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## SCHEDULES

### SCHEDULE 13

Section 48

#### EMPLOYER ASSET-BACKED PENSION CONTRIBUTIONS ETC

##### PART 1

###### DENIAL OF RELIEF FOR CONTRIBUTIONS PAID DURING PERIOD 29 NOVEMBER 2011 TO 21 FEBRUARY 2012

- 1 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert—

##### “196B Employer asset-backed contributions: denial of relief (1)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A, B and C are met.
- (2) Condition A is that—
  - (a) under an arrangement (“the asset-backed arrangement”)—
    - (i) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
    - (ii) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
    - (iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,
  - (b) the borrower is E or a person connected with E, and
  - (c) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),and the case is not one in relation to which either condition A in section 196C or condition A in section 196D is met.
- (3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.
- (5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence, the whole or a

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part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.

- (6) For the purposes of subsection (5) it does not matter—
- (a) that the repayment of the loan might be subject to any condition, or
  - (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,
- but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (7) For the purposes of this section—
- (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
  - (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
  - (c) “loan” includes any advance of money.

### **196C Employer asset-backed contributions: denial of relief (2)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
- (a) under an arrangement (“the asset-backed arrangement”) a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor is E or a person connected with E,
  - (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (d) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from a person (“the lender”) other than the transferor,
  - (e) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
  - (f) there is a relevant change in relation to the partnership (see section 196E), and
  - (g) under the asset-backed arrangement the share in the partnership’s profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.

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- (4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (5) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

### **196D Employer asset-backed contributions: denial of relief (3)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E's contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
  - (a) a partnership holds an asset (“the security”) at any time before an arrangement (“the asset-backed arrangement”) is made,
  - (b) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
  - (d) there is a relevant change in relation to the partnership (see section 196E), and
  - (e) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

### **196E What is a “relevant change in relation to the partnership” etc?**

- (1) For the purposes of sections 196C and 196D there is a relevant change in relation to the partnership if condition X or Y is met.
- (2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition Y is that—
  - (a) in connection with the asset-backed arrangement, there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.
- (4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.

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- (5) For the purposes of sections 196C and 196D references to the person involved in the relevant change are—
- (a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and
  - (b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

### **196F Employer asset-backed contributions: anti-avoidance**

- (1) This section applies if—
- (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met,
  - (d) at any time (“the relevant time”) E, or a person connected with E, enters into an arrangement (“the avoidance arrangement”), and
  - (e) the main purpose, or one of the main purposes, of E or the person connected with E in entering into the avoidance arrangement is to secure that the total amount of the relevant payments will be less than the amount of E’s contribution.
- (2) If the relevant time is the same as the time at which the advance is received or earlier, section 196B, 196C or 196D (as the case may be) applies in relation to E’s contribution as if condition B in that section were met.
- (3) Otherwise, the amount of the relevant financial liability as at the relevant time is treated as follows as relevant—
- (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant time falls, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.
- (4) The amount treated as profit or income by subsection (3)(a) or (b) is not to exceed the total amount of relief given in respect of E’s contribution.
- (5) For the purposes of this section—
- (a) “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be),
  - (b) “the relevant financial liability” means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,
  - (c) “the relevant payments” means the payments which reduce that liability as so mentioned, and

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- (d) the amount of the relevant financial liability as at the relevant time is to be determined in accordance with generally accepted accounting practice.

### **196G Employer asset-backed contributions: reduction of financial liability under structured finance arrangement**

- (1) This section applies if—
  - (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
  - (d) there occurs an event (“the relevant event”)—
    - (i) which is not the making of a relevant payment, but
    - (ii) by virtue of which, in accordance with generally accepted accounting practice, the amount of the relevant financial liability is reduced to nil or in part.
- (2) If the relevant financial liability is reduced to nil, Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as the case may be) is no longer to apply in relation to the asset-backed arrangement from when the relevant event occurs.
- (3) But no person is, by virtue of subsection (2), to be placed in a position which is more advantageous than the position in which the person would have been had this section never applied; and, in order to give effect to this principle, such assessments to tax or adjustments to any assessment to tax as are just and reasonable are to be made.
- (4) In any case, the amount of the reduction of the relevant financial liability mentioned in subsection (1)(d) is treated as follows as relevant—
  - (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant event occurs, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant event occurs.
- (5) The amount treated as profit or income by subsection (4)(a) or (b) is not to exceed the total amount of relief given in respect of E’s contribution.
- (6) For the purposes of this section—
  - (a) “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be),
  - (b) “the relevant financial liability” means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,

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- (c) “relevant payment” means a payment which reduces that liability as so mentioned, and
- (d) the amount of the relevant financial liability before its reduction by virtue of the relevant event and the amount of the reduction are to be determined in accordance with generally accepted accounting practice.

### **196H Employer asset-backed contributions: extension of section 196G**

- (1) This section applies if—
  - (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
  - (d) after the beginning of 21 March 2012, an event (“the relevant event”) listed in subsection (4) occurs.
- (2) Section 196G applies as if the relevant event were an event (other than the making of a relevant payment) by virtue of which, in accordance with generally accepted accounting practice, the amount of the relevant financial liability is reduced to nil.
- (3) For this purpose, in section 196G(4) references to E’s accounting period, or the tax year, in which the relevant event occurs are to be read as references to E’s accounting period, or the tax year, in which falls the time immediately before the occurrence of the relevant event.
- (4) The events are—
  - (a) if E is a company within the charge to corporation tax when E’s contribution is paid, E ceases to be within that charge;
  - (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E’s contribution is paid, that provision ceases to apply in relation to E;
  - (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E’s contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
  - (d) in any case—
    - (i) if E is a company, E enters administration or the winding up of E starts;
    - (ii) if E is a partnership, the partnership is dissolved;
    - (iii) if E is an individual, E dies.
- (5) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of subsection (4)(d)(i).

