

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

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

Summary

1. [Section 48](#) and the first four parts of Schedule 13 amend Part 4 of Finance Act (FA) 2004 as it relates to employer pensions tax relief by inserting a number of new sections into FA 2004 as well as providing transitional provisions in order to ensure that the amount on which relief is given in respect of a contribution paid by any employer accurately reflects, but does not exceed, the payments received by the registered pension scheme.
2. Specifically, the Schedule will apply to asset-backed contribution (ABC) arrangements used by some employers to fund their registered pension schemes.
3. An ABC arrangement involves offsetting an employer's legal obligation to pay a pension contribution against the registered pension scheme's legal obligation to purchase an asset from the employer directly or indirectly, using the contribution. There are also ABC arrangements that involve an upfront monetary contribution.
4. These types of arrangement enable an employer, or a person connected with the employer (hereafter referred to as "the employer etc"), to provide for payments over a period of time (or an income stream) to the pension scheme. A more complex ABC arrangement typically involves a special purpose vehicle (for example, a partnership of which the employer is a member (an employer-related partnership)), in which case the employer provides the pension scheme with the income stream indirectly through the vehicle. The income stream is derived from assets of the employer or a connected party including an employer-related partnership.
5. Part 5 of the Schedule contains minor and related amendments to the structured finance legislation¹, which concerns structured finance arrangements (SFAs).
6. Detail of the commencement provisions applicable to these parts is given in the following sections. References to Parts, sections or paragraphs are references to the Schedule unless otherwise stated. Where a reference to a section can mean a reference to it in Part 1 or Part 3, then a reference to the relevant Part is also given.

Details of the Schedule

7. [Part 1](#) inserts new sections 196B to 196I after section 196A FA 2004. These provisions have effect on the contribution paid between 29 November 2011 and 21 February 2012 under an ABC arrangement.
8. However, new section 196G also applies to pre-November arrangements that are SFAs. In addition, it contains provisions that have effect on certain events that take place on or after 21 March 2012. There are two types of events. The first type places a person in

¹ This legislation is set out in Chapter 2 of Part 16 Corporation Tax Act 2010 for corporation tax purposes and Chapter 5B of Part 13 Income Tax Act 2007 for income tax purposes.

a more advantageous tax position as a result of the application of the new section 196G. The second type relates to an employer ceasing to be chargeable to tax as set out in new section 196H.

9. **Part 2** (paragraphs 4-14) introduces transitional provisions for ABC arrangements where the contribution was paid before 29 November 2011 and the SFA rules do not apply. For those arrangements where the contribution was paid before 22 February 2012, which are ‘acceptable’ SFAs², the transitional provision is new section 196G in Part 1 (detail in the next section). If they are unacceptable SFAs³, then Part 4 (see paragraph 13 below) applies from 22 February and new section 196G in Part 1 only applies to events that occur between 29 November and 21 February.
10. There are also provisions to recover excess relief when an employer ceases to be chargeable to tax by regarding the date of such cessation as the date on which the arrangement is completed. These provisions have effect from 21 March 2012.
11. **Part 3** inserts new sections 196B to 196L after section 196A FA 2004. These provisions have effect on the contribution paid on or after 22 February 2012 under an ABC arrangement.
12. However, new section 196I in Part 3 contains provisions that have effect on certain events that take place on or after 21 March 2012. There are two types of events. The first type places a person in a more advantageous tax position as a result of the application of the new section 196I. The second type relates to an employer ceasing to be chargeable to tax as set out in new section 196J in Part 3.
13. **Part 4** (paragraphs 18-31) introduces transitional provisions for those ABC arrangements where the contribution was paid before 22 February 2012, the arrangement is not an acceptable SFA and Part 2 does not apply. There are also provisions similar to those included in new section 196J in Part 3 and these have effect from 21 March 2012.
14. **Part 5** (paragraphs 32-42) provides for minor and related changes to the SFA rules. They have effect in relation to arrangements whenever made but only on those amounts arising on or after 21 March 2012.

