HM Revenue & Customs

HM TREASURY

Employer Asset-backed Pension Contributions

Consultation document
Publication date: 24 May 2011
Closing date for responses: 16 August 2011

Subject of this consultation:	As announced in Budget 2011, the Government is consulting on changing the tax rules around employer asset-backed contributions to defined benefit registered pension schemes. The proposed changes will limit the unintended tax relief that can arise from the ways some contributions are structured. The aim is to ensure that the amount of tax relief given to employers accurately reflects the value of the contributions received by pension schemes, while preserving flexibility for both employers and pension schemes to use these arrangements to manage pension deficits.
Scope of this consultation:	The Government has identified two broad options for changing the tax rules in line with its core principles and objectives, and is seeking views on these options to inform the detailed policy design.
Who should read this:	Interested parties who have been involved in or considered using asset-backed pension contribution arrangements, or may be affected by the proposed changes, including: • sponsoring employers, administrators and trustees of defined benefit registered pension schemes; • advisors of employers and trustees using these arrangements; and • pension industry representative bodies.
Duration:	24 May – 16 August 2011
Enquiries:	Enquiries can be sent to: pensions.policy@hmrc.gsi.gov.uk
How to respond:	• By email to the address given above. • By post to Employer Asset-backed Pension Contributions, Pension Policy Team, HM Revenue & Customs, Room G/63, 100 Parliament Street, London, SW1A 2BQ.
Additional ways to be involved:	The Government will organise meetings for interested parties (subject to possible capacity constraints) – if you are interested in attending a session, please email to pensions.policy@hmrc.gsi.gov.uk for further details.
After the consultation:	Subject to the consultation outcome and draft clauses published in the autumn, new legislation will be introduced in Finance Bill 2012.
Getting to this stage:	Before the Budget 2011 announcement, informal discussions with employers, schemes and advisors were held earlier this year. The legislative regimes that cover this area include: • Pensions Regime - for pensions tax relief – Part 4 of Finance Act 2004; - for regulatory governance – Pensions Acts 1995, 2004 and 2008, and Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378); and • Structured Finance Regime - for corporation tax – Part 16 of Corporation Tax Act 2010; - for income tax – Part 13 of Income Tax Act 2007. Annexe A gives further details of the legislative framework.

Contents

1	Introduction	4
2	Context and Background	5
3	Tax Issues	8
4	Principles and Options for Change	12
5	Tax Impact Assessment	19
6	Summary of Consultation Questions	20
7	The Consultation Process	21
Annexe A: Current Legislation		23
Annexe B: Relevant Accounting Standards		26
Annexe C: The Code of Practice on Consultation		29

1 Introduction

1.1 The Government recognises that employers and pension scheme trustees value flexibility in meeting defined benefit (DB) pension scheme deficits. One flexible option, which is increasingly being used by large employers, is to fund DB schemes with a series of payments guaranteed with security over the assets from which the payments derive, rather than making a one-off lump sum contribution.

1.2 Asset-backed income streams can have advantages for employers over a simple up-front cash contribution. Payments can be spread over several years and the overall contribution can be adjusted by agreement to take account of changing economic circumstances and deficit levels. The arrangements can also provide security to pension schemes, which have a right to the underlying asset if the income stream ceases or the employer becomes insolvent. The Government recognises that such funding structures can meet both the commercial needs of employers and offer pension schemes secure, high-quality funding.

1.3 However, the Government has become aware that some asset-backed funding arrangements may give rise to tax relief that is greater than the fair value of plan assets received by the pension scheme.[1] This can arise where tax relief is given twice: up-front for the discounted value of a future income stream and again for each instalment of the income stream. It can also arise where the employer structures an income stream so that it is conditional on the future funding position of the pension scheme, resulting in a situation where tax relief given up-front may exceed the final value received by the pension scheme. These unintended effects result from the complex interaction of tax and accounting rules.

1.4 The Government therefore announced in Budget 2011 that it would consult on changing tax rules to limit the amount of tax relief available to employers when they make asset-backed contributions to their DB schemes in order that the tax relief given accurately reflects the increase in the fair value of pension scheme assets. This corresponds with action the Government has already taken to ensure that pensions tax relief remains fair and sustainable in the long term. The Government's intention is not, however, to inhibit the use of asset-backed contributions, recognising the flexibility they provide for employers and pension schemes.

1.5 The next chapter briefly outlines the context of the UK pensions tax system and DB pension provision. The main types of asset-backed arrangements and the tax issues arising from them are then set out in Chapter 3. The Government's principles in considering change, and two options for reform, are discussed in Chapter 4. The Government is keen to engage with employers and pension schemes in developing the detail of these changes, with consultation questions included in the main chapters, and summarised in Chapter 6 for reference.

[1] Annexe B provides a description of the key accounting terms used in this paper.

2 Context and Background

The principles of tax relief and the UK pensions tax regime

2.1 The Government is committed to supporting individuals in saving for their retirement, and encouraging employers to support their employees' long-term welfare by offering pensions through the workplace. The UK pensions tax system operates on an 'Exempt, Exempt, Taxed' basis. Tax relief is provided on pension contributions made by employers and individuals, and on the investment growth of funds in UK registered pension schemes. An individual also has the option to take up to 25% of their pension fund as a tax free lump sum upon retirement (subject to scheme rules), with the remainder used to provide an income for life, and taxed at the individual's marginal rate.

2.2 In 2009-10, pensions tax relief was worth £28.1 billion, with nearly £14 billion attributed to employer contributions. National Insurance Contributions exemptions were estimated to be worth an additional £8.3 billion in 2009-10. In addition to the tax relief and exemption for individuals, employers can also obtain tax relief for their contributions in the form of deductions from their taxable profits.

2.3 To qualify for tax relief, pension schemes must be registered with HM Revenue and Customs (HMRC). Since 2006, employer tax relief is only provided for pension contributions made in cash to their scheme.[2] This restriction to cash payments was introduced to simplify the valuation of contributions and was intended to ensure that the value of the employer's tax relief given for a contribution would not exceed the value received by the pension scheme.

The regulatory framework

2.4 The Pensions Regulator (the Regulator) is the main regulatory body for occupational pension schemes, and all schemes must register with them. The Pensions Act 2004 created and set out the main powers of the Regulator, which include powers in relation to pension scheme funding and the investment of scheme assets. They also provide guidance and communications to support pension scheme trustees and employers in their duties.