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### **196I Employer asset-backed contributions: “advances” under structured finance arrangements**

- (1) This section applies if—
  - (a) an employer pays a contribution under a registered pension scheme,
  - (b) condition A in section 196B, 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
  - (d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).
- (2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).
- (3) For the purposes of this section “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be).

### **196J Employer asset-backed contributions: supplementary**

- (1) This section applies for the purposes of sections 196B to 196I.
- (2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—
  - (a) the contribution being deducted in computing the amount of the employer's profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),
  - (b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or
  - (c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.
- (4) “Structured finance arrangement” means an arrangement which is a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (structured finance arrangements).
- (5) Sections 774 to 776 of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act.”

2 In section 280(1) of FA 2004 (abbreviations)—

- (a) omit the “and” after the definition of “ITA 2007”, and
- (b) after the definition of “CTA 2009” insert “, and

“CTA 2010” means the Corporation Tax Act 2010”.

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- 3
- (1) The amendment made by paragraph 1 above has effect in accordance with sub-paragraphs (2) to (6); and the amendments made by paragraph 2 above have effect accordingly.
  - (2) Sections 196B to 196J of FA 2004 have effect in relation to contributions paid by employers on or after 29 November 2011 but before 22 February 2012.
  - (3) Section 196G of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 where the event mentioned in section 196G(1)(d) occurs on or after that date (and, for the purpose of applying section 196G in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).
  - (4) In cases where the relevant event occurs before 21 March 2012, section 196G has effect as if subsection (3) were omitted.
  - (5) Section 196H of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 (and, for the purpose of applying section 196H in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).
  - (6) Section 196I of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 (and, for the purpose of applying section 196I in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).

## PART 2

### TRANSITIONAL PROVISION RELATING TO PART 1

#### *Application and interpretation*

- 4
- (1) This Part of this Schedule applies if—
    - (a) before 29 November 2011, an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme (“the relevant scheme”),
    - (b) at any time, relief is given in respect of E’s contribution,
    - (c) if the reference in paragraph 3(2) above to 29 November 2011 were instead a reference to the date on which E’s contribution is paid, E would have no entitlement to relief in respect of E’s contribution by virtue of section 196B, 196C or 196D of FA 2004, and
    - (d) the asset-backed arrangement is not completed before 29 November 2011.
  - (2) For the purposes of sub-paragraph (1)(c) section 196F of FA 2004 is to be ignored.
- 5
- For the purposes of this Part of this Schedule—
- (a) terms used in section 196B, 196C or 196D of FA 2004 (as the case may be) have the same meaning as in that section, and
  - (b) as necessary, assume that section 196B, 196C or 196D of FA 2004 (as the case may be) has effect in relation to E’s contribution.
- 6
- (1) This paragraph applies for the purposes of this Part of this Schedule.
  - (2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.



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- (3) The asset-backed arrangement is “completed” when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.
- (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (5) The asset-backed arrangement is “completed”—
- (a) when the share in the partnership's profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security, or
  - (b) if earlier, when no responsible authority is any longer entitled (conditionally or unconditionally) to any payments in connection with the asset-backed arrangement.
- (6) In sub-paragraph (5)(b) the reference to payments are to payments of any type including drawings or distributions from a partnership, payments in respect of the security and other payments in respect of an asset (as read in accordance with section 776(4)(b) of CTA 2010).
- (7) “Responsible authority” means—
- (a) the persons who from time to time are the trustees of the relevant scheme, or
  - (b) the persons who from time to time are the persons controlling the management of the relevant scheme,
- in their capacity as such.
- (8) A responsible authority is entitled to a payment “in connection with” the asset-backed arrangement if it is entitled to the payment directly or indirectly in consequence of the arrangement or otherwise in connection with the arrangement.
- 7 (1) In this Part of this Schedule “the completion day” means the earliest of the following—
- (a) the day on which the asset-backed arrangement is to be completed determined as at the beginning of 29 November 2011;
  - (b) the day on which the asset-backed arrangement is actually completed;
  - (c) the day on which a completion event occurs (see sub-paragraphs (2) to (5));
  - (d) if an event falling within paragraph 8 occurs, the day on which falls the time immediately before the occurrence of the event.
- (2) To determine if a completion event occurs for the purposes of sub-paragraph (1)(c) first determine, as at the beginning of 22 February 2012, the following—
- (a) the number of payments to be made after the beginning of 22 February 2012 to which a responsible authority is entitled in connection with the asset-backed arrangement,
  - (b) what the amounts of those payments are to be, and
  - (c) the times at which those payments are to be made.
- (3) A completion event occurs for the purposes of sub-paragraph (1)(c) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—

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- (i) there is a change in the number of payments to be made from that determined under sub-paragraph (2),
  - (ii) there is a significant change in the amount of a payment to be made from that so determined, or
  - (iii) there is a significant change in the time at which a payment is to be made from that so determined,
  - (b) a payment determined under sub-paragraph (2) is not made,
  - (c) a payment determined under sub-paragraph (2) is made but its amount is significantly different from the amount so determined for the payment, or
  - (d) a payment determined under sub-paragraph (2) is made but is made at a time significantly different from the time so determined for the payment.
- (4) In sub-paragraphs (2) and (3) references to payments are to payments of any type including drawings or distributions from a partnership, payments in respect of the security and other payments in respect of an asset (as read in accordance with section 776(4)(b) of CTA 2010).
- (5) For the purposes of sub-paragraph (3)(b) to (d) it does not matter if the event in question is authorised by a term of the asset-backed arrangement or any other arrangement or results from the occurrence or non-occurrence of another event which is so authorised.
- 8 (1) The events falling within this paragraph are those listed in sub-paragraph (2).
- But an event falls within this paragraph only if it occurs after the beginning of 21 March 2012.
- (2) The events are—
- (a) if E is a company within the charge to corporation tax when E's contribution is paid, E ceases to be within that charge;
  - (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E's contribution is paid, that provision ceases to apply in relation to E;
  - (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E's contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
  - (d) in any case—
    - (i) if E is a company, E enters administration or the winding up of E starts;
    - (ii) if E is a partnership, the partnership is dissolved;
    - (iii) if E is an individual, E dies.
- (3) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of sub-paragraph (2)(d)(i).

