These notes refer to the Finance Act 2012 (c.14) which received Royal Assent on 17 July 2012

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

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

Details of the Schedule

Part 3 – sections 196B to 196L and paragraphs 16-17

98. Part 3 follows the design of Part 1 including a reference to the SFA legislation. The main difference is the introduction of new qualifying conditions set out in new sections 196C, E and G that must be met in respect of ABC arrangements in order to qualify for upfront relief.

99. The main provisions (new sections 196B to 196G) of Part 3 will deny upfront relief to the employer on a contribution paid using an ABC arrangement if the arrangement does not meet the new qualifying conditions. Instead deductions against the profits or income of the employer will be given in respect of each payment that the employer makes to the pension scheme (the lender) directly or indirectly under the income stream ("pay as you go" relief). Amounts of an income stream, which were previously taxable in the hands of the employer, are likely to cease to be taxable upon the transfer of the income stream to the lender or a connected person (the lender etc). However, if the arrangement is an unacceptable SFA with the contribution paid on or after 22 February, relief is only given to the finance charge under the SFA rules.

100. There is a revenue protection provision (new section 196I) to ensure that, where an arrangement is an acceptable SFA and has received upfront relief, excess tax relief is recovered when certain changes or events occur. A balancing tax charge will arise by treating the outstanding financial liability immediately before these events as an amount of income or profit of the employer. If the financial liability is only reduced in part, then only the excess relief will be recovered at the time when that event occurs.

101. The provisions will have effect from 22 February 2012 with the exception of events that are set out in new sections 196I(6) and 196J (see paragraphs 45, and 48 to 50 above which describe similar provisions in section 196G(3) and 196H in Part I); the provisions will only have effect on those events that occur on or after 21 March 2012.

102. A series of new provisions – new sections 196H, 196K and 196L – provide for supplementary provisions and application. Paragraph 16 makes consequential changes and paragraph 17 makes provision for commencement of the new provisions.

The simple case – new sections 196B and 196C

103. All the conditions for the simple case as set out in Part 1 (see paragraphs 21-26 above) remain unchanged with the exception of Condition B where the reference is made to an acceptable SFA rather than a SFA. This new reference is required in relation to new qualifying conditions which are set out in new section 196C.

104. New section 196C set out the following conditions that must be met for those ABC arrangements that fall within Conditions A, B and C of new section 196B before they can qualify as an acceptable SFA:

- 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 being the responsible authority must be the direct lender giving an “advance” (the pension scheme investment) to the employer;
- 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 amount due at intervals of no more than one year to the next working day and must be received by the pension scheme within three months from the due date to form part of the sums held for the purposes of the pension scheme. In determining if this requirement is met, certain planned increases to the payments can be ignored but such increase must be set at the outset and cannot be higher than the greatest of the increase in the consumer prices index, the retail prices index or 5% per annum;
- the first payment must be due no later than one year after the day on which the advance is paid;
- the total amount of the payments due to the pension scheme must not be less than the contribution; and
- at the outset, no commitment has been given to a “relevant person” (which is not the responsible authority as defined in new section 196C(11)) directly or indirectly and the commitment is to secure that a person receives money or another asset that is linked to the making of any payment in respect of the security.

105. New section 196C(10) defines “relevant person” which has the same meaning as “relevant person” (as defined in paragraph 11(8) of the new Schedule) in relation to Amount C. New section 196C(11) stipulates that the “responsible authority” means the trustees or the persons in control of the management of the pension scheme.

The complex case – new sections 196D to 196G

106. New sections 196D to 196G deal with complex types of ABC arrangement involving a partnership receiving the advance, and changes in profit sharing arrangements in relation to the lender etc as set out in Part 1 (see paragraphs 27-36 above). As with the simple case, the only change in the conditions for the complex case is in relation to Condition B where the reference is made to an acceptable SFA as set out in new sections 196E and G respectively.

107. The new qualifying conditions are similar to those applicable in the simple case (see paragraphs 104 and 105 above) with the exception that a partnership is the party that receives the advance from the pension scheme and references to payment in respect of security are replaced by references to drawing (including the receiving of distributions from the partnership) and other payment.

Revenue protection provisions – new sections 196I and 196J

108. New section 196I is a new provision to recover excess relief given to an ABC arrangement that is an acceptable SFA. It is extended by new section 196J from 21 March 2012 which describes further events which cause new section 196I to apply.