DB schemes and pension deficits

2.5 A key challenge for employers and their DB pension schemes is to ensure that DB pension liabilities are met in full in a way that is sustainable for the employer's business. Under the Pensions Act 2004, DB schemes are required to carry out triennial valuations of their assets and liabilities on a technical provisions basis.[3] Where a scheme is found to have a deficit, scheme trustees

[2] Prior to 2006, employer assets could be passed directly to pension schemes and employers would receive tax relief for the value of these assets. This often entailed lengthy discussions between employers, scheme trustees and HMRC to agree the asset value.
[3] Under a technical provisions basis, liabilities are calculated using a prudent discount rate which may vary from scheme to scheme.

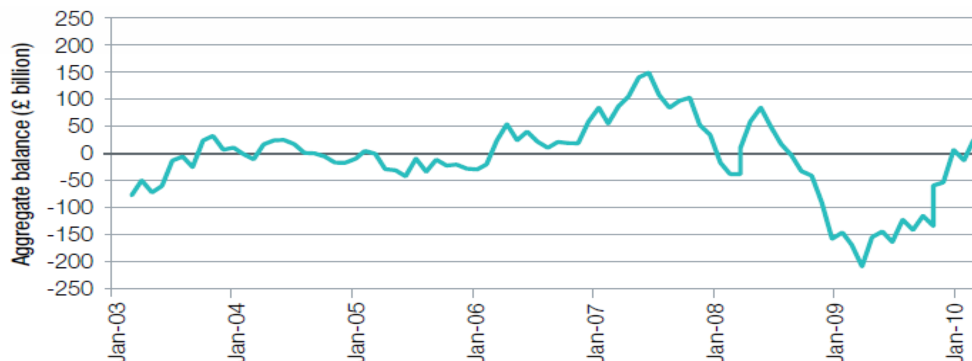
must agree a recovery plan with the sponsoring employer within 15 months of the valuation date, and submit it to the Regulator. Recovery plans typically last eight to ten years. The Regulator publishes an annual report on these plans to give an overall picture of pension assets and liabilities.

2.6 The latest employer recovery plans (March 2010) show that contributions to pension schemes are set to amount to £13-14 billion per year for the period 2010-12, and will remain over £9 billion per year until 2015. The joint Pension Protection Fund/Pensions Regulator publication, the Purple Book 2010, showed that the aggregate funding deficit schemes were targeting in recovery plans was just under £150 billion on a technical provisions basis. [4]

2.7 There are a number of reasons for DB scheme funding deficits. One underlying factor is longer life expectancy. In 1981, a 65 year old man could expect to live for another 14 years on average. By 2008, this had risen to 21 years, and it is expected to reach over 25 years by 2051.[5] This means that existing DB schemes' liabilities to provide a pension income to an employee have steadily risen.

2.8 Deficits are also driven by the investment performance of scheme assets, which can be volatile. As shown in the chart below, the economic downturn in 2009 introduced a particularly exaggerated spike in deficits, causing the aggregate balance of DB pension funding to reach a deficit of £209 billion on a section 179 basis in March 2009.[6] Much of this increase in deficits is a result of the decline in stock markets in this period, since pension schemes typically have around 60% of their investments in equities.

Estimated s179 aggregate balance (assets less liabilities) of pension schemes in the *Purple Book* 2010 dataset



Source: PPF/The Pensions Regulator

The emergence of asset-backed pension contributions

2.9 As set out above, DB scheme funding is monitored through triennial valuations. Employers also have to reflect pension deficits in their accounts under the UK General Accepted Accounting Practice (UK GAAP) or International Financial

[4] Pensions Regulator/Pension Protection Fund's *Purple Book* 2010: http://www.thepensionsregulator.gov.uk/docs/purple-book-2010.pdf

[5] Increases in women's life expectancy have been even higher, increasing from 18 years average lifespan at age 65 in 1981, to 23.6 years by 2008 and a projected 27.7 years by 2051 (information published by Office for National Statistics: http://www.statistics.gov.uk/downloads/theme_compendia/pensiontrends/Pension_Trends_ch02.pdf).

[6] A section 179 (Pensions Act 2004) valuation broadly refers to what would have to be paid to an insurance company for it to take on the payment of Pension Protection Fund level of compensation (detail in Annexe A).

Reporting Standards (see Annexe B for details). Employer pension liabilities and required contributions can potentially affect shareholder perceptions or the market share price of the business and by extension its commercial viability.

2.10 From informal discussions with customers and evidence of trends in DB schemes, it is apparent that some firms have faced large scheme deficits in the pension schemes they sponsor at the same time as credit conditions have tightened, placing constraints on business cash flow. This has created a demand to find ways to meet the required recovery plan to tackle deficits without seriously compromising short term cash flow, in order to provide certainty for the employer, their shareholders and pension scheme trustees. Some employers are also keen to avoid overfunding their pension schemes in these volatile times because of the costs involved in retrieving excess funds.

2.11 Asset-backed funding arrangements appear to have emerged as a result of these factors, with a KPMG report showing arrangements worth around £3 billion that were completed in 2010.[7] These arrangements allow an employer to use non-cash assets to underpin and act as a guarantee for regular, qualifying (for tax relief purposes) cash contributions or income streams to the pension scheme. They can also allow employers to agree recovery plan payments to their scheme over a longer period.[8] They are acceptable to a pension scheme and the Regulator if the guarantee is a valuable and realisable asset which the scheme has a right to should the employer default on their promised payments or become insolvent during the arrangement period. Due to the type of assets required and the cost of setting up the arrangements, they have been used mainly by larger employers and their schemes where the levels of deficit shown in their triennial valuations have been significant.

Overview and tax relief consequences

2.12 The Government recognises that these arrangements have emerged as a practical means for employers with large DB schemes to meet their obligations without significantly undermining their commercial viability. Meanwhile, they offer pensions schemes a securitised income stream, with protection against potential employer insolvency.

2.13 However, the Government is concerned that more complex arrangements can give rise to unintended tax consequences, particularly excess relief. The following chapters set out how these unintended consequences can arise, and the Government's proposed options for preventing such unintended tax effects.

