (1)—
 - (i) after “taxpayer” insert “, or a dispute about the return is referred to the tribunal under section 12ABZB(3) of this Act,”;
 - (ii) after “the amendment”, in both places it occurs, insert “ or dispute”;
 - (c) in subsection (2), after “amendment” insert “ or dispute”.
- (6) In section 28B(2)(b) (completion of enquiry into partnership return), after “return” insert “ (including anything included in the return by virtue of section 12ABZB(7) (b) (amendment of partnership return following reference to tribunal)) ”.
- (7) In section 30B(1) (amendment of partnership return where loss of tax discovered), in the words after paragraph (c), after “return” insert “ (including anything included in the return by virtue of section 12ABZB(7)(b) (amendment of partnership return following reference to tribunal)) ”.
- (8) In section 55 (recovery of tax not postponed)—
- (a) in subsection (8B), for “and (8D)” substitute “ to (8E) ”;
 - (b) in subsection (8C)—
 - (i) in paragraph (c), omit the final “or”;
 - (ii) after paragraph (c) insert—

“(ca) any amount of tax specified in the notice by virtue of an amendment made under section 227(7A) of that Act, or”;
 - (c) after subsection (8D) insert—

“(8E) If the payment of an amount of tax within subsection (8C)(ca) is postponed by virtue of this section immediately before notice of the amendment is given, it ceases to be so postponed with effect from the time that the notice of the amendment is given, and the tax is due and payable on or before—

 - (a) the last day of the period of 30 days beginning with the day on which the notice is given, or
 - (b) if later, the last day on which it would have been payable under subsection (8D) if it had been included in the amount specified in the accelerated payment notice or partner payment notice when that notice was given.”
- (9) In section 59B(5)(b) (payment of tax following amendment of self-assessment), after “section” insert “ 12ABZB(8), ”.
- (10) In Schedule 3ZA (date by which payment to be made after amendment or correction of self-assessment), in paragraph 7 (amendment consequential on correction of partnership return by Revenue)—

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- (a) in the heading, at the end insert “ or tribunal determination of partnership dispute ”;
 - (b) in sub-paragraph (1), after “under” insert “ section 12ABZB(8)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership return corrected following reference to tribunal) or ”;
 - (c) in sub-paragraph (2), after “section” insert “ 12ABZB(8)(a) or ”.
- 11 In section 850 of ITTOIA 2005 (allocation of firm's profits or losses between partners), in subsection (1), after “850D” insert “ and section 12ABZB of TMA 1970 (partnership return is conclusive) ”.
- 12 In section 1262 of CTA 2009 (allocation of firm's profits or losses between partners), in subsection (1), after “1264A” insert “ and section 12ABZB of TMA 1970 (partnership return is conclusive) ”.
- 13 (1) FA 2014 is amended as follows.
- (2) In each of sections 220 and 221 (content of accelerated payment notice), at the end of subsection (3) insert “ (and disregarding any dispute which has been referred to a tribunal under section 12ABZB(3) of TMA 1970 but not yet determined) ”.
 - (3) In section 226 (penalty for failure to pay accelerated payment), after subsection (7) insert—
 - “(8) Where an amendment to an accelerated payment notice made under section 227(7A) (amendment following tribunal determination about partnership return) increases the amount of the accelerated payment, the amount of the increase is to be ignored for the purposes of—
 - (a) this section, and
 - (b) any other enactment imposing a penalty or surcharge for non-payment or late payment of tax.”
 - (4) In section 227 (withdrawal, modification or suspension of accelerated payment notice)—
 - (a) after subsection (7) insert—
 - “(7A) Where—
 - (a) an accelerated payment notice is given, and
 - (b) a partnership return (as defined in Schedule 32) to which the notice relates is amended under section 12ABZB(7)(b) of TMA 1970 (amendment following tribunal determination),HMRC may by notice given to P make consequential amendments to the accelerated payment notice.”;
 - (b) in subsection (13), after “subsection (2)(c)” insert “ or an amendment made under subsection (7A) ”;
 - (c) after subsection (13) insert—
 - “(13A) If, as a result of an amendment made under subsection (7A), an amount payable to HMRC under section 223(2) is increased, the amount of that increase must be paid before—
 - (a) the end of the period of 30 days beginning with the day on which notice of the amendment is given, or
 - (b) if later, the end the payment period (within the meaning given by section 223(5)).”

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- (5) In Schedule 32 (accelerated payments and partnerships)—
- (a) in paragraph 4(2), at the end insert “ (and disregarding any dispute which has been referred to a tribunal under section 12ABZB(3) of TMA 1970 but not yet determined) ”;
 - (b) in paragraph 7—
 - (i) in paragraph (b), omit the final “and”;
 - (ii) after paragraph (b) insert—
 - “(ba) the reference in section 226(8) to an amendment to an accelerated payment notice made under section 227(7A) were to an amendment to a partner payment notice made under that section as applied by paragraph 8 of this Schedule, and”;
 - (c) in paragraph 8(2)—
 - (i) after paragraph (a) insert—
 - “(aa) section 227(7A) has effect as if the reference to a partnership return to which the accelerated payment notice relates were a reference to the partnership return in relation to which the partner payment notice is given;”;
 - (ii) in paragraph (b), omit the final “and”;
 - (iii) after paragraph (c) insert “and
 - (d) section 227(13A) has effect as if the reference to section 223(2) were to paragraph 6(2) of this Schedule and the reference to section 223(5) were to paragraph 6(5) of this Schedule.”
- 14 The amendments made by paragraphs 10 to 13 have effect in relation to returns relating to the tax year 2018-19 or any subsequent tax year.
- 15 (1) Schedule 14 to F(No.2)A 2017 (amendments relating to digital reporting etc) is amended as follows.
- (2) After paragraph 10B (as inserted by this Schedule) insert—

“10C In section 12ABZB (partnership return conclusive as to partnership shares)

 - (a) in the heading, before “Partnership return” insert “ Section 12AA ”;
 - (b) in subsections (1), (3), (5), (7), (8), (9), (11) and (12), before every “partnership return” insert “ section 12AA ”.”
 - (3) After paragraph 43 insert—

“43A In section 227(7A)(b) (withdrawal etc of accelerated payment notice), before “partnership return” insert “ section 12AA ”.”
 - (4) In paragraph 46, at the end insert—

“(5) In paragraph 8(2)(aa) (withdrawal etc of partner payment notices), before “partnership return”, in both places, insert “ section 12AA ”.”

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