

SCHEDULES

SCHEDULE 13

EMPLOYER ASSET-BACKED PENSION CONTRIBUTIONS ETC

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.
- (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

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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.
- (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

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- 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 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;

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- (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,
 - (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).

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- (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
 - (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—

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- (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).

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

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- (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.
- (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

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(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.