Part 1 – sections 196B to 196I and paragraphs 2-3

15. The new provisions in Part 1 follow the design of the structured finance legislation (see footnote 1) which applies where a person enters into a SFA. This is an arrangement where in accordance with generally accepted accounting practice, a person (the borrower) records in the borrower’s accounts a financial liability in respect of a sum (the advance) paid by “the lender”, and the advance will be repaid by an income stream.
16. In the case of ABC arrangements, the obligations of the employer and the registered pension scheme give rise to a situation similar to a SFA, where “the borrower” is the employer etc or an employer-related partnership or other relevant person, and the borrower receives money or another asset (the advance) from the pension scheme (the lender). The advance is wholly or partly funded out of the employer’s contribution and the lender is entitled to a series of payments in respect of the borrower’s asset (the security).
17. The main provisions (new sections 196B to 196D) will deny pensions tax relief (upfront relief) to the employer on the contribution paid using the ABC arrangement if the SFA rules do not apply. 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

² Acceptable SFAs are those ABC arrangements that meet the qualifying conditions set out in Part 3 of this Schedule and also fall within the SFA rules.

³ Unacceptable SFAs are those ABC arrangements that do not meet the qualifying conditions in Part 3.

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).

18. There are also revenue protection provisions (new sections 196F to 196H) –
 - an anti-avoidance provision (new section 196F) to prevent any employer from securing tax relief that exceeds the value made to the pension scheme; and
 - a separate set of provisions (new sections 196G and 196H) to recover relief given to an ABC arrangement that is an acceptable SFA when the financial liability is later reduced by an event other than the making of payments including an event where the employer ceases to be chargeable to tax or when a person is placed in a more advantageous tax position by the application of new section 196G.
19. However, in the examples of the events mentioned in the second bullet of the last paragraph, new sections 196G and 196H will only have effect when either event takes place on or after 21 March 2012. Otherwise these provisions will have effect on events that take place on or after 29 November 2011.
20. A series of new provisions – new sections 196E, 196I and 196J – provide for supplementary provisions and application. Paragraph 2 makes consequential changes and paragraph 3 makes provision for commencement of the new provisions.

The simple case – new section 196B

21. New section 196B deals with the simple case where the employer etc is the borrower and the lender is a person who acts for, or is otherwise connected with, the registered pension scheme. It stipulates in sub-section 1 the conditions under which relief under section 196 FA 2004 (upfront relief) will **not** be given to the employer (the borrower) in respect of a contribution paid under the ABC arrangement.
22. New sections 196B(2), (4) and (5) set out these conditions as follows:
 - Condition A is that -
 - the borrower (employer etc) receives the advance which is wholly or partly paid or provided by the lender etc out of the contribution in respect of the arrangement;
 - the borrower or a person connected with the borrower (borrower etc) disposes of an asset (the security) to or for the benefit of the lender etc; and
 - the lender etc is entitled to payments in respect of the security.
 - Condition B is that the arrangement is **not** a SFA as defined in new section 196J(4); and
 - Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned above is determined (wholly or partly) on the basis that, in essence, some part of the advance represents a loan (including any advance of money in accordance with new section 196B(7)(c)) which is to be repaid by the payment(s).
23. New section 196B(2) also makes it clear that those arrangements that fall within new section 196C(2) and 196D(2) do not fall within new section 196B(2).
24. New section 196B(3) states that condition A is met even if an entitlement of the lender etc is subject to any condition.
25. New section 196B(6) makes it clear that condition C is met even if repayments of the loan might be subject to any condition, or the accounts of any person do not record a financial liability in respect of the advance or is not otherwise treated as representing

a loan for the purposes of the accounts of any person. However, this is subject to all the relevant circumstances being taken into account in order to get to the essence of the matter.

26. New section 196B(7)(a) ensures that references to a person connected with the borrower or lender do not include the lender or borrower respectively. This means that new section 196B cannot be triggered accidentally just because the borrower and lender are connected. New section 196B(7)(b) ensures that if the borrower is not the employer, the reference to a person connected to the borrower includes a person connected with the employer who would not otherwise be connected with the borrower.

