

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

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

Details of the Schedule

Part 5 – Related changes to structured finance legislation¹ (paragraphs 32 to 42)

169. Paragraphs 32 – 36 provide for amendments to the structured finance legislation in Chapter 5B of Part 13 ITA 2007.
170. Paragraph 33 amends section 809BZA of ITA 2007, providing that for type 1 finance arrangements, it does not matter if the entitlement of the lender or a person connected with the lender is subject to any condition.
171. Paragraph 34 amends condition A in section 809BZF of ITA 2007 so that an arrangement may be a type 2 finance arrangement where a person connected with the transferor is a member of the partnership immediately after the disposal. The paragraph also provides that type 2 finance arrangements will include finance arrangements where the determination of the shares in the partnership's profits of the person involved in the relevant change is subject to any condition.
172. Paragraph 35 amends section 809BZH ITA 2007, which applies to type 2 finance arrangements, so that any mention of the transferor additionally includes a person connected with the transferor. This applies to section 809BZH(3) ITA 2007, which defines relevant effects, with the consequence that a relevant effect as defined in that subsection may now arise in respect of a person connected with the transferor, as well as in respect of a transferor. It also applies to section 809BZH(2) ITA 2007, with the consequence that where that subsection applies, it may provide additionally that Part 9 of the Income Tax (Trading and Other Income) Act 2005 is to have effect as if the relevant effect had not occurred in relation to a person connected with the transferor.
173. Paragraph 36 amends section 809BZJ ITA 2007 so that for type 3 finance arrangements, it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change is subject to any condition.
174. Paragraphs 37 to 41 provide for amendments to the structured finance legislation in Chapter 2 of Part 16 CTA 2010. Paragraph 38 amends section 758 CTA 2010, so that for type 1 finance arrangements, it does not matter if the entitlement of the lender, or a person connected with the lender is subject to any condition.
175. Paragraph 39 amends condition A in section 763 of CTA 2010 so that an arrangement may be a type 2 finance arrangement where a person connected with the transferor is a member of the partnership immediately after the disposal. The paragraph also provides that type 2 finance arrangements will include finance arrangements where the

¹ This is the legislation concerning SFAs, which are in turn defined under new section 196J(1)(4) in Part 1 of this Schedule as an arrangement which is a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 Corporation Tax Act 2010 and Chapter 5B of Part 13 Income Tax Act 2007.

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

determination of the shares in the partnership's profits of the person involved in the relevant change is subject to any condition.

176. Paragraph 40 amends section 765 CTA 2010, which applies to type 2 finance arrangements, so that any mention of the transferor additionally includes a person connected with the transferor. This applies to section 765(3) CTA 2010, which defines relevant effects, with the consequence that a relevant effect as defined in that subsection may now arise in respect of a person connected with the transferor, as well as in respect of a transferor. It also applies to section 765(2) CTA 2010, with the effect that where that subsection applies, it may provide additionally that sections 1259 to 1265 CTA 2009 are to have effect as if the relevant effect had not occurred in relation to a person connected with the transferor.
177. Paragraph 41 amends section 767 CTA 2010 so that for type 3 finance arrangements, it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change is subject to any condition.
178. Paragraph 42 states that the amendments made by Part 5 are to have effect whenever the arrangements are made, but that in relation to arrangements made before 21 March 2012, an amount is to be charged to tax or brought into account in calculating any income for tax purposes or deducted from any income for tax purposes only if the amount arises on or after 21 March 2012. It also states that the amendments in Part 5 have no effect for the purposes of new section 196I(4) in Part 1 and have no effect for the purposes of new sections 196C(2)(b), 196E(2)(b) or 196G(2)(b) in Part 3 if the ABC arrangement is one where the contribution is paid before 21 March 2012.