2.14 As highlighted in the Regulator's published guidance[9] about issues around the interaction of such arrangements with employer-related investment rules (see Annexe A), it is the responsibilities of scheme trustees to consider the quality and tangibility of the assets offered by their employer to support income streams and the extent to which payments are deferred into the future.

---

[7] KPMG, *Asset-backed Funding for Pensions*: http://www.kpmg.co.uk/pubs/ABF_survey_final_web_accessible.pdf

[8] The same KPMG report suggests some recovery plans are extending to around 17 years (the typical length: 8-10 years).

[9] Statement by The Pensions Regulator on *Employer related investment* published in November 2010: http://www.thepensionsregulator.gov.uk/docs/employer-related-investments-statement-nov-2010.pdf

3 Tax Issues

3.1 As described in Chapter 2, employers can currently transfer a non-cash asset to their pension scheme and obtain a tax deduction under a funding arrangement provided it is structured in a certain way.

3.2 The Government is aware of a number of ways that this can be done. This chapter sets out the main types of arrangements that have been described in tax publications, and explains the Government's concerns with unintended tax consequences that can arise in specific arrangements.

Simple asset transfers for settling pension liabilities

3.3 In a "plain vanilla" arrangement where there is a full and irrevocable transfer of ownership of an asset from an employer to the pension scheme, the scheme is not tied to an amount of income that is fixed at the start of the arrangement. The scheme can benefit from the ability to make its own investment decisions about the asset without regard to any terms pre-agreed with the employer concerning the transfer. This means that the tax deduction given to the employer or the employer group not only reflects the fair value of the asset but should also match the value received by the scheme (see Example 1 below).

Example 1

Company A's pension scheme is in deficit by £400 million. If Company A paid £400 million in cash into the scheme, it would get immediate tax relief for that amount. As Company A does not have access to that amount of cash, it enters into the following structure:

- the company commits to paying a cash contribution of £400 million to the scheme;
- the scheme agrees to acquire a business property from the company that is valued at £400 million;
- the employer and the pension scheme agree that the values of the two transactions can be offset against each other and no money changes hands; and
- after the property transfer, the scheme bears all the risks and rewards of ownership of the property and also makes its own investment decisions on the property.

The company has effectively made a cash contribution to the scheme of £400 million on which it receives pensions tax relief. The transaction is a disposal event for the purpose of the charge to corporation tax on capital gains and the company would be charged as if it had disposed of the property for £400 million. Similarly, the scheme has acquired the property and Stamp Duty Land Tax will be payable on the £400 million consideration. The tax treatment for the company is exactly as if it had sold the property for £400 million, and had contributed the cash proceeds to the scheme.

Asset-backed income stream arrangements

3.4 More complex arrangements typically involve a stream of cash payments (or an income stream) from an employer to the pension scheme over a period of time. The employer guarantees these payments with security over the asset from which these payments derive.

3.5 An example of this type of asset-backed arrangement is the use of an employer's property to generate an income stream which the pension scheme has a right to receive for a certain period. This means that the right to income is fixed at the start (both in amount and payment dates) and the fair value of the right is recognised as an asset in the accounts of the pension scheme. As cash is received, this value decreases year on year and is accounted for as such over the arrangement period. There is no residual value at the end of the arrangement. In effect, the right is recognised as an amortising loan or a wasting asset. As Example 2 below shows, the tax relief given to the employer matches the actual amount of contributions received by the pension scheme over the arrangement period.

Example 2

Assume that the facts are as in Example 1. However, instead of using a business asset under a plain vanilla arrangement, Company A enters into the following structure:

- the company commits to paying a cash contribution of £400 million to the scheme;
- the company occupies property which would cost £22.5 million a year to rent. It transfers this property to the pension scheme which immediately leases it back for a period of 20 years, at the end of which the property reverts to the company; and
- during the 20 years, the company is committed to paying a total of £450 million as rent to the scheme.

Taking into account the delay in payment, this is equivalent to an immediate payment of £400 million (on a net present value basis) and an interest payment of £50 million to compensate the scheme for the delay.

The company gets pensions tax relief for the net present value (£400 million) upfront. The transaction is accounted for in the employer's accounts as a loan under Financial Reporting Standard (FRS) 25 or International Accounting Standard (IAS) 32 (see Annexe B). This is therefore within the scope of the structured finance arrangements (SFA) legislation in Part 16 of Corporation Tax Act 2010 (see Annexe A). The SFA rules stop any deduction for the rental payment of £22.5 million each year and instead allow relief on just £50 million over the period as it is recognised as interest in the company's accounts.

The overall deduction will therefore be £450 million over 20 years (£400 million upfront and £50 million on an accruals basis).

Use of special purpose vehicles

3.6 Some asset-backed arrangements involve a special purpose vehicle such as a partnership. There can also be some elements of contingency, for example, where the payments are contingent on the level of dividends by the employer, or there is a contingent final payment (or a "bullet" payment that is made at the end of the arrangement period only if the pension deficit remains)[10]. Example 3 below shows the possible effects of the first type of contingency.

Example 3

Assume that the facts are as in Example 2, but at step two, instead of transferring the property to the pension scheme, Company A transfers it to a special purpose vehicle or partnership for a period of 20 years, at the end of which the property reverts to the company:

- the vehicle then uses the property to deliver a pattern of cash payments to the pension scheme;
- subject to the contingency below, the company is required to pay a total of £450 million rental payments over 20 years to the vehicle, which in turn is required to make payments of the same amount to the pension scheme to the same time scale. Taking into account the time taken to pay, this is equivalent to an immediate payment of £400 million (i.e. on a net present value basis) and £50 million as an interest payment to compensate the scheme for the delay;
- however, these payments are contingent on the level of dividends paid by the company.

As in the previous examples, the company gets pensions tax relief for the net present value (£400 million) upfront. However, because of the contingent element to the stream of payments, the arrangements are accounted for in the employer's accounts as equity under FRS 25/IAS 32 (see Annexe B) and so the transaction in the hands of the company does not fall within the scope of the SFA rules.

As the SFA rules do not apply, the company might also receive deductions for the full amount of the rental payments. If so, the overall deduction that Company A receives could be up to £850 million over 20 years when only about half, £450 million would actually be received as contributions in total by the scheme over time.