109. New sections 196I(1), (3), (9) and (10) stipulate the conditions when a balancing charge will arise to recover excess relief from the employer by treating the outstanding financial liability immediately before:

- a change to the original position of the lender (the responsible authority or the pension scheme), for example, when the annual payments are suspended by the employer exercising a right set out in the ABC arrangement at the outset;
- an occurrence or a non-occurrence of an event that does not accord with the original position;
- the financial liability in respect of the advance being reduced to nil by an event other than the making of payments;
- a commitment to a relevant person is given in a similar way to the commitment set out in new section 196C, E or G; or
- an occurrence of an event as set out in new section 196J

as profit or income in the relevant period of accounts.

New section 196I applies to this type of ABC arrangement where the contribution is paid on or after 22 February 2012, but in the case of a "new section 196J" event, it only has effect if the event takes place on or after 21 March 2012.

110. New sections 196I(2), (3), (9) and (10) provide that the amount of the reduction in the relevant financial liability other than by the making of payments will be treated as profit or income chargeable on the employer in the period in which the event occurs.

111. New section 196I(4) sets out that the amount treated as profit or income under new sub-section 3 cannot exceed the total amount on which relief has been given to the employer in respect of the arrangement.

112. New section 196I(5) provides that where a balancing charge applies under sub-section 3, the arrangement ceases to be a SFA.

113. New section 196I(6) cancels the effect of the application of new section 196I if a person is to be placed in a tax position which is more advantageous than the tax position in which the person would have been had new section 196I never applied. This subsection will have effect from 21 March 2012.

114. New section 196I(7) stipulates that new section 196I will not apply in cases where the change in the lender's original position, or the occurrence or non-occurrence of the event arises from an administrative error which is remedied promptly or changes in the pension scheme trustees or the persons in control of the management of the pension scheme.

115. New section 196I(8) stipulates that the occurrence or non-occurrence can be one that is authorised by a term of the ABC arrangement.

116. The terms used in new section 196I are defined in new section 196I(10).

117. New section 196J is an extension of new section 196I, which sets out further events that fall within new section 196J(1).

118. The relevant events are those where the employer, who has an ABC arrangement with the contribution paid on or after 22 February 2012, ceases to be chargeable to tax on or after 21 March 2012.

119. New sections 196J(2) and (3) set out the circumstances under which such cessation takes place. There are different circumstances depending on whether the employer's business is a company, a limited liability or other type of partnership. These circumstances include cases where the employer company goes into administration or winds up, or the employer partnership dissolves or when an individual who is the employer dies.

Treatment of advances under acceptable SFAs – new section 196K

120. New section 196K provides that any advance under an ABC arrangement which is an acceptable SFA with the contribution on or after 22 February 2012 and which gives rise to a loan within the meaning of Chapter 3 of FA 2004 is not prevented from meeting the definition of a scheme administration employer payment in S180 FA 2004. This means that no unauthorised payment charge will arise under section 208 FA 2004 purely by virtue of the fact that the advance gives rise to a loan which is not capable of meeting the conditions of section 179 FA 2004.

Supplementary provisions and application – new section 196L and paragraph 16

121. New section 196L provides a number of definitions and other supplementary provisions for new sections 196B to 196K.

122. New section 196L(2) explains the references to relief being given in respect of a contribution paid by an employer under a registered pension scheme.

123. New section 196L(3) refers to the meaning of connected persons in section 1122 of CTA 2010.

124. New section 196L(4) provides that sections 774 (accounts), 775 (arrangements) and 776 (assets) of CTA 2010 apply to new sections 196B to 196K in the same way as they do for the purposes of Part 16 of CTA 2010.

125. New section 196L(5) provides that a reference to a disposal of an asset includes:

- anything constituting a disposal of an asset for the purposes of the Taxation of Chargeable Gains Act 1992; and
- 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 that all types of asset transfers in relation to ABC arrangements are covered.

126. New section 196L(6) stipulates that section 776(2) of CTA 2010 applies for the purposes of sub-section 5(b) set out above.

127. New section 196L(7) sets out the meaning of "non-working day".

128. Paragraph 16 make a consequential amendment to section 280(1) FA 2004 (abbreviations) by inserting a reference to CTA 2010.

Commencement and application of new sections 196B to 196L – paragraph 17

129. Paragraph 17 provides that the amendments made by new sections 196B to 196L shall have effect on contributions paid by employers on or after 22 February 2012 with the exception of the events set out in new sections 196I(6) and 196J (only those events that take place on or after 21 March 2012 are covered).