The complex case – new sections 196C and 196D

27. New sections 196C and 196D 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.
28. New section 196C will apply where, as part of the ABC arrangement which is used to make the contribution, the employer etc (the transferor) transfers an asset to a partnership and is a member of that partnership immediately after the transfer (whether or not a member immediately before the transfer), and there is a relevant change in relation to the partnership as set out in new section 196E. In that circumstance, new section 196C(1) provides that the employer will **not** receive upfront tax relief under section 196 FA 2004 in respect of the contribution paid to the registered pension scheme when conditions A and B are met.
29. New sections 196C(2) and (5) set out these conditions as follows:
- Condition A is that -
 - the transferor is the employer etc;
 - the transferor or a person connected with the transferor (transferor etc) disposes of the security to a partnership and is a member of the partnership immediately after the disposal;
 - the partnership receives the advance, which is wholly or partly paid or provided out of the employer's contribution, from a person (the lender) other than the transferor;
 - there is a relevant change in relation to the partnership as set out in new section 196E; and
 - the share in the partnership's profits of the person involved in the relevant change is determined by reference to payments in respect of the security.
 - Condition B is that the arrangement is **not** a SFA as defined in new section 196J(4).
30. New section 196C(3) ensures that where the transferor is not the employer, the reference to a person connected to the transferor includes a person connected with the employer who would not otherwise be connected with the transferor.
31. New section 196C(4) provides that condition A is met even if the determination of the share of partnership's profits is subject to any condition.
32. New section 196D will apply where the ABC arrangement which the employer uses to make the contribution to the pension scheme also involves a partnership receiving the advance but the security is held by a pre-existing partnership. As part of the ABC arrangement, the partnership receives an advance that is funded in some way by the employer's contribution. In that circumstance, new section 196D(1) provides that the employer will **not** receive upfront tax relief under section 196 FA 2004 in respect of the

contribution paid to the registered pension scheme under the ABC arrangement when conditions A and B are met.

33. New sections 196D(2) and (4) set out these conditions as follows:
- Condition A is that -
 - a partnership holds the security at any time before the ABC arrangement is made;
 - the partnership receives the advance which is wholly or partly paid or provided by the lender out of the employer's contribution in respect of the arrangement;
 - there is a relevant change in relation to the partnership as set out in new section 196E; and
 - the share in the partnership's profits of the person involved in the relevant change is determined by reference to payments in respect of the security.
 - Condition B is that the arrangement is **not** a SFA as defined in new section 196J(4).
34. New section 196D(3) provides that condition A is met even if the determination of the share of partnership's profits is subject to any condition.
35. New section 196E provides that a relevant change in relation to the partnership occurs (which in turn enables the conditions in new sections 196C and 196D to be met) if one of the conditions - condition X or condition Y - is met. New sections 196E(2) and (3) set out these conditions as follows:
- Condition X is that the lender etc joins the partnership in connection with the ABC arrangement at any time; or
 - Condition Y is that there is a change in the lender etc's share of the partnership's profits in connection with the ABC arrangement.
36. References used in this new section and in new sections 196C and 196D are explained in new sections 196E(4) and (5).

Anti-avoidance – new section 196F

37. New section 196F is an anti-avoidance provision to deny upfront relief or recover any relief already given when the employer etc sets up an arrangement (the avoidance arrangement) mainly for the purpose of securing tax relief that will exceed the amount the employer should receive relative to the total amount of payments the employer will make to the pension scheme under the ABC arrangement. This provision will only apply to ABC arrangements where the contribution is paid between 29 November 2011 and 21 February 2012 and its effect continues after 21 February.
38. New section 196F(1) provides that this new provision applies where the employer etc enters into an avoidance arrangement and where upfront relief for the ABC arrangement is not denied under new sections 196B, 196C, or 196D because the arrangement is a SFA.
39. New section 196F(2) provides that where the avoidance arrangement is entered into at or before the time when the advance referred to in new sections 196B, 196C or 196D is received, upfront relief is denied on the contribution paid under the ABC arrangement by deeming that Condition B in one of those sections is met.
40. New section 196F(3) provides that where the avoidance arrangement is entered into after the advance is received, then the amount of the relevant financial liability at the time the avoidance arrangement is entered into is treated as profit or income that is charged to the employer for the period in which that time falls.

41. New section 196F(4) sets out that the amount treated as profit or income is not to exceed the total amount of relief given to the employer in respect of the ABC arrangement. The terms used in this new section are defined in new section 196F(5).