3.7 In arrangements involving other types of contingency, there are also risks of over-relief, for example, where a "bullet" payment turns out to be smaller than expected because the scheme's deficit at the end of the period is less than anticipated. In this situation, an upfront deduction is given for the £400 million contribution agreed at the outset. However, if the way the arrangement is accounted for does not adjust profits to reflect the reduction, there is no existing

[10] Source: *Asset-backed Funding for Pensions* published by KPMG in 2010: pages 3, 11 & Appendix 2.

tax mechanism to reduce the size of that upfront deduction, either at the time the relief was originally given or later when it turns out that the contingent final payment is not as much as expected.

Summary of tax issues and recent developments

3.8 By introducing more complex legal arrangements involving some elements of contingency (see Example 3), an employer can secure unintended tax relief. Tax relief for the employer may be:

- given before a contribution is received by the pension scheme;
- doubled as a result of mismatches between accounting and tax rules; and
- retained even though the value of the payments actually received by the pension scheme is much lower than the tax relief given to the employer.

3.9 As discussed in the previous Chapter, there has been a rapid growth in employers' use of asset-backed contributions to fund DB scheme deficits. Their growth can be linked to the timing of the increase in pension deficits caused primarily by the recent economic downturn.

3.10 As the global and UK economies recover, market conditions are expected to improve over the coming years, which may in turn improve liquidity for employers and help reduce pension deficits through improved investment performance. If this occurs, the use of asset-backed funding arrangements could reduce. However, the fact that these arrangements can generally help preserve business capital by spreading out pension contributions and provide flexibility by allowing variations in payments, as well as generating the unintended tax advantages in some cases, may mean some employers will continue to use them as long-term methods of funding their schemes.

3.11 While the Government understands the reasons behind using these arrangements, the Government does not believe they should create the excess, unintended tax relief as outlined in the examples above. Nor should pension funding decisions be driven by the tax treatment for different arrangement types for employer contributions. The Government considers it appropriate to take action to remove the unintended tax consequences of these arrangements as this represents a tax loss to the Exchequer. As far as possible, any changes will be made in a manner that allows the commercial benefits of these arrangements to continue.

3.12 The Government welcomes feedback on these developments in particular:

Question 1: Do the examples above accurately describe the range of asset-backed arrangements currently in use? Are there any other forms of similar arrangements we have not considered?

Question 2: Are there further views on why these arrangements have emerged, and whether they will continue to be used in the long-term (including any tax or regulatory issues not considered above in relation to these arrangements)?

4 Principles and Options for Change

4.1 This Chapter sets out the Government's approach to preventing the unintended tax relief that can arise. First, the principles that the Government has considered in formulating options for change are outlined. Then, two proposed solutions are detailed, and questions about the solutions are set out at the end of the Chapter.

Principles for reform

4.2 In considering any reform to tax rules, the Government seeks to ensure that the tax relief system remains affordable and sustainable for the Exchequer, while minimising complexity in the tax rules wherever possible. Specifically, any changes to the pensions tax framework will be considered in light of the following key principles:

- Flexibility – the Government wants to enable flexibility and support employers wanting to tackle their pension deficits while maintaining commercial viability;
- Fairness and affordability – tax relief offered by the Government is intended as an incentive for employers who make contributions to their pension schemes in order to provide their members with an income in retirement. Tax relief beyond the value of such contributions at a cost to the Exchequer should not be allowed, nor should pension funding decisions be driven by the tax treatment of different kinds of contribution;
- Responsibility – employers have responsibility for funding pension schemes and ensuring liabilities are adequately met, in a way that is acceptable to scheme trustees and meets regulatory requirements; and
- Simplicity – any changes to the tax rules should be proportionate, and seek to minimise administrative burdens for pension schemes, employers, and the Government.

Options for change

4.3 The Government believes that leaving the existing tax rules unchanged is not an option because of the Exchequer cost of unintended tax relief. The Government also initially considered whether simply allowing assets to be passed directly from employers to pension schemes would resolve this tax issue. However, informal discussions with industry indicated that this option would not prevent demand for more complex arrangements, and so would not meet the Government's objective to remove unintended tax relief, while also preserving as far as possible flexibility for employers and pension schemes.

4.4 The challenge therefore is to find solutions that result in the amount of tax relief available to the employer matching the cash value received by the scheme, but in a way that does not inhibit unduly the use by employers of commercially sensible arrangements.

4.5 Two main options have been identified on which views are welcomed. Both are intended to remove any excess tax relief that may arise beyond the fair value of plan assets received by a pension scheme from its sponsoring employer, which is the Government's primary objective. However, each would operate in slightly different ways, which may result in varying administrative burdens or different effects on the viability of using these types of arrangement.

- **Option A – providing relief only when cash is received by scheme**

  This would remove automatic upfront tax relief for asset-backed contributions. Instead, employer tax relief would be given only when cash actually changes hands between the employer and the pension scheme, or when the scheme acquires full title to an asset that can readily be converted into cash (for example a traded security).

- **Option B – aligning tax rules with accounting rules**

  This would involve amending existing tax rules to ensure that the tax treatment of the arrangements as a whole (not just the part that governs tax relief for pension contributions) accurately reflects the economic substance of the transaction. This means that the tax treatment of the arrangements would generally follow the relevant accounting rules over the period of the arrangements. The main difference would be that where arrangements are recognised as financial liabilities in the accounts, upfront relief based on the accounting value of the asset would be available. If they are accounted for as equity, upfront pensions tax relief would not be available.

4.6 Neither option would affect the current tax treatment of straightforward cash contributions. Nor would there be any change to the tax treatment when there is an outright transfer arrangement as described in Example 1 in Chapter 3.

4.7 Changes to the tax rules would not apply to transactions that have already taken place. Any tax relief given on the basis of tax rules and accounting treatment used before the proposed new rules come into force would not be unpicked. However, the new rules would apply to amounts that arise after the new rules come into force including payments that become due after these rules are enacted, which would, in the absence of the new rules, be treated as deductions from taxable profits.

4.8 One example is where the final bullet payment under an arrangement was less than originally expected (as set out in paragraphs 3.6 and 3.7). The employer would need to make an adjustment to their tax computation for the accounting period when the bullet payment was made to reflect the lower payment if normal tax rules did not automatically add back the reduction.

4.9 Similarly if double tax relief arises as shown in Example 3 in Chapter 3, the new rules would stop deductions for rental payments that are due on or after the date on which the new rules become effective.

4.10 The Government welcomes views on this aspect of the policy design:

<u>Question 3</u>: Does this capture the right balance between not disturbing the tax treatment of transactions that have already been reflected in taxable profits and preventing undue reliefs?

<u>Question 4</u>: Should the new rules apply to any other situations in relation to existing arrangements?

4.11 Further details of the options and questions to highlight the areas on which comments are sought are given in the remainder of this chapter.

Providing relief only on cash basis (Option A)

4.12 This option would match tax relief for the employer to the time at which the pension scheme has unfettered funds available to meet its obligations to pay pensions. Where a readily-marketable asset is transferred in satisfaction of the employer's liability to contribute – for example, listed shares – then, as now, tax relief would be available at the point of transfer. In other words, this option would involve no change for arrangements that are closest to cash contributions.

4.13 What would be different under this option is the tax treatment where the asset used to offset the debt cannot readily be turned to cash. This could, for example, apply if the asset were a right to an income stream due from the employer which is restricted so that the pension scheme cannot sell that right. Under this type of arrangement, it could be said that there has been no net transfer of value because one financial obligation (to fund the pension scheme) has simply been replaced by another (to make payments under the obligation transferred or created).

4.14 Instead of providing an upfront deduction for the net present value of the stream of payments to the pension scheme, as now, tax relief under Option A would only be given to an employer as and when each payment is received by the scheme. This would match the timing and amount of tax relief for the employer with availability to the pension scheme of cash to meet its obligations. It would prevent both the risks of double tax relief arising from the combination of the upfront deduction and relief on individual payments under the arrangements, and any discrepancy between the upfront deduction and the final value received by the pension scheme.

4.15 As part of this change, employers would need first of all to decide (and where necessary agree with HMRC) whether the asset used to settle the undertaking to make a pension contribution is sufficiently close to cash for an up-front deduction to apply. If it is, then the employer and the pension scheme would need to determine the value of the asset and the scheme would need to report that information to HMRC in support of the amount of deduction claimed by the employer. Depending on the type of asset, this may also involve discussions with HMRC to agree the valuation.

4.16 If the asset is not sufficiently close to cash, the employer would, in preparing their tax computations, need to set up systems to remove the effects of the transactions from the accounting profits, and to disapply any processes that would otherwise apply SFA rules to the arrangements so that the employer can obtain any deductions that may be due on rental or other type of regular payments to the pension scheme. The employer would then need information from the scheme to make adjustments to their taxable profits to claim pensions tax relief as and when the scheme has full title to the asset or receives cash under the arrangement.

4.17 It is anticipated that this option could generate additional costs to employers, pension schemes and the Government because of these mismatches and new reporting requirements. Example 4 below gives a brief description of how this option would work.

Example 4

Assume that the facts are as in Example 3. The pension deficit is £400 million and Company A makes a rental payment of £22.5 million a year for 20 years to the pension scheme directly or through a special purpose vehicle or partnership.

Because of the terms of the arrangement, the scheme would not be able to sell its right to the income stream in the meantime without agreement of the company (or the special purpose vehicle, if one is involved).

Under Option A, there would be no upfront deduction. The SFA rules would be disapplied to allow for deductions for the total rental payments of £450 million.

The company would only receive deductions as and when it makes a cash payment to the scheme (or deductions on each annual payment of £22.5m). Over the arrangement period, the deductions would total £450 million.

Aligning tax and accounting rules (Option B)

4.18 This option would apply to deferred contributions and ensure that tax relief to employers who make deferred pension contributions follows the economic substance of the arrangement and matches the accounting treatment.

4.19 An asset-backed contribution would count as a deferred contribution for this purpose as the employer does not contribute a cash lump sum upfront. In substance, it is as if the pension scheme had lent money to the employer and the employer had used the money to reduce the pension deficit. In other words, these arrangements function in a way similar to the financial instruments covered by the existing structured finance regime set out in Chapter 2 of Part 16 of Corporation Tax Act 2010 (and their income tax equivalent in Chapter 5B in Part 13 of Income Tax Act 2007) (more detail in Annexe A).

4.20 According to these SFA rules, arrangements that are in economic substance financing transactions and are accounted for as financial liabilities or debts

should be taxed in accordance with their accounting treatment. This means that these rules effectively provide a mechanism under which Option B can operate and regulate the basis on which relief is available.

4.21 However, as set out in Example 3 in Chapter 3, there may be some asset-backed arrangements where the current pensions tax relief rules would recognise that the employer has made a pension contribution but the accounts do not treat the arrangements as debt. This could be because the nature of the obligation is contingent and is thus treated as some form of equity interest under the criteria in FRS 25/IAS 32 (see Annexe B). In this case, the SFA rules are unlikely to apply and over-relief may result.

4.22 Therefore this proposed option would make the following changes:

- where the arrangement is accounted for by the employer as debt, the SFA regime would always apply; tax relief for an upfront tax deduction would be available for the accounting value of the debt instrument; and relief would be available for the element of subsequent payments that are accounted for as interest;
- where the employer accounts for the arrangement as equity, upfront tax relief for the value of the equity instrument would not be available; and
- where the accounting treatment of an arrangement that was initially accounted for as debt changes to equity or there is a change to the amount of contributions (for example, contingent payments are less than originally planned or are not made, or an arrangement is wound up early), then the new rules would ensure any excess of the upfront tax relief is clawed back.

4.23 The following example (Example 5) shows how Option B would work in practice by realigning the tax and accounting rules to prevent unintended tax relief.

Example 5

Using the same facts as in Example 2, if the transaction is accounted for as a loan, then the arrangements would be within the scope of the SFA rules.

Under Option B, Company A would

- obtain immediate tax relief of £400 million (the net present value) under the pension scheme rules and
- receive further relief of £50 million (the interest payment) over the remaining 20 years under the SFA rules.

The SFA rules prevent the company from obtaining the unintended relief for the rental payments effectively recognising that these payments are repaying the capital element of the “loan” the company entered into at the outset.

4.24 As set out above, option B would allow an upfront tax deduction only when an arrangement is one to which the SFA rules apply. If the accounting treatment or the value of the asset-backed contribution changes after the tax relief is first given, simple adjustments would be made to allow only that part of the tax relief applicable to the period before the change and to claw back the rest. Example 6 below illustrates this claw-back effect.

Example 6

Assume that the facts are as in Example 5. However, after 10 years, at a point when the financial liability stands at £175 million, the structure is unwound (perhaps because the pension scheme is no longer in deficit) so that no further rental income would be received. In that case, Company A would be taxed on the amount of financial liability still recognised in the accounts at the point of unwind, and there would be no further relief for any finance charge.

4.25 Option B would therefore ensure that the tax deduction received by the employer would match the economic benefits received by the pension scheme over time. In most cases, employers would need only to follow the existing accounting and tax rules. The current processes for accounting for tax would broadly apply. Therefore, it is anticipated that costs to employers, pension schemes and the Government should be kept to a minimum. Most importantly, this option should correct the unintended tax consequences, while preserving the flexibility of asset-backed arrangements for both employers and pension schemes in managing pension deficits.

4.26 Based on the principles considered at the start of this Chapter, the Government considers that Option B is currently the preferred option. At this point, this option appears to most effectively balance removing the unintended excess tax relief some arrangements may deliver and allowing the flexibility of these arrangements. The Government thinks it achieves this balance without creating undue administrative or compliance costs for the Government, employers or pension schemes.

4.27 The Government welcomes views and any further analysis on the options set out above particularly on the following questions:

Question 5: Are there any significant advantages of Option A over Option B that have not been identified above? Are there any significant disadvantages of Option B over Option A not identified above?

Question 6: Would the options give rise to any commercial issues for employers, for example in the recognition of an asset-backed arrangement in their accounts? If so, please also suggest how these issues could be resolved.

Question 7: Would the options create a significant impact on the viability and use of asset-backed structures? Would such impact extend to the funding of pension schemes? If so, what would these likely effects be?

Question 8: Would either option have any other effects that the Government should take into account?

Question 9: The Government has identified two options and has set out its current preference for Option B, based on an initial assessment. However, if interested parties feel that other options should be considered which can fully meet the Government's principles for reform as set out in paragraph 4.2, please can full details be provided?

5 Tax Impact Assessment

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	Exchequer impacts are under review and will take account of consultation responses and other evidence. For example, a recent KPMG report suggests that nine large employers have pledged £9 billion assets to their schemes under some funding arrangements apparently amounting to £4 billion of asset-backed contributions.				
Economic impact	The Government expects the economic impact to be limited as full relief will be available under both options.				
Impact on individuals and households	None - this is a measure that only impacts directly on employers and pension schemes.				
Equalities impacts	No impacts on any protected equality groups are expected from these options for the reason set out in the box above.				
Impact on businesses including civil society organisations	Under Option A, employers and pension schemes would need to set up a new process separate from their accounting processes to capture cash receipts of pension schemes and, if assets are transferred outright, to assess the convertibility of assets received by schemes. Both costs of change and ongoing costs could be significant depending on the design of these new processes and on the new reporting requirements. Option B makes use of the existing processes, and any change or ongoing costs that employers or pension schemes may incur would be small.				
Impact on HMRC or other public sector delivery organisations	HMRC expects to apply the existing processes for Option B, and the operational impact would not be significant. There would be increased cost to HMRC under Option A. A few public sector organisations with funded schemes may be using or considering using asset-backed arrangements. They would also incur costs of change like private sector organisations.				
Other impacts	The existing evidence suggests that only large firms are using asset-backed arrangements and so the impact of this measure (limiting tax relief) should only fall on large firms. Small firms can set up these arrangements at present if they need to and the measure would not prevent them from doing so.				

Question 10: Can interested parties offer views on any other likely costs that employers and pension schemes may incur under each option?

6 Summary of Consultation Questions

A summary of the questions on which views are sought from interested parties, as set out throughout this document, are as follows:

Question 1: Do the examples above accurately describe the range of asset-backed arrangements currently in use? Are there any other forms of similar arrangements we have not considered?

Question 2: Are there further views on why these arrangements have emerged, and whether they will continue to be used in the long-term (including any tax or regulatory issues not considered above in relation to these arrangements)?

Question 3: Does this capture the right balance between not disturbing the tax treatment of transactions that have already been reflected in taxable profits and preventing undue reliefs?

Question 4: Should the new rules apply to any other situations in relation to existing arrangements?

Question 5: Are there any significant advantages of Option A over Option B that have not been identified above? Are there any significant disadvantages of Option B over Option A not identified above?

Question 6: Would the options give rise to any commercial issues for employers, for example in the recognition of an asset-backed arrangement in their accounts? If so, please also suggest how these issues could be resolved.

Question 7: Would the options create a significant impact on the viability and use of asset-backed structures? Would such impact extend to the funding of pension schemes? If so, what would these likely effects be?

Question 8: Would either option have any other effects that the Government should take into account?

Question 9: The Government has identified two options and has set out its current preference for Option B, based on an initial assessment. However, if interested parties feel that other options should be considered which can fully meet the Government's principles for reform as set out in paragraph 4.2, please can full details be provided?

Question 10: Can interested parties offer views on any other likely costs that employers and pension schemes may incur under either option?

7 The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.
Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
Stage 3 Drafting legislation to effect the proposed change.
Stage 4 Implementing and monitoring the change.
Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process following an evidence gathering exercise involving informal discussions with employers, pension schemes and advisors held earlier this year. The purpose of this consultation is to seek views on the options that the Government has explored, the detailed policy design and a framework for implementation of a specific proposal.

How to respond

A summary of the questions in this consultation is included at Chapter 6.

Responses should be sent by 16 August 2011, by email to pensions.policy@hmrc.gsi.gov.uk or by post to: Employer Asset-backed Pension Contributions, Pension Policy Team, HM Revenue & Customs, Room G/63, 100 Parliament Street, London, SW1A 2BQ.

Telephone enquiries can be made to the HMRC Pensions Policy team on 0207 147 2835 or 0115 974 2420.

This document can also be accessed from the HMRC Internet site at http://www.hmrc.gov.uk/consultations. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

The Government will organise meetings for interested parties (subject to possible capacity constraints) – if you are interested in attending a session, please email to pensions.policy@hmrc.gsi.gov.uk for further details.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation. However, we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HMRC.

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annexe C.

