



# Finance Act 2002

## 2002 CHAPTER 23

### PART 5

#### OTHER TAXES

##### *Inheritance tax*

#### **118 IHT: rate bands**

(1) For the Table in Schedule 1 to the Inheritance Tax Act 1984 (c. 51) substitute—

##### **“Table of Rates of Tax**

| <i>Portion of value</i> |                        | <i>Rate of tax</i> |
|-------------------------|------------------------|--------------------|
| <b>Lower limit (£)</b>  | <b>Upper limit (£)</b> | <b>Per cent.</b>   |
| 0                       | 250,000                | Nil                |
| 250,000                 |                        | 40”                |

(2) Subsection (1) shall apply to any chargeable transfer made on or after 6th April 2002; and section 8(1) of that Act (indexation of rate bands) shall not have effect as respects any difference between the retail prices index for the month of September 2000 and that for the month of September 2001.

#### **119 IHT: powers over, or exercisable in relation to, settled property or a settlement**

(1) The Inheritance Tax Act 1984 is amended in accordance with the following provisions of this section.

(2) After section 47 (meaning of “reversionary interest”) insert—

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#### **“47A Settlement power**

In this Act “settlement power” means any power over, or exercisable (whether directly or indirectly) in relation to, settled property or a settlement.”

(3) After section 55 (reversionary interest acquired by beneficiary) insert—

#### **“55A Purchased settlement powers**

(1) Where a person makes a disposition by which he acquires a settlement power for consideration in money or money’s worth—

- (a) section 10(1) above shall not apply to the disposition;
- (b) the person shall be taken for the purposes of this Act to make a transfer of value;
- (c) the value transferred shall be determined without bringing into account the value of anything which the person acquires by the disposition; and
- (d) sections 18 and 23 to 27 above shall not apply in relation to that transfer of value.

(2) For the purposes of this section, a person acquires a settlement power if he becomes entitled—

- (a) to a settlement power,
- (b) to exercise, or to secure or prevent the exercise of, a settlement power (whether directly or indirectly), or
- (c) to restrict, or secure a restriction on, the exercise of a settlement power (whether directly or indirectly),

as a result of transactions which include a disposition (whether to him or another) of a settlement power or of any power of a kind described in paragraph (b) or (c) above which is exercisable in relation to a settlement power.”

(4) In section 272 (general interpretation)—

- (a) insert the following definition at the appropriate place—  
““settlement power” has the meaning given by section 47A above;”;
- and
- (b) in the definition of “property”, at the end insert “ but does not include a settlement power ”.

(5) In consequence of the amendments made by this section, the title of Chapter 2 of Part 3 of the Inheritance Tax Act 1984 (c. 51) becomes “Interests in possession, reversionary interests and settlement powers”.

(6) The amendments made by this section have effect in relation to transfers of value on or after 17th April 2002.

(7) The amendments made by subsections (2) and (4) shall also be deemed always to have had effect (subject to and in accordance with the other provisions of the Inheritance Tax Act 1984) for the purpose of determining the value, immediately before his death, of the estate of any person who died before 17th April 2002, for the purposes of the

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transfer of value which that person is treated by section 4(1) of that Act as having made immediately before his death.

## **120 IHT: variation of dispositions taking effect on death**

(1) In section 142 of the Inheritance Tax Act 1984 (alteration of dispositions taking effect on death), for subsection (2) (election to treat subsequent variation of dispositions taking effect on death as if effected by deceased) substitute—

“(2) Subsection (1) above shall not apply to a variation unless the instrument contains a statement, made by all the relevant persons, to the effect that they intend the subsection to apply to the variation.

(2A) For the purposes of subsection (2) above the relevant persons are—

- (a) the person or persons making the instrument, and
- (b) where the variation results in additional tax being payable, the personal representatives.

Personal representatives may decline to make a statement under subsection (2) above only if no, or no sufficient, assets are held by them in that capacity for discharging the additional tax.”.

(2) After section 218 of that Act insert—

### **“218A Instruments varying dispositions taking effect on death**

(1) Where—

- (a) an instrument is made varying any of the dispositions of the property comprised in the estate of a deceased person immediately before his death,
- (b) the instrument contains a statement under subsection (2) of section 142 above, and
- (c) the variation results in additional tax being payable,

the relevant persons (within the meaning of that subsection) shall, within six months after the day on which the instrument is made, deliver a copy of it to the Board and notify them of the amount of the additional tax.

(2) To the extent that any of the relevant persons comply with the requirements of this section, the others are discharged from the duty to comply with them.”.

(3) In section 245A of that Act (failure to provide information etc)—

(a) after subsection (1) insert—

“(1A) A person who fails to comply with the requirements of section 218A above shall be liable—

- (a) to a penalty not exceeding £100; and
- (b) to a further penalty not exceeding £60 for every day after the day on which the failure has been declared by a court or the Special Commissioners and before the day on which the requirements are complied with.”.