Relief recovery for a financial liability reduction by an event other than the making of payments – new sections 196G and 196H

42. New section 196G is a new provision to recover upfront relief given to an ABC arrangement (including a pre-November arrangement) that is an acceptable SFA when the financial liability is later reduced by an event other than the making of payments. This provision applies to this type of ABC arrangement where the contribution is paid at any time before 21 February 2012 but in the case of those arrangements with contributions paid before 29 November 2011, it only applies where the event occurs on or after 29 November 2011. There are two exceptions to these commencement provisions and they concern new section 196G(3) and new section 196H (which is an extension of new section 196G) - see details in paragraphs 45, and 48 to 50 below.
43. New section 196G(1) provides that the section applies where the ABC arrangement is an acceptable SFA, and an event, other than the making of payments to the pension scheme, occurs which results in the advance (or part of it) no longer being recorded as a financial liability in the employer's (or partnership's) accounts.
44. If the financial liability is reduced to nil, the ABC arrangement will cease to be a SFA under new section 196G(2).
45. New section 196G(3) cancels the effect of the application of new section 196G 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 196G never applied. This subsection will have effect from 21 March 2012.
46. New section 196G(4) provides that the amount of the reduction in the relevant financial liability immediately before this event will be treated as profit or income chargeable on the employer in the period in which the event occurs.
47. New section 196G(5) provides that the amount treated as profit or income under new sub-section 4 cannot exceed the total amount of relief already given to the employer in respect of the arrangement. The terms used in new section 196G are defined under new section 196G(6).
48. New section 196H is an extension of new section 196G as set out in new section 196H(1).
49. New section 196H provides in new subsections (2) and (3) that the financial liability is treated as being reduced to nil in the relevant period of accounts⁴ when the employer who has an ABC arrangement where the contribution was paid between 29 November 2011 and 21 February 2012, ceases to be chargeable to tax on or after 21 March 2012.
50. New sections 196H(4) and (5) 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 also 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 that fall within the SFA rules – new section 196I

51. New section 196I provides that any advance made before 22 February 2012 under an ABC arrangement that is a SFA and that gives rise to a loan within the meaning

⁴ The relevant period of accounts is either (a) the relevant accounting period if the employer etc is a company or (b) the relevant tax year if the employer etc is an unincorporated business.

of Chapter 3 of FA 2004 is not prevented from meeting the definition of a scheme administration employer payment in S180 FA 2004 regardless of whether the advance also meets the definition of a loan for the purposes of 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 196J and paragraph 2

52. New section 196J provides a number of definitions and other supplementary provisions for new sections 196B to 196I.
53. New section 196J(2) explains the references to relief being given in respect of a contribution paid by an employer under a registered pension scheme.
54. New section 196J(3) refers to the meaning of connected persons in section 1122 Corporation Tax Act (CTA) 2010.
55. New section 196J(4) explains the references to a SFA are to the definition of a type 1, type 2 or type 3 arrangement under Part 13 of the Income Tax Act (ITA) 2007 (for income tax purposes) or Part 16 of CTA 2010 (for corporation tax purposes).
56. New section 196J(5) provides that sections 774 (accounts), 775 (arrangements) and 776 (assets) of CTA 2010 apply to new sections 196B to 196I in the same way as they do for the purposes of Part 16 of CTA 2010.
57. Paragraph 2 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 196J – paragraph 3

58. Paragraphs 3(1) and (2) provide that the amendments made by new sections 196B to 196J shall have effect for contributions paid by employers between 29 November 2011 and 21 February 2012.
59. Paragraph 3(3) provides that new section 196G also has effect for contributions paid before 29 November 2011 where the relevant event as described in new section 196G(1) (d) occurs on or after 29 November 2011. Where this paragraph applies, new sections 196B to 196D also have effect for the purpose of applying new section 196G.
60. Paragraph 3(4) provides that new section 196G(3) only has effect on an event as set out in that section when it takes place on or after 21 March 2012.
61. Paragraphs 3(5) and (6) respectively provide that new sections 196H and 196I also have effect for contributions paid before 29 November 2011 and assumes that new sections 196B to 196D have effect in relation to these contributions for the purposes of applying new sections 196H and 196I.

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 brought 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*⁵ 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.

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

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.

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.

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 subsection 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 subsection 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).

Part 4 - Transitional rules (paragraphs 18 to 31)

130. **Part 4** contains transitional provisions which apply the “relevant effect” of the SFA rules to those ABC arrangements where the contribution was paid before 22 February 2012, they are not an acceptable SFA, and Part 2 does not apply. These rules apply to income amounts that arise on or after 22 February 2012. 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.
131. The transitional provision that will apply to ABC arrangements which are an acceptable SFA, and the contribution is paid on or after 22 February 2012 is new section 196I of Part 3. This section recovers any excess relief given where the relevant change or event occurs on or after either 22 February or 21 March 2012 as set out in the preceding section concerning Part 3 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 18 to 22 – application and interpretation

132. Paragraphs 18-22 provide for application and interpretation of the terms used in Part 4.
133. Paragraph 18 provides that these transitional provisions will apply where Part 2 does not apply and an ABC arrangement with the contribution paid at any time would **not** have received relief under new sections 196B, 196D or 196F of Part 3 had the contributions been paid on or after 22 February 2012, and the arrangement is not ‘completed’ as determined under paragraph 20 before that date. However, the reference to one year in new sections 196C(5), 196E(5) and 196G(5) should be read as a reference to 18 months for this provision.
134. Paragraph 19 provides that for the purposes of Part 4, the terms used in new sections 196B, 196D or 196F 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.
135. Paragraph 20 provides that an ABC arrangement that would be denied upfront relief under new section 196B, 196D or 196F had the contribution been paid on or after 22 February 2012 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.
136. Paragraph 21 provides that “the completion day” is the earliest of the day on which the ABC arrangement is to be completed as determined at the beginning of 22 February 2012, the day on which the arrangement is actually completed, the day which is the last day of the period of 25 years from the day on which the employer’s contribution is paid, or the day on which either a completion event occurs, or, after 21 March 2012, the day on which an event as set out in paragraph 22 of this Schedule 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. 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.

- 137. A completion event occurs 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.
- 138. A “paragraph 22” event occurs when the employer who has an ABC arrangement ceases to be chargeable to tax. Paragraph 22 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 in the section covering Part 1 of the Schedule).
- 139. These two paragraphs (21 and 22) 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 29 to 31.

Paragraphs 23 to 28 – certain tax consequences not to have effect

- 140. Paragraphs 23-28 deem the relevant ABC arrangements not to have “the relevant effect” as set out in paragraphs 23(3), 24(3) and 25(2). This means that on or after 22 February 2012, 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 brought back into charge on the employer etc or other relevant person.
- 141. Paragraph 23(1) provides that paragraph 23 applies to an ABC arrangement where, had the employer’s contribution been paid on or after 22 February 2012, new section 196B in Part 3 would have applied so that the arrangement would have the “relevant effect”. The “relevant effect” defined in paragraph 23(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.
- 142. Paragraph 23(2) deems the arrangement **not** to have the “relevant effect” which is set out in paragraph 23(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.
- 143. Paragraph 23(4) defines the relevant effect if the borrower is a partnership.
- 144. Paragraph 23(5) provides that “amount” in sub-paragraphs 3 and 4 means an amount that arises on or after 22 February 2012 but on or before the completion day as set out in paragraph 21. This means that before the completion day, this paragraph prevents relief for income payments made on or after 22 February 2012 or brings back income amounts into charge from that date.
- 145. Paragraph 24(1) provides that paragraph 24 applies to an ABC arrangement where, had the employer’s contribution been paid on or after 22 February 2012, new section 196D in Part 3 would have applied so that the ABC arrangement would have the “relevant effect”. The “relevant effect”, defined in paragraph 24(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.
- 146. Paragraph 24(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).

147. Paragraph 24(4) provides that for the purposes of sub-paragraph 3, “amount” means an amount that arises on or after 22 February 2012 but on or before the completion day as set out in paragraph 21. This means that before the completion day, this paragraph prevents relief for income payments made on or after 22 February 2012 or brings back income amounts into charge from that date.
148. Paragraph 24(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 196D(2)(g) in Part 3 were payable to the partnership before the relevant change occurred.
149. Paragraphs 25(1) provides that paragraph 25 applies to an ABC arrangement where had the employer’s contribution been paid on or after 22 February 2012, new section 196F in Part 3 would have applied so that the ABC arrangement would have the “relevant effect”. The “relevant effect”, defined in paragraph 25(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.
150. Paragraph 25(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.
151. Paragraph 25(4) provides that for the purposes of sub-paragraph 2, “amount” means an amount that arises on or after 22 February 2012 but on or before the completion day as set out in paragraph 21. This means that before the completion day, this paragraph prevents relief for income payments made on or after 22 February 2012 or brings back income amounts into charge from that date.
152. Paragraph 25(5) deems the arrangement **not** to have the “relevant effect” as set out in paragraph 25(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).
153. Paragraph 25(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 196F(2)(e) in Part 3 were payable to the partnership before the relevant change occurred.
154. Paragraph 26 applies instead of paragraph 23, 24 or 25 if a relevant charging provision under the SFA rules applies to the ABC arrangement.
155. Paragraph 27 applies not to treat the amount of the relevant interest provision as interest if the amount arises on or after 22 February 2012 but on or before the completion day.
156. Paragraph 28 stipulates that new section 196G in Part 1 does not apply in relation to the employer’s contribution if the relevant event occurs on or after 22 February 2012. It also states that new section 196H in Part 1 does not apply to the contribution.

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.

Part 5 – Related changes to structured finance legislation⁶ (paragraphs 32 to 42)

169. Paragraphs 32 – 36 provide for amendments to the structured finance legislation in Chapter 5B of Part 13 ITA 2007.

⁶ 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.

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 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.

Background Note

179. This Schedule limits the amounts on which tax relief will be given to an employer in respect of a contribution paid under an asset-backed arrangement so that the relief accurately reflects, but does not exceed, the total amount of payments made to the registered pension scheme. It also contains minor and related changes to the structured finance legislation in the last part of the Schedule (Part 5).
180. The effects of the Schedule do not apply to any straightforward monetary sum that a sponsoring employer gives to the registered pension scheme as a pension contribution or any employer's transfer of an asset to the pension scheme which is unconditional or outright so that the pension scheme gains complete ownership of the asset on an irrevocable basis. In these cases, relief will continue to be given to the employer in respect of the contribution paid under section 196 in Finance Act 2004 provided that the requirements of that section are met.
181. At Budget 2011, the Government announced that it would consult on changing tax rules to prevent unintended and excessive relief arising from employer asset-backed pension contributions, while preserving as much flexibility as possible for employers and their pension schemes to use these contributions, as well as ensuring that the compliance process is deliverable for Government without creating undue burdens on HM Revenue & Customs or customers.
182. A consultation document, *Employer Asset-backed Pension Contributions* was published on 24 May 2011 and the consultation closed on 16 August 2011. The document invited views on two broad options: (a) providing upfront relief to the employer only for giving a monetary contribution or a cash-convertible asset to the pension scheme, and (b) providing either upfront relief or "pay as you go" relief depending on whether the structured finance legislation would apply to the asset-backed arrangement in order to ensure that the economic substance of the arrangement would be accurately reflected and excessive relief would not arise. The main purpose of the consultation was to establish which option would better meet the Government's objectives as set out in the last paragraph while also ensuring that pensions tax relief would remain fair and sustainable in the long term.
183. Following the consultation, legislation was announced published on 29 November 2011 and 22 February 2012 respectively, which is designed on the basis of the second option above and informed by responses to and information received during the consultation and feedback received on the draft legislation. In order to prevent certain activity or behaviour in relation to these types of arrangement which brings a significant risk to the Exchequer, the legislation has effect from the respective dates of announcement.
184. Amendments to February and structured finance legislation were also announced on 21 March 2012 (Budget Day) to take immediate effect. These amendments are covered in a Budget supplementary document in the form of a Technical Note, which was published on the same day.
185. There are also relieving or clarifying changes to the February legislation, taking effect from 22 February 2012. The full set of legislation has been consolidated into Finance Act 2012 and published.
186. Further detail is available in the consultation document, the two Budget reports and other Budget supplementary documents, the
- Autumn Statement, the Written Ministerial Statements made in November and February, the summary of responses document, and the two Tax Information and Impact Notes published on 29 November 2011 and 22 February 2012.