Annexe A: Current Legislation

A. Pensions Regime

Tax Relief

Finance Act 2004 ("the 2004 Act") introduced rules to ensure that the tax relief due on an employer's contribution to a registered pension scheme in respect of any individual does not exceed the value received by the scheme. By only allowing tax relief for cash contributions, it was intended to make things simpler for businesses, thereby avoiding the complicated and lengthy disputes over valuations that took place before 2006 between HMRC and employers about contributions to their pension schemes. The main provisions giving the relief to employers are set out in section 196[11] of the 2004 Act.

However, there are ways in which employers can structure their non-cash contributions (also referred to as in specie contributions) so that, depending on the nature of the arrangements entered into, the contributions may qualify for tax relief. It is possible for an employer to agree to make a cash contribution and settle this obligation by way of a transfer of non-cash assets. The Registered Pension Scheme Manual (reference: 05102035) states that for tax purposes, there must be:

- a clear obligation on the employer to pay a contribution of a specified monetary sum. This needs to create a recoverable debt obligation;
- a separate agreement between the pension scheme trustees and employer to pass an asset to the scheme for consideration; and
- if the scheme agrees, the cash contribution debt may be paid by off-setting against the consideration payable for the asset. The scheme effectively agrees to acquire the asset for its market value.

Pensions regulation and protection

The Pensions Act 2004 made a number of changes to the regulation and protection of occupational pensions. The Occupational Pensions Regulatory Authority was

[11] Under section 196 of the 2004 Act, employers can obtain a tax deduction on monetary contributions they pay under a registered pension scheme in respect of any individual. There are different provisions for different types of businesses:

1. Trading or professional concerns - a contribution paid by a person who carries on a trade or profession will not be disallowed for the purposes of tax relief because it is capital in nature. The contributions have to be deductible under the normal tax rules applying to expenses incurred. The main implication of this is that the contribution has to have been paid wholly and exclusively for the purposes of the trade or profession in accordance with section 54 Corporation Tax Act 2009 (CTA 2009) or section 34 Income Tax (Trading and Other Income) Act 2005.

2. Companies with investment business – contributions paid are always treated as management expenses under section 1221 CTA 2009, even if they would not be but for section 196((3) of the 2004 Act.

3. Insurance companies – contributions paid are always brought into Step 1 in section 76(7) Income and Corporation Taxes Act 1988 even if they would not be but for section 196(4) of the 2004 Act.

In each of the three cases above, the deduction is given in the period of account when the contribution is paid.

replaced by a new, risk-based, Pensions Regulator (the Regulator). The Pension Protection Fund (PPF) was established to pay compensation to members of defined benefit schemes which had begun winding up underfunded following their employer experiencing an insolvency event.

The Pensions Act 2004 also introduced a new, scheme-specific, funding regime which requires all defined benefit schemes to conduct an actuarial valuation at least once every three years, and where the scheme is in deficit, to submit a recovery plan agreed between the scheme's trustees and sponsoring employer to the Regulator.

The Regulator has statutory objectives relating to protecting members' benefits, reducing risks to the PPF, promoting good administration and governance, and, following the Pensions Act 2008, enforcing employers' duties to enrol staff in pension schemes.

Compensation paid by the PPF is funded by a levy (Pension Protection Levy) charged on eligible pension schemes, assets of schemes transferring to the PPF, and investment returns. The levy includes a risk-based component determined by the level of a scheme's deficit and the likelihood that the sponsor employer becomes insolvent.

Following assessment, an eligible pension scheme transfers to the PPF if it is funded below the level required to buy PPF-level benefits from an insurer regulated by the Financial Services Authority. This funding level (as estimated by valuations under section 179 of the Pensions Act 2004) is one of the factors in calculating the risk-based component of the levy.

Employer Investment Rules

The Pension Act 1995 ("the 1995 Act") and the Occupational Pension Schemes (Investment) Regulations 2005 set out restrictions on employer-related investments (ERI).[12] Subject to certain exceptions, not more than 5% of the current market value of assets in an occupational pension scheme may at any time be invested in ERI. In addition, some ERI is absolutely prohibited, including an employer-related loan or guarantee and ERI transactions at less than the market value. ERI restrictions not only apply to investments in the employer, but also to investments in parties

---

[12] Under Section 40 of the 1995 Act, "employer-related investments" means—

(a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer,

(b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person,

(c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person,

(d) loans to the employer or any such person, and

(e) other prescribed investments.

"Securities" in paragraph (a) means any shares, instruments creating or acknowledging indebtedness, instruments giving entitlement to investments or certificates representing securities (this definition must be read with section 22 of that Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act).

associated or connected with the employer, and in property used by the employer or its associates.

Breaches of ERI restrictions may attract civil penalties and in some cases will be a criminal offence for which the Regulator can instigate criminal proceedings against trustees (and in some cases also against employers and advisors). It can also impact on the calculation of the scheme's assets.

In addition to ERI considerations, any scheme investment should also comply with legislative and trust law restrictions (including that they are prudent and act in the best interests of scheme members).

B. Structured Finance Regime

The structured finance regime is set out for corporation tax purposes in Chapter 2 of Part 16 of Corporation Tax Act 2010 with mirroring provisions for income tax in Chapter 5B of Part 13 of Income Tax Act 2007. It applies where a person enters into a "structured finance arrangement". A structured finance arrangement (or "SFA") is an arrangement where in accordance with the Generally Accepted Accounting Practice,[13] a person ("the borrower") records in its account a financial obligation in respect of the lump sum paid by "the lender". The reference to accounts of the borrower includes a reference to the consolidated group accounts of a group of companies of which the borrower is a member.

The following conditions must also be met:

- the borrower (or a person connected with the borrower) disposes of an asset to the lender (or a person connected with the lender)
- as a result the lender becomes entitled to amounts of income in respect of the asset. This includes any case where the lender indirectly derives any value from the asset.

Where there is a SFA and that arrangement would have had the effect that:

- either income or receipts that would have been brought into account on the borrower for tax purposes are not brought into account;
- or the borrower would have become entitled to a deduction in computing its income or profits for tax purposes,

then

- the arrangement will not have that effect, and
- subject to meeting certain conditions, any disposal or reacquisition of assets or rights under the arrangement, and the lump sum received, will be disregarded for the purposes of tax on capital gains (section 263E of the Taxation of Chargeable Gains Act 1992).

Tax relief will be allowed for the amount of any interest or 'finance charge' in respect of the finance agreement shown in the borrower's accounts. For a company, this amount will be treated as interest payable on a debtor loan relationship to which it is party, and for any other person as interest payable.

[13] This is defined under section 1127 Corporation Tax Act 2010 to include both the UK Generally Accepted Accounting Practice and International Financial Reporting Standard (see Annexe B for the details of the accounting standards).

Annexe B: Relevant Accounting Standards

A brief description is given below on the relevant the UK and International Accounting Standards applicable to employer accounting in relation to asset-backed contributions.

Current UK Generally Accepted Accounting Practice (GAAP)

1. The accounting for Retirement Benefits is set out in Financial Reporting Standard 17 Retirement benefits ('FRS 17'). FRS 17 takes a balance sheet approach and it works on the basis that a surplus or deficit in a pension scheme as measured by reference to the fair values of the scheme assets and liabilities is shown on the employer's balance sheet. The overall figures reported in the financial statements reflect the changes in those fair values year on year.

2. If a sponsoring employer contributes an asset (via a special purpose vehicle ('SPV') or partnership) to a defined benefit scheme and the asset qualifies as a plan asset of the pension scheme, the pension deficit is reduced or (less commonly) the plan assets increases by the amount of the asset transferred.

3. The accounting entry for the replacement of the pension obligation in the financial statement of the sponsoring entity will depend on the nature of the new obligation and agreement between the group (including the SPV) and the pension scheme. For example, in different structures the replacement of the pension obligation could be treated as equity minority interests or as a financial liability (debt).

4. The relevant UK accounting standard when considering whether the credit should be treated as debt or equity is Financial Reporting Standard 25 Financial instruments: Presentation 'FRS 25'.

5. FRS 25 requires that the issuer of a financial instrument shall classify the instrument, or its component parts, on initial recognition as a financial liability, a financial asset or an equity instrument in accordance with the substance of the arrangement.[14]

6. FRS 25 defines fair value as "the amount at which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction".[15]

[14] FRS 25 paragraph 15
[15] FRS 25 paragraph 11

7. FRS 25 defines a financial liability as any liability that is;

   '(a) contractual obligation:

   i. to deliver cash or another financial asset to another entity; or

   ii. to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity…'[16]

8. FRS 25 defines an equity instrument as;

   '… any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities.'[17]

9. Assets minus liabilities equal equity and thus equity is generally understood as a residual concept.

10. So a financial liability is a contractual obligation to deliver cash or another financial asset, which an entity cannot avoid (even if contingent on a future event). Whereas equity is the interest remaining in the entity's assets after deducting all the liabilities. Thus the instrument is equity if the entity is not required (but may choose) to pay out cash or another financial asset.

International Financial Reporting Standard (IFRS)

11. In respect of IFRS, the definition of a financial liability and equity is contained within International Accounting Standard 32 Financial Instruments: Presentation ('IAS 32'). IAS 32 is identical to FRS 25 in this respect. In addition, the definition of fair value in IAS 32 is the same as FRS 25.

12. The accounting for pensions is contained within International Accounting Standard 19 'Employee Benefits' ('IAS 19'). There are some differences between IAS 19 and FRS 17. Although both adopt a balance sheet approach, there are differences in how the gains and losses are recognised and how the defined benefit liability is measured.

13. IAS 19 defined "plan assets" as
    (a) assets held by a long-term employee benefit fund; and
    (b) qualifying insurance policies.[18]

---

[16] FRS 25 paragraph 11
[17] FRS 25 paragraph 11
[18] IAS 19 paragraph 7:-

Assets held by a long term employee benefit fund are assets (other than non transferrable financial instruments issued by the reporting entity) that:
a) are held by an entity (a fund) that is legally separate from the reporting entity and exist solely to pay or fund employee benefits; and
b) are available to be used only to pay or fund employee benefits, are not available to the reporting entity's own creditors (even in bankruptcy), and cannot be returned to the reporting entity, unless either:
   i) the remaining assets of the fund are sufficient to meet all the related employee benefit obligations of the plan or the reporting entity; or
   ii) The assets are returned to the reporting entity to reimburse it for employee benefits already paid.

Future UK GAAP

14. The Accounting Standards Board is currently carrying out a consultation on the future of UK GAAP. An exposure draft in respect of the consultation was issued by the Accounting Standards Board on 29 October 2010. The consultation has suggested that there will be three Tiers of UK GAAP: Tier one will apply EU-adopted International Financial Reporting Standards, Tier two will follow a new financial reporting standard called the Financial Reporting Standard for Small and Medium Entities ('FRSME'), Tier three will apply the Financial Reporting Standard for Smaller Entities.

15. There is still some debate as to which entities will be in each Tier but it is expected that publicly accountable entities will be in Tier 1, entities meeting the Companies Act definition of a small entity will be in Tier 3 and everything else will be in Tier 2. Entities will have the option to move to a higher tier if they wish.

16. It is likely that subsidiaries of entities in Tier 1 would be able to adopt a version of EU-adopted IFRS with reduced disclosures, and retirement benefits is one area of disclosures that may be simplified.

17. The FRSME is based on the International Reporting Standard for Small and Medium Enterprises, which in respect of pensions is broadly based on IAS19, but it is unclear as yet whether there will be changes to the Exposure Draft after consultation to align it more closely with current UK GAAP. We do not expect changes to the retirement benefits section. A standard is expected to be issued in mid 2011 and it is expected that it will be available for early adoption, becoming mandatory from 2013.

18. In respect of the definitions of equity and financial liabilities, these are the same in the FRSME as in FRS 25 and IAS 32 and changes are not expected.

A qualifying insurance policy is an insurance policy issued by an insurer that is not a related party (as defined in IAS 24 *Related Party Disclosures*) of the reporting entity if the proceeds of the policy:

a) can be used only to pay or fund employee benefits under a defined benefit plan; and
b) are not available to the reporting entity's own creditors (even in bankruptcy) and cannot be paid to the reporting entity, unless either;
   i) the proceeds represent surplus assets that are not needed for the policy to meet all the related employee benefit obligations; or
   ii) the proceeds are returned to the reporting entity to reimburse it for employee benefits already paid.

Annexe C: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, Better Regulation and Policy Team, H M Revenue & Customs, Room 3E13, 100 Parliament Street, London, SWA 2BQ

020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk