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 4 - Transitional rules (paragraphs 18 to 31)

Detail of transitional rules

Paragraphs 29 to 31 – adjustments

157. Paragraphs 29-31 provide 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.

158. 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 22 February 2012. Any deductions and payments given before 22 February 2012 will be cancelled out in the overall adjustment so the amounts set out in paragraphs 29 to 31 do not include these sums. The adjustment can result in either a charge on the employer or further tax relief.

159. The following example illustrates how the adjustment mechanism as set out in paragraphs 29-31 works in relation to an unacceptable SFA.

Example B

The ABC arrangement is a SFA with contribution paid before 22 February 2012 but it is not an acceptable SFA because of its contingent features.

Pension scheme deficit = £400m

Contribution paid under the ABC arrangement = £400m

Yearly payment = £22.5m (of which £22m is the finance charge as the arrangement is a SFA) payable for 20 years.

Two yearly payments were made before 29 November 2011.

The last payment will vary between £0.5m and £440m depending on the pension deficit level at year 20, i.e. it is a contingent payment.

Assume that the ABC arrangement will be completed on the day on which it is to be completed at the beginning of 22 February 2012.

Using Amounts A, B and C as defined in paragraph 29(1)

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

Amount B (total amount of denied deductions on yearly payments under paragraphs 26 and 27) = £22.5m x 18 years = £405m

Amount C = £0.5m (assuming the pension scheme does not have a deficit at year 20 and the employer agrees with the pension scheme to pay the minimum amount for the last payment)

Pre-February deductions on yearly payments = Pre-February yearly payments (which we call Amount D which is **not** included in the Schedule) = £22.5m x 2 years = £45m.

As Amount B + Amount C exceeds Amount A by £5.5m, additional relief arises under paragraph 31 of the Schedule.

So the total relief given to the employer is the sum of Amount A (£400m) + Amount D (£45m) plus the adjustment relief of £5.5m (see the item above). This is equal to £450.5m.

Total payments received by the pension scheme = Amount D + Amount B + Amount C = £45m + £405m + £0.5m = £450.5m which equals the total amount of relief given.

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

160. Paragraph 29(1) defines Amount A, Amount B and Amount C for the purposes of making tax adjustments as set out in paragraphs 30 and 31:

- 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 a relevant provision which is, as defined in paragraphs 29(2) and (3), paragraphs 23, 24 or 25, or the relevant charging provision as set out in paragraph 26, or the provision not to treat interest payment as interest as stipulated in paragraph 27, provided that there is no overlap of those payments which are denied relief under the separate provisions; 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.

161. Paragraph 29(4) defines "income deduction" for the purposes of sub-paragraph 1.

162. Paragraphs 29(5) and (6) provide that where, had the employer's contribution been paid on or after 22 February 2012, new section 196B in Part 3 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.

163. Paragraphs 29(7) and (8) provide that where, had the employer's contribution been paid before 22 February 2012, new sections 196D or 196F in Part 3 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.

164. Paragraphs 29(9) 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.

165. Paragraph 29(10) defines the 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 29(11), 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.

166. Paragraph 30 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.

167. Paragraphs 30(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 in which the completion day falls.

168. Paragraph 31 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 to which the employer is to be given to relief in accordance with section 196 FA 2004.