(b) in subsection (4), insert “ (1A)(b), ” after “subsection (1)(b),” and after paragraph (a) insert—

“(aa) he complies with the requirements of section 218A above,”.

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- (4) This section applies in relation to instruments made on or after 1st August 2002.

*Air passenger duty*

**121 Air passenger duty: extension of area to which EEA rates apply**

- (1) Section 30 of the Finance Act 1994 (c. 9) (the rate of duty) is amended as follows.
- (2) In subsection (2) (rate where journey ends at a place in the defined area and in an EEA State etc) omit the word “or” immediately preceding paragraph (b) and at the end of that paragraph add “or
- (c) any qualifying territory (so long as not falling within paragraph (a) above),”.
- (3) In subsection (3) (which defines the area referred to in subsection (2)) for “32 degrees E” substitute “ 45 degrees E ”.
- (4) After subsection (9) (meaning of “EEA State”) insert—

“(9A) In this section “qualifying territory” means each of the following territories—

|                |           |                 |
|----------------|-----------|-----------------|
| Bulgaria       | Latvia    | Slovak Republic |
| Cyprus         | Lithuania | Slovenia        |
| Czech Republic | Malta     | Switzerland     |
| Estonia        | Poland    | Turkey.         |
| Hungary        | Romania   |                 |

(9B) The Treasury may by order amend the definition of “qualifying territory” in subsection (9A) above by adding, removing, or varying the description of, any territory.”.

- (5) This section applies to any carriage of a passenger on an aircraft which begins on or after 1st November 2002.

*Landfill tax*

**122 Landfill tax: rate**

- (1) In section 42 of the Finance Act 1996 (c. 8) (amount of landfill tax), in subsections (1)(a) and (2) for “£12” substitute “ £13 ”.
- (2) This section has effect in relation to taxable disposals made, or treated as made, on or after 1st April 2002.

*Climate change levy*

**123 Climate change levy: electricity produced in combined heat and power station**

- (1) In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), after paragraph 20 insert—

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**“Exemption: electricity produced in combined heat and power stations**

20A (1) A supply of electricity is exempt from the levy chargeable under paragraph 5(1) if—

- (a) the supply is not one that is deemed to be made under paragraph 23(3),
- (b) the supply is made under a contract that contains a CHP declaration given by the supplier,
- (c) prescribed conditions are fulfilled, and
- (d) the supplier, and each other person (if any) who is a generator of any CHP electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.

(2) Sub-paragraph (1) does not apply in relation to a supply to a person of electricity produced in a wholly or partly exempt combined heat and power station where the supply is made to that person from the station.

(3) In this paragraph “CHP declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt CHP supplies made by the supplier in the period will not exceed the difference between—

- (a) the total amount of CHP electricity that during that period is either acquired or generated by the supplier, and
- (b) so much of that total amount as is allocated by the supplier otherwise than to exempt CHP supplies made by him in the period.

In this sub-paragraph “averaging period” has the same meaning as in paragraph 20B; and “exempt CHP supplies” means supplies made on the basis that they are exempt under this paragraph.

(4) For the purposes of this paragraph and paragraph 20B, electricity is “CHP electricity” if—

- (a) the electricity was—
  - (i) produced in a fully exempt combined heat and power station, or
  - (ii) produced in a partly exempt combined heat and power station and originally supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded,
- (b) the electricity is not renewable source electricity (within the meaning of paragraph 19), and
- (c) prescribed conditions are fulfilled.

(5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—

- (a) the giving of effect to CHP declarations;
- (b) the supply of information;

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- (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
  - (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
  - (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as the doing of things to or by the Authority or the Director General);
  - (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.
- (6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.
- (7) The conditions that may be prescribed under sub-paragraph (4)(c) include in particular conditions in connection with any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).
- (8) Each of—
- (a) the Gas and Electricity Markets Authority, and
  - (b) the Director General of Electricity Supply for Northern Ireland,
- shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application of this paragraph (whether generally or in relation to any particular case).
- (9) Paragraph 19(10) (disclosure of information) applies in relation to sub-paragraph (8) above as it applies in relation to paragraph 19(8).

### **Exemption under paragraph 20A: averaging periods**

- 20B (1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 20A (“exempt CHP supplies”).
- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of three months;
  - (b) when a balancing period ends, a new one begins;
  - (c) the first balancing period and the first averaging period begin at the same time;
  - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt CHP supplies;
  - (e) when an averaging period ends, a new one begins;
  - (f) an averaging period ends once it has run for two years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
  - (g) if the supplier stops making exempt CHP supplies, the end of the balancing period in which he makes the last exempt CHP supply is also the end of the averaging period in which the balancing period falls.

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- (3) At the end of each balancing period calculate—
    - (a) the total of—
      - (i) the quantity of CHP electricity that the supplier acquired or generated in that period, and
      - (ii) any balancing credit carried forward to that balancing period; and
    - (b) the total of—
      - (i) the quantity of electricity supplied by exempt CHP supplies made by him in that period, and
      - (ii) any balancing debit carried forward to that balancing period.
  - (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—
    - (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
    - (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
  - (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—
    - (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
    - (b) no balancing credit or debit is carried forward to the next balancing period.
  - (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).
  - (7) Where the end of the balancing period is by virtue of sub-paragraph (2)
    - (g) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
      - (a) is made at the end of the balancing period, and
      - (b) is a supply of a quantity of electricity equal to the difference between the two totals.

For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.
  - (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.”.
- (2) Subsection (1) has effect in relation to supplies of electricity made on or after such day as the Treasury may by order made by statutory instrument appoint.

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## **124 Climate change levy: certification requirement**

In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), after paragraph 149 insert—

### **“Certification of electricity from fully or partly exempt combined heat and power station**

- 149A (1) The Commissioners may by regulations make provision for the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, to certify as respects any quantity of electricity that—
- (a) the electricity has been produced in a fully exempt combined heat and power station;
  - (b) the electricity has been produced in a partly exempt combined heat and power station and supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded.
- (2) Regulations under this paragraph may provide that for any purposes of this Schedule (or any regulations made under it)—
- (a) electricity is not to be regarded as having been produced as specified in sub-paragraph (1)(a) unless it has been certified under that provision;
  - (b) electricity is not to be regarded as having been produced and supplied as specified in sub-paragraph (1)(b) unless it has been certified under that provision.
- (3) Regulations under this paragraph may in particular provide that the supply of any electricity does not qualify for the exemption under paragraph 16(2) unless the electricity is certified as specified in sub-paragraph (1)(b).
- (4) Regulations under this paragraph may also make provision for determining whether electricity is produced and supplied as specified in sub-paragraph (1)(b).”.

## **125 Climate change levy: exemption for renewable sources**

- (1) In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), in paragraph 20(7), (exemption under paragraph 19: liability to account)—
- (a) for the words from “(2)(c)” to “2 years” substitute “(2)(g)”,
  - (b) after paragraph (a) insert “and”, and
  - (c) omit paragraph (c) and the preceding “and”.
- (2) This section has effect in relation to averaging periods under paragraph 20 of that Schedule which end on or after the day on which this Act is passed.

## **126 Climate change levy: electricity produced from coal mine methane**

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), in paragraph 19 (exemption: renewable source electricity), after sub-paragraph (4) there is inserted—
- “(4A) For the purposes of this paragraph, coal mine methane shall be regarded as a renewable source.”.



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- (2) This section has effect in relation to supplies of electricity made on or after such day as the Treasury may by order made by statutory instrument appoint.

### **127 Climate change levy: incorrect certificates**

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), in sub-paragraph (2)(a) of paragraph 101 (civil penalties: incorrect notifications etc)—

- (a) in sub-paragraph (ii) for “18 and 21, or” substitute “ 15, 18 and 21, ”;
- (b) before the word “and” at the end of sub-paragraph (iii) insert—

“, or

(iv) a reduced-rate supply (or reduced-rate supplies).”.

- (2) This section applies in relation to certificates given in respect of any supplies made on or after 24th April 2002.

### **128 Climate change levy: invoices incorrectly showing levy due**

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), immediately before paragraph 142 insert—

#### **“Invoices incorrectly showing levy due**

141A (1) This paragraph applies where—

- (a) a person issues an invoice showing an amount as levy chargeable on a supply, and
- (b) no levy is chargeable on the supply, or the amount chargeable is less than the amount shown.

(2) The person shall be liable to a penalty unless he satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inclusion in the invoice of the false information.

(3) The amount of the penalty is £50 or, if more, the following amount—

- (a) where no levy is chargeable, the amount shown as chargeable;
- (b) where an amount of levy is chargeable, the difference between that amount and the amount shown as chargeable.

(4) It is irrelevant for the purposes of sub-paragraph (1) whether or not the supply shown on the invoice actually takes place or has taken place.

(5) A reference in this paragraph to an invoice is a reference to any kind of invoice (and not just a climate change levy accounting document).”.

- (2) This section applies only in relation to invoices issued on or after the day on which this Act is passed.