*Certain tax consequences not to have effect*

- 9 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004, and

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- (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).
  - (2) The asset-backed arrangement is not to have the relevant effect.
  - (3) The relevant effect is that—
    - (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
    - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
    - (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount—
      - (i) in calculating income for tax purposes, or
      - (ii) from total income or total profits (as the case may be).
  - (4) But if the borrower is a partnership the relevant effect is that—
    - (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
    - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
    - (c) a member of the partnership becomes entitled to deduct an amount—
      - (i) in calculating income for tax purposes, or
      - (ii) from total income or total profits (as the case may be).
  - (5) In sub-paragraphs (3) and (4) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- 10 (1) This paragraph applies if—
  - (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C of FA 2004, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) In such a case—
    - (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and
    - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
  - (3) The relevant effect is that—
    - (a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,
    - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or
    - (c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount—
      - (i) in calculating income for tax purposes, or
      - (ii) from total income or total profits (as the case may be).

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- (4) In sub-paragraph (3) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- (5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196C(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 11 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196D of FA 2004, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) The relevant effect is that—
- (a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or
  - (c) a relevant member becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (3) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.
- (4) In sub-paragraph (2) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- (5) If this paragraph applies—
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.

#### *Adjustments*

- 12 (1) For the purposes of paragraphs 13 and 14—
- (a) amount A is the total amount of relief given in respect of E's contribution,
  - (b) amount B is the total of the following amounts—
    - (i) any amounts of income which are charged to tax by virtue of paragraph 9, 10 or 11 above (as the case may be),
    - (ii) any amounts brought into account in calculating income for tax purposes by virtue of paragraph 9, 10 or 11 above (as the case may be) (so far as not reflected in sub-paragraph (i)), and

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- (iii) any amounts stopped from being the subject of an income deduction by virtue of paragraph 9, 10 or 11 above (as the case may be) (so far as not reflected in sub-paragraph (i) or (ii)), and
  - (c) subject to sub-paragraph (7), amount C is the amount of the payment mentioned in sub-paragraph (4) or (6) (as the case may be) so far as the payment—
    - (i) is made under the asset-backed arrangement on the completion day,
    - (ii) is not reflected in amount B,
    - (iii) is not the subject of an income deduction, and
    - (iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.
- (2) In sub-paragraph (1) “income deduction” means a deduction to which any person is entitled—
  - (a) in calculating income for tax purposes, or
  - (b) from total income or total profits.
- (3) Sub-paragraph (4) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.
- (4) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire—
  - (a) the security, or
  - (b) any asset substituted for the security under the asset-backed arrangement.
- (5) Sub-paragraph (6) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (6) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which E, or a person connected with E, makes—
  - (a) to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership, or
  - (b) otherwise to a responsible authority in order to buy out the authority's interest in any partnership involved in the asset-backed arrangement.
- (7) Amount C is to be taken to be nil if—
  - (a) the completion day is on or after 22 February 2012,
  - (b) on or before the completion day, a commitment (whether or not legally enforceable and whether or not subject to any conditions) is given (directly or indirectly) to a relevant person, and
  - (c) the commitment—
    - (i) is a commitment to secure that a person receives money or another asset, and
    - (ii) is linked (directly or indirectly) to the making of the payment covered by amount C.
- (8) In sub-paragraph (7)(b) “relevant person” means—
  - (a) E;
  - (b) a person connected with E;

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- (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership.
- (9) But “relevant person” does not include a responsible authority.
- 13 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.
- (2) The amount of the excess is treated as follows as relevant—
- (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the beginning of the completion day falls, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the beginning of the completion day falls.
- 14 If the sum of amounts B and C exceeds amount A—
- (a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,
  - (b) the contribution is to be treated as having been paid at the beginning of the completion day, and
  - (c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.

### PART 3

#### DENIAL OF RELIEF FOR CONTRIBUTIONS PAID ON OR AFTER 22 FEBRUARY 2012

- 15 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert—

#### “196B Employer asset-backed contributions: denial of relief (1)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E's contribution”) paid by E under a registered pension scheme if conditions A, B and C are met.
- (2) Condition A is that—
  - (a) under an arrangement (“the asset-backed arrangement”)—
    - (i) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
    - (ii) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
    - (iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,
  - (b) the borrower is E or a person connected with E, and

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- (c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),  
and the case is not one in relation to which either condition A in section 196D or condition A in section 196F is met.
- (3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196C).
- (5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence, the whole or a part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.
- (6) For the purposes of subsection (5) it does not matter—
- (a) that the repayment of the loan might be subject to any condition, or
  - (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,
- but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (7) For the purposes of this section—
- (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
  - (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
  - (c) “loan” includes any advance of money.

### **196C Employer asset-backed contributions: “acceptable structured finance arrangement” (1)**

- (1) For the purposes of section 196B the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
- (a) in accordance with generally accepted accounting practice, the borrower's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
  - (b) the asset-backed arrangement is a type 1 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
- (a) the lender is a responsible authority,

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- (b) the advance is money which is paid by the lender directly to the borrower wholly and directly out of E's contribution, and
  - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is entitled to the payments mentioned in section 196B(2)(a)(iii),
  - (b) those payments are to arise at times which have been fixed and fall at intervals of no more than one year (but allowing for payments otherwise due to arise on a non-working day to arise on the next working day),
  - (c) the lender is to receive each payment no later than 3 months after the day on which the payment arises (but allowing for payments otherwise due to be received on a non-working day to be received on the next working day),
  - (d) on receipt by the lender, each payment is directly to become part of the sums held for the purposes of the registered pension scheme,
  - (e) the payments are all to be of the same amount,
  - (f) the total amount of the payments is not to be less than the amount of E's contribution, and
  - (g) all the payments are to be received by the lender within a period (“the payment period”) ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (5) For the purposes of subsection (4)(b) the first payment is to arise no later than one year after the day on which the advance is paid.
- (6) For the purposes of subsection (4)(e) the following are to be ignored—
- (a) negligible differences in the amounts of payments;
  - (b) differences in the amounts of payments which would be caused by a term of the asset-backed arrangement that requires the amounts of all outstanding payments to be increased periodically by a percentage which cannot be higher than the highest of the following—
    - (i) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the term of the asset-backed arrangement in question;
    - (ii) the percentage increase in the retail prices index for the reference period;
    - (iii) the percentage for the reference period which corresponds to 5% per annum.
- (7) For the purposes of subsection (4), in determining the lender's position, regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (8) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to



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be reduced to nil by the end of the payment period by (and only by) the payments mentioned in section 196B(2)(a)(iii).

- (9) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (10) applies has been given.
- (10) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if—
- (a) it is given (directly or indirectly) to a relevant person,
  - (b) it is a commitment to secure that a person receives money or another asset, and
  - (c) it is linked (directly or indirectly) to the receipt by the lender of a payment mentioned in section 196B(2)(a)(iii).
- (11) In subsection (10)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership;
- but does not include a responsible authority.
- (12) In this section “responsible authority” means—
- (a) the persons who from time to time are the trustees of the registered pension scheme, or
  - (b) the persons who from time to time are the persons controlling the management of the registered pension scheme,
- in their capacity as such.

#### **196D Employer asset-backed contributions: denial of relief (2)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
- (a) under an arrangement (“the asset-backed arrangement”) a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor is E or a person connected with E,
  - (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (d) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from a person (“the lender”) other than the transferor,

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- (e) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
  - (f) there is a relevant change in relation to the partnership (see section 196H), and
  - (g) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196H) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.
- (4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (5) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196E).

**196E Employer asset-backed contributions: “acceptable structured finance arrangement” (2)**

- (1) For the purposes of section 196D the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
- (a) in accordance with generally accepted accounting practice, the partnership's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
  - (b) the asset-backed arrangement is a type 2 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
- (a) the lender is a responsible authority,
  - (b) the advance is money which is paid by the lender directly to the partnership wholly and directly out of E's contribution, and
  - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is or is to be the person involved in the relevant change in relation to the partnership,
  - (b) the lender's share in the partnership's profits is to be determined wholly by reference to the payments mentioned in section 196D(2)(g),
  - (c) determinations of the lender's share in the partnership's profits are to be made at times which have been fixed and fall at intervals of no

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- more than one year (but allowing for determinations otherwise due to be made on a non-working day to be made on the next working day),
- (d) no later than 3 months after the day on which a determination of the lender's share in the partnership's profits is made, the lender is to make a drawing from the partnership on account of its determined share (but allowing for drawings otherwise due to be made on a non-working day to be made on the next working day),
  - (e) on its making, each drawing is directly to become part of the sums held for the purposes of the registered pension scheme,
  - (f) the drawings are all to be of the same amount,
  - (g) the total amount of the drawings is not to be less than the amount of E's contribution, and
  - (h) all of the lender's share in the partnership's profits is to be drawn by the lender from the partnership within a period ("the drawing period") ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (5) For the purposes of subsection (4)(c) the first determination is to be made no later than one year after the day on which the advance is paid.
- (6) For the purposes of subsection (4)(f) the following are to be ignored—
- (a) negligible differences in the amounts of drawings;
  - (b) differences in the amounts of drawings which would be caused by a term of the asset-backed arrangement that requires the amounts of all outstanding drawings to be increased periodically by a percentage which cannot be higher than the highest of the following—
    - (i) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the term of the asset-backed arrangement in question;
    - (ii) the percentage increase in the retail prices index for the reference period;
    - (iii) the percentage for the reference period which corresponds to 5% per annum.
- (7) In determining the lender's position for the purposes of subsection (4), regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (8) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the drawing period by (and only by) the payments mentioned in section 196D(2)(g).
- (9) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (10) applies has been given.
- (10) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if—
- (a) it is given (directly or indirectly) to a relevant person,
  - (b) it is a commitment to secure that a person receives money or another asset, and

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- (c) it is linked (directly or indirectly) to any determination of the lender's share in the partnership's profits or any drawing from the partnership on account of that share.
- (11) In subsection (10)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership;
- but does not include a responsible authority.
- (12) In this section—
- (a) “responsible authority” means—
    - (i) the persons who from time to time are the trustees of the registered pension scheme, or
    - (ii) the persons who from time to time are the persons controlling the management of the registered pension scheme,
 in their capacity as such, and
  - (b) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.

### **196F Employer asset-backed contributions: denial of relief (3)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E's contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
  - (a) a partnership holds an asset (“the security”) at any time before an arrangement (“the asset-backed arrangement”) is made,
  - (b) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
  - (d) there is a relevant change in relation to the partnership (see section 196H), and
  - (e) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196H) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.

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- (4) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196G).

**196G Employer asset-backed contributions: “acceptable structured finance arrangement” (3)**

- (1) For the purposes of section 196F the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
- (a) in accordance with generally accepted accounting practice, the partnership's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
  - (b) the asset-backed arrangement is a type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
- (a) the lender is a responsible authority,
  - (b) the advance is money which is paid by the lender directly to the partnership wholly and directly out of E's contribution, and
  - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is or is to be the person involved in the relevant change in relation to the partnership,
  - (b) the lender's share in the partnership's profits is to be determined wholly by reference to the payments mentioned in section 196F(2) (e),
  - (c) determinations of the lender's share in the partnership's profits are to be made at times which have been fixed and fall at intervals of no more than one year (but allowing for determinations otherwise due to be made on a non-working day to be made on the next working day),
  - (d) no later than 3 months after the day on which a determination of the lender's share in the partnership's profits is made, the lender is to make a drawing from the partnership on account of its determined share (but allowing for drawings otherwise due to be made on a non-working day to be made on the next working day),
  - (e) on its making, each drawing is directly to become part of the sums held for the purposes of the registered pension scheme,
  - (f) the drawings are all to be of the same amount,
  - (g) the total amount of the drawings is not to be less than the amount of E's contribution, and
  - (h) all of the lender's share in the partnership's profits is to be drawn by the lender from the partnership within a period (“the drawing

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- period”) ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (5) For the purposes of subsection (4)(c) the first determination is to be made no later than one year after the day on which the advance is paid.
- (6) For the purposes of subsection (4)(f) the following are to be ignored—
- (a) negligible differences in the amounts of drawings;
  - (b) differences in the amounts of drawings which would be caused by a term of the asset-backed arrangement that requires the amounts of all outstanding drawings to be increased periodically by a percentage which cannot be higher than the highest of the following—
    - (i) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the term of the asset-backed arrangement in question;
    - (ii) the percentage increase in the retail prices index for the reference period;
    - (iii) the percentage for the reference period which corresponds to 5% per annum.
- (7) In determining the lender's position for the purposes of subsection (4), regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (8) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the drawing period by (and only by) the payments mentioned in section 196F(2)(e).
- (9) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (10) applies has been given.
- (10) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if—
- (a) it is given (directly or indirectly) to a relevant person,
  - (b) it is a commitment to secure that a person receives money or another asset, and
  - (c) it is linked (directly or indirectly) to any determination of the lender's share in the partnership's profits or any drawing from the partnership on account of that share.
- (11) In subsection (10)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership;
- but does not include a responsible authority.

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- (12) In this section—
- (a) “responsible authority” means—
    - (i) the persons who from time to time are the trustees of the registered pension scheme, or
    - (ii) the persons who from time to time are the persons controlling the management of the registered pension scheme,in their capacity as such, and
  - (b) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.

**196H Employer asset-backed contributions: “relevant change in relation to the partnership” and “person involved in the relevant change”**

- (1) For the purposes of sections 196D and 196F there is a relevant change in relation to the partnership if condition X or Y is met.
- (2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition Y is that—
  - (a) in connection with the asset-backed arrangement, there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.
- (4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) For the purposes of sections 196D to 196G references to the person involved in the relevant change in relation to the partnership are—
  - (a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and
  - (b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

**196I Employer asset-backed contributions: change in lender's original position under acceptable structured finance arrangement etc**

- (1) This section applies if—
  - (a) an employer (“E”) pays a contribution (“E's contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196D or 196F is met,
  - (c) the asset-backed arrangement is an acceptable structured finance arrangement for the purposes of section 196B, 196D or 196F (as the case may be) and, accordingly, condition B in that section is not met, and

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- (d) at any time (“the relevant time”) after the advance is paid—
- (i) the lender's position changes from the lender's original position in any respect (whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise),
  - (ii) an event occurs or does not occur and the occurrence or non-occurrence of the event does not accord with the lender's original position in any respect,
  - (iii) in accordance with generally accepted accounting practice, the recorded financial liability is reduced to nil other than by a payment mentioned in section 196B(2)(a)(iii), 196D(2)(g) or section 196F(2)(e) (as the case may be),
  - (iv) a commitment to which section 196C(10), 196E(10) or 196G(10) (as the case may be) applies is given, or
  - (v) an event falling within section 196J occurs.
- (2) This section also applies if—
- (a) the requirements of subsection (1)(a) to (c) are met, and
  - (b) at any time (“the relevant time”) after the advance is paid, in accordance with generally accepted accounting practice, the recorded financial liability is reduced in part other than by a payment mentioned in section 196B(2)(a)(iii), 196D(2)(g) or section 196F(2)(e) (as the case may be).
- (3) Subject to subsection (4), the relevant amount is treated as follows as relevant—
- (a) for corporation tax purposes, the relevant amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the relevant time falls, or
  - (b) for income tax purposes, the relevant amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.
- (4) The amount treated as profit or income by subsection (3)(a) or (b), together with any amounts so treated on any previous applications of this section in relation to the asset-backed arrangement, is not to exceed the total amount of relief given in respect of E's contribution.
- (5) If this section applies by virtue of subsection (1), from the relevant time Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as relevant) is no longer to apply in relation to the asset-backed arrangement.
- (6) But no person is, by virtue of subsection (5), to be placed in a position which is more advantageous than the position in which the person would have been had this section never applied; and, in order to give effect to this principle, such assessments to tax or adjustments to any assessment to tax as are just and reasonable are to be made.
- (7) Subsection (1)(d)(i) and (ii) does not cover—
- (a) cases in which the lender's change in position, or the occurrence or non-occurrence of the event, is the direct result of a mere



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- administrative error, so long as the consequences of the error are remedied promptly, or
- (b) mere changes in the persons who are the trustees of the registered pension scheme or in the persons who control the management of the registered pension scheme.
- (8) For the purposes of subsection (1)(d)(ii) it does not matter if the occurrence or non-occurrence of the event is authorised by a term of the asset-backed arrangement or results from the occurrence or non-occurrence of another event which is so authorised.
- (9) If this section applies by virtue of subsection (1)(d)(v), in subsection (3) references to the relevant time are to be read as references to the time immediately before the relevant time.
- (10) In this section—
- “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196D or 196F (as the case may be),
- “the lender's original position” means the lender's position as at the time the advance is paid set out in the paragraphs of section 196C(4), 196E(4) or 196G(4) (as the case may be),
- “the recorded financial liability” has the same meaning as in section 196C, 196E or 196G (as the case may be), and
- “the relevant amount” means—
- (a) if this section applies by virtue of subsection (1), the outstanding amount of the recorded financial liability immediately before the relevant time determined in accordance with generally accepted accounting practice, or
- (b) if this section applies by virtue of subsection (2), the amount of the reduction of the recorded financial liability.

### **196J Employer asset-backed contributions: further events which cause section 196I to apply**

- (1) The events falling within this section are those listed in subsection (2).
- (2) The events are—
- (a) if E is a company within the charge to corporation tax when E's contribution is paid, E ceases to be within that charge;
- (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E's contribution is paid, that provision ceases to apply in relation to E;
- (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E's contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
- (d) in any case—
- (i) if E is a company, E enters administration or the winding up of E starts;
- (ii) if E is a partnership, the partnership is dissolved;
- (iii) if E is an individual, E dies.

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- (3) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of subsection (2)(d)(i).

**196K Employer asset-backed contributions: “advances” under acceptable structured finance arrangements**

- (1) This section applies if—
- (a) an employer pays a contribution under a registered pension scheme,
  - (b) condition A in section 196B, 196D or 196F is met,
  - (c) the asset-backed arrangement is an acceptable structured finance arrangement for the purposes of section 196B, 196D or 196F (as the case may be) and, accordingly, condition B in that section is not met, and
  - (d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).
- (2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).
- (3) In this section “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196D or 196F (as the case may be).

**196L Employer asset-backed contributions: supplementary**

- (1) This section applies for the purposes of sections 196B to 196K.
- (2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—
- (a) the contribution being deducted in computing the amount of the employer's profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),
  - (b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or
  - (c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.
- (4) Sections 774, 775 and 776(2) and (4) of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act.
- (5) A reference to a disposal of an asset includes—
- (a) anything constituting a disposal of an asset for the purposes of TCGA 1992, and
  - (b) so far as not covered by paragraph (a), the taking of any step by virtue of which a person receives an asset.
- (6) Section 776(2) of CTA 2010 applies for the purposes of subsection (5)(b).

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- (7) “Non-working day” means—
- (a) a Saturday or Sunday,
  - (b) a Christmas Eve, Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom,
- and “working day” is to be read accordingly.”
- 16 In section 280(1) of FA 2004 (abbreviations)—
- (a) omit the “and” after the definition of “ITA 2007”, and
  - (b) after the definition of “CTA 2009” insert “, and  
CTA 2010” means the Corporation Tax Act 2010”.
- 17 (1) Subject to what follows, the amendments made by paragraphs 15 and 16 above have effect in relation to contributions paid by employers on or after 22 February 2012.
- (2) In cases where the relevant time falls before 21 March 2012, section 196I of FA 2004 has effect as if subsection (6) were omitted.
- (3) An event falls within section 196J of FA 2004 only if it occurs after the beginning of 21 March 2012.

#### **PART 4**

##### TRANSITIONAL PROVISION RELATING TO PART 3

##### *Application and interpretation*

- 18 (1) This Part of this Schedule applies if—
- (a) before 22 February 2012, an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme (“the relevant scheme”),
  - (b) Part 2 of this Schedule does not apply in relation to E’s contribution,
  - (c) at any time, relief is given in respect of E’s contribution,
  - (d) if the reference in paragraph 17 above to 22 February 2012 were instead a reference to the date on which E’s contribution is paid, E would have no entitlement to relief in respect of E’s contribution by virtue of section 196B, 196D or 196F of FA 2004, and
  - (e) the asset-backed arrangement is not completed before 22 February 2012.
- (2) For the purposes of sub-paragraph (1)(d) assume that Parts 1 and 2 of this Schedule were never enacted.
- (3) For the purposes of sub-paragraph (1)(d), in sections 196C(5), 196E(5) and 196G(5) the reference to one year is to be read as a reference to 18 months.
- 19 For the purposes of this Part of this Schedule—
- (a) terms used in section 196B, 196D or 196F of FA 2004 (as the case may be) have the same meaning as in that section, and
  - (b) as necessary, assume that section 196B, 196D or 196F of FA 2004 (as the case may be) has effect in relation to E’s contribution.
- 20 (1) This paragraph applies for the purposes of this Part of this Schedule.

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- (2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004.
- (3) The asset-backed arrangement is “completed” when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.
- (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D or 196F of FA 2004.
- (5) The asset-backed arrangement is “completed” when the share in the partnership's profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security.
- 21 (1) In this Part of this Schedule “the completion day” means the earliest of the following—
- (a) the day on which the asset-backed arrangement is to be completed determined as at the beginning of 22 February 2012;
  - (b) the day on which the asset-backed arrangement is actually completed;
  - (c) the day which is the last day of the period of 25 years beginning with the day on which E's contribution is paid;
  - (d) the day on which a completion event occurs (see sub-paragraphs (2) to (11));
  - (e) if an event falling within paragraph 22 occurs, the day on which falls the time immediately before the occurrence of the event.
- (2) Sub-paragraphs (3) and (4) apply if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004.
- (3) To determine if a completion event occurs for the purposes of sub-paragraph (1)(d) first determine, as at the beginning of 22 February 2012, the following—
- (a) the number of payments to be made after the beginning of 22 February 2012 to which the lender or a person connected with the lender is entitled in connection with the asset-backed arrangement,
  - (b) what the amounts of those payments are to be, and
  - (c) the times at which those payments are to be made.
- (4) A completion event occurs for the purposes of sub-paragraph (1)(d) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—
    - (i) there is a change in the number of payments to be made from that determined under sub-paragraph (3),
    - (ii) there is a significant change in the amount of a payment to be made from that so determined, or
    - (iii) there is a significant change in the time at which a payment is to be made from that so determined,
  - (b) a payment determined under sub-paragraph (3) is not made,
  - (c) a payment determined under sub-paragraph (3) is made but its amount is significantly different from the amount so determined for the payment, or
  - (d) a payment determined under sub-paragraph (3) is made but is made at a time significantly different from the time so determined for the payment.

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- (5) Sub-paragraphs (6) and (7) apply if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D or 196F of FA 2004.
- (6) To determine if a completion event occurs for the purposes of sub-paragraph (1)(d) first determine, as at the beginning of 22 February 2012, the following—
- (a) what the amount of the share in the partnership's profits of the person involved in the relevant change is to be so far as the share is to be determined under the asset-backed arrangement by reference to payments made after the beginning of 22 February 2012,
  - (b) the number of drawings to be made from the partnership on account of the amount determined under paragraph (a) and the number of any other payments to be made after the beginning of 22 February 2012 to which the person involved in the relevant change, the lender or any other person connected with the lender is entitled in connection with the asset-backed arrangement,
  - (c) what the amounts of those drawings or other payments are to be, and
  - (d) the times at which those drawings or other payments are to be made.
- (7) A completion event occurs for the purposes of sub-paragraph (1)(d) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—
    - (i) there is a change in the number of drawings or other payments to be made from that determined under sub-paragraph (6),
    - (ii) there is a significant change in the amount of a drawing or other payment to be made from that so determined, or
    - (iii) there is a significant change in the time at which a drawing or other payment is to be made from that so determined,
  - (b) a drawing or other payment determined under sub-paragraph (6) is not made,
  - (c) a drawing or other payment determined under sub-paragraph (6) is made but its amount is significantly different from the amount so determined for the drawing or other payment, or
  - (d) a drawing or other payment determined under sub-paragraph (6) is made but is made at a time significantly different from the time so determined for the drawing or other payment.
- (8) In sub-paragraphs (3) and (4) and (6) and (7) references to payments are to payments of any type including drawings or distributions from a partnership, payments in respect of the security and other payments in respect of an asset (as read in accordance with section 776(4)(b) of CTA 2010).
- (9) In sub-paragraphs (6) and (7) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.
- (10) For the purposes of sub-paragraphs (3)(a) and (6)(b) a person is entitled to a payment “in connection with” the asset-backed arrangement if the person is entitled to the payment directly or indirectly in consequence of the arrangement or otherwise in connection with the arrangement.
- (11) For the purposes of sub-paragraphs (4)(b) to (d) and (7)(b) to (d) it does not matter if the event in question is authorised by a term of the asset-backed arrangement or

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any other arrangement or results from the occurrence or non-occurrence of another event which is so authorised.

- 22 (1) The events falling within this paragraph are those listed in sub-paragraph (2).

But an event falls within this paragraph only if it occurs after the beginning of 21 March 2012.

- (2) The events are—

- (a) if E is a company within the charge to corporation tax when E's contribution is paid, E ceases to be within that charge;
- (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E's contribution is paid, that provision ceases to apply in relation to E;
- (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E's contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
- (d) in any case—
  - (i) if E is a company, E enters administration or the winding up of E starts;
  - (ii) if E is a partnership, the partnership is dissolved;
  - (iii) if E is an individual, E dies.

- (3) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of sub-paragraph (2) (d)(i).

*Certain tax consequences not to have effect*

- 23 (1) This paragraph applies if—

- (a) the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004, and
- (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).

- (2) The asset-backed arrangement is not to have the relevant effect.

- (3) The relevant effect is that—

- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
- (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount—
  - (i) in calculating income for tax purposes, or
  - (ii) from total income or total profits (as the case may be).

- (4) But if the borrower is a partnership the relevant effect is that—

- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,

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- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
    - (c) a member of the partnership becomes entitled to deduct an amount—
      - (i) in calculating income for tax purposes, or
      - (ii) from total income or total profits (as the case may be).
  - (5) In sub-paragraphs (3) and (4) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- 24
- (1) This paragraph applies if—
    - (a) the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D of FA 2004, and
    - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
  - (2) In such a case—
    - (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and
    - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
  - (3) The relevant effect is that—
    - (a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,
    - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or
    - (c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount—
      - (i) in calculating income for tax purposes, or
      - (ii) from total income or total profits (as the case may be).
  - (4) In sub-paragraph (3) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
  - (5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 25
- (1) This paragraph applies if—
    - (a) the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196F of FA 2004, and
    - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
  - (2) The relevant effect is that—
    - (a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,
    - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or

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- (c) a relevant member becomes entitled to deduct an amount—
- (i) in calculating income for tax purposes, or
  - (ii) from total income or total profits (as the case may be).
- (3) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.
- (4) In sub-paragraph (2) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- (5) If this paragraph applies—
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196F(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 26 (1) This paragraph applies if, apart from this Part of this Schedule, a relevant charging provision applies in relation to the asset-backed arrangement.
- (2) The relevant charging provision is to apply in relation to the asset-backed arrangement instead of paragraph 23, 24 or 25 above (as the case may be) to the extent of any overlap.
- (3) In this paragraph “relevant charging provision” means—
- (a) section 809BZB, 809BZC, 809BZH or 809BZK of ITA 2007, or
  - (b) section 759, 760, 765 or 768 of CTA 2010.
- 27 (1) This paragraph applies if, apart from this Part of this Schedule—
- (a) a relevant interest provision applies in relation to the asset-backed arrangement, and
  - (b) as a result of the application of the relevant interest provision in relation to the asset-backed arrangement, an amount is or may be treated as interest under that provision.
- (2) Without prejudice to the generality of paragraphs 23(3) and (4), 24(3) and 25(2), the amount is not to be treated as interest if the amount arises on or after 22 February 2012 but on or before the completion day.
- (3) In this paragraph “relevant interest provision” means—
- (a) section 809BZD, 809BZE, 809BZI or 809BZL of ITA 2007, or
  - (b) section 761, 762, 766 or 769 of CTA 2010.
- 28 (1) Section 196G of FA 2004 (as inserted by paragraph 1 above) does not apply in relation to E's contribution (if it would otherwise do so) if the relevant event occurs on or after 22 February 2012.
- (2) Section 196H of FA 2004 (as inserted by paragraph 1 above) does not apply in relation to E's contribution at all (if it would otherwise do so).



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### *Adjustments*

- 29 (1) For the purposes of paragraphs 30 and 31—
- (a) amount A is the total amount of relief given in respect of E's contribution,
  - (b) amount B is the total of the following amounts—
    - (i) any amounts of income which are charged to tax by virtue of a relevant provision,
    - (ii) any amounts brought into account in calculating income for tax purposes by virtue of a relevant provision (so far as not reflected in sub-paragraph (i)), and
    - (iii) any amounts stopped from being the subject of an income deduction by virtue of a relevant provision (so far as not reflected in sub-paragraph (i) or (ii)), and
  - (c) subject to sub-paragraph (9), amount C is the amount of the payment mentioned in sub-paragraph (6) or (8) (as the case may be) so far as the payment—
    - (i) is made under the asset-backed arrangement on the completion day,
    - (ii) is not reflected in amount B,
    - (iii) is not the subject of an income deduction, and
    - (iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.
- (2) In sub-paragraph (1)(b) “relevant provision” means—
- (a) paragraph 23, 24 or 25 above (as the case may be);
  - (b) a relevant charging provision (as defined in paragraph 26 above) as applied in relation to the asset-backed arrangement for amounts arising on or before the completion day;
  - (c) paragraph 27 above (if applicable).
- (3) No amount is to be included in amount B by virtue of sub-paragraph (2)(c) so far as it is reflected in an amount included in amount B by virtue of sub-paragraph (2) (a) or (b).
- (4) In sub-paragraph (1) “income deduction” means a deduction to which any person is entitled—
- (a) in calculating income for tax purposes, or
  - (b) from total income or total profits.
- (5) Sub-paragraph (6) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004.
- (6) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire—
- (a) the security, or
  - (b) any asset substituted for the security under the asset-backed arrangement.
- (7) Sub-paragraph (8) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D or 196F of FA 2004.

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- (8) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which E, or a person connected with E, makes to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership.
- (9) Amount C is to be taken to be nil if—
- (a) on or before the completion day, a commitment (whether or not legally enforceable and whether or not subject to any conditions) is given (directly or indirectly) to a relevant person, and
  - (b) the commitment—
    - (i) is a commitment to secure that a person receives money or another asset, and
    - (ii) is linked (directly or indirectly) to the making of the payment covered by amount C.
- (10) In sub-paragraph (9)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership.
- (11) But “relevant person” does not include—
- (a) the persons who from time to time are the trustees of the relevant scheme, or
  - (b) the persons who from time to time are the persons controlling the management of the relevant scheme,
- in their capacity as such.
- 30 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.
- (2) The amount of the excess is treated as follows as relevant—
- (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the beginning of the completion day falls, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the beginning of the completion day falls.
- 31 If the sum of amounts B and C exceeds amount A—
- (a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,
  - (b) the contribution is to be treated as having been paid at the beginning of the completion day, and
  - (c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.

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## PART 5

### OTHER PROVISION RELATING TO FINANCE ARRANGEMENTS

#### *Chapter 5B of Part 13 of ITA 2007*

32 Chapter 5B of Part 13 of ITA 2007 (finance arrangements) is amended as follows.

33 In section 809BZA (type 1 finance arrangements: definition) after subsection (2) insert—

“(2A) For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender or a person connected with the lender is subject to any condition.”

34 (1) Section 809BZF (type 2 finance arrangements: definition) is amended as follows.

(2) In subsection (2)(b) after “transferor” insert “ or a person connected with the transferor ”.

(3) After subsection (2) insert—

“(2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”

35 In section 809BZH (type 2 finance arrangements: certain tax consequences not to have effect) after “transferor” (wherever occurring) insert “ or the person connected with the transferor ”.

36 In section 809BZJ (type 3 finance arrangements: definition) after subsection (2) insert—

“(2A) For the purposes of subsection (2)(d) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”

#### *Chapter 2 of Part 16 of CTA 2010*

37 Chapter 2 of Part 16 of CTA 2010 (finance arrangements) is amended as follows.

38 In section 758 (type 1 finance arrangements: definition) after subsection (2) insert—

“(2A) For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender or a person connected with the lender is subject to any condition.”

39 (1) Section 763 (type 2 finance arrangements: definition) is amended as follows.

(2) In subsection (2)(b) after “transferor” insert “ or a person connected with the transferor ”.

(3) After subsection (2) insert—

“(2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”

40 In section 765 (type 2 finance arrangements: certain tax consequences not to have effect) after “transferor” (wherever occurring) insert “ or the person connected with the transferor ”.

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*Status: Point in time view as at 11/07/2023.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 13. (See end of Document for details)*

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- 41 In section 767 (type 3 finance arrangements: definition) after subsection (2) insert—
- “(2A) For the purposes of subsection (2)(d) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”

*Commencement*

- 42 (1) Subject to what follows, the amendments made by paragraphs 32 to 41 above have effect in relation to arrangements whenever made.
- (2) In relation to arrangements made before 21 March 2012, an amount is by virtue of the amendments—
- (a) to be charged to tax, or
  - (b) to be 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.
- (3) The amendments have no effect for the purposes of section 196J(4) of FA 2004 inserted by paragraph 1 above.
- (4) The amendments have no effect for the purposes of section 196C(2)(b), 196E(2)(b) or 196G(2)(b) of FA 2004 inserted by paragraph 15 above if the asset-backed arrangement is made before 21 March 2012.

**Status:**

Point in time view as at 11/07/2023.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 13.