#### *Aggregates levy*

### **129 Aggregates levy: transitional relief for Northern Ireland**

- (1) After section 30 of the Finance Act 2001 (c. 9) (credit for aggregates levy) insert—

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### **“30A Transitional tax credit in Northern Ireland**

- (1) The Commissioners may by regulations make provision of the kind described in section 30(2) above (entitlement to tax credit) in relation to cases where aggregate is used in Northern Ireland for a prescribed purpose—
- (a) on or after the commencement date, and
  - (b) before 1st April 2007.
- (2) In relation to the use of aggregate in the year ending with a date shown in the first column of the following table, the amount of any tax credit to which a person would otherwise be entitled by virtue of the regulations shall be reduced by the percentage of that amount shown opposite that date in the second column.

| <i>Year ending</i> | <i>Reduction in tax credit</i> |
|--------------------|--------------------------------|
| 31st March 2004    | 20%                            |
| 31st March 2005    | 40%                            |
| 31st March 2006    | 60%                            |
| 31st March 2007    | 80%                            |

- (3) Subsections (3) to (5) of section 30 above apply to regulations under this section as they apply to regulations under that section.”.
- (2) In section 17(6) of that Act (certain tax credits to be disregarded in determining whether aggregate has already been charged to levy), in paragraph (a) after “section 30(1)(c)” insert “ or 30A ”.

### **130 Aggregates levy: amendments to provisions exempting spoil etc**

- (1) In section 17(3) of the Finance Act 2001 (c. 9) (aggregate that is exempt)—
- (a) in paragraph (e) (by-products of extracting china clay or ball clay), after “or other by-products” insert “, not including the overburden,”;
  - (b) after that paragraph insert—
    - “(f) it consists wholly of the spoil from any process by which—
      - (i) coal, lignite, slate or shale, or
      - (ii) a substance listed in section 18(3) below,
 has been separated from other rock after being extracted or won with that other rock;”.
- (2) Omit section 17(4)(b) of that Act (aggregate exempt if it consists, or is part of anything consisting, wholly or mainly of spoil from the separation of coal from other rock after extraction).
- (3) This section shall be deemed to have come into force on 1st April 2002.

### **131 Aggregates levy: crushing and cutting rock**

- (1) In section 17(3) of the Finance Act 2001 (exempt aggregate), omit paragraph (a) (exemption for rock that has not been subjected to an industrial crushing process).

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- (2) In section 18(2)(a) of that Act (exemption for production of dimension stone), for “dimension stone” substitute “stone with one or more flat surfaces”.
- (3) The following amendments to that Act are consequential on that made by subsection (1)—
  - (a) in section 20(1) (originating sites), omit—
    - (i) the words “and is not rock” in paragraphs (a) and (b), and
    - (ii) paragraph (c);
  - (b) in section 21 (operators of sites), omit subsection (2)(b);
  - (c) in section 24 (the register), omit subsections (6)(b) and (8)(a).
- (4) This section shall be deemed to have come into force on 1st April 2002.

### **132 Aggregates levy: miscellaneous amendments**

- (1) Schedule 38 to this Act, which makes amendments to provisions in Part 2 of the Finance Act 2001 (aggregates levy), has effect.
- (2) In section 197(2) of the Finance Act 1996 (c. 8) (enactments for which interest rates are set under section 197), in paragraph (h) (aggregates levy provisions) in sub-paragraph (ii) for “paragraph 8(3)(a)” substitute “paragraphs 6 and 8(3)(a)”.
- (3) This section shall be deemed to have come into force on 1st April 2002.

### **133 Aggregates levy: amendments to provisions about civil penalties**

- (1) Part 2 of Schedule 6 to the Finance Act 2001 (c. 9) (aggregates levy: civil penalties) is amended as follows.
- (2) In sub-paragraph (1) of paragraph 7 (evasion)—
  - (a) at the end of paragraph (a), insert “and”;
  - (b) omit paragraph (b) (by virtue of which only registered persons or persons who are registrable, or would be but for an exemption, are liable to the penalty);
  - (c) omit the words from “equal to the amount” to the end.
- (3) After that sub-paragraph insert—

“(1A) The amount of the penalty shall be—

  - (a) equal to the amount of the levy evaded, or (as the case may be) intended to be evaded, by the person’s conduct if at the time of engaging in that conduct he was or was required to be registered;
  - (b) equal to twice that amount if at that time the person neither was nor was required to be registered.”.
- (4) In sub-paragraphs (3) and (4) of paragraph 7, for “sub-paragraph (1)” substitute “sub-paragraph (1A)”.
- (5) After paragraph 9 insert—

#### **9A “Incorrect records etc evidencing claim for tax credit**

- (1) This paragraph applies where—
  - (a) a claim is made for a tax credit in such a case as is mentioned in—

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- (i) section 30(1)(c) of this Act (aggregate used in a prescribed industrial or agricultural process), or
    - (ii) section 30A of this Act (transitional tax credit in Northern Ireland);
  - (b) a record or other document is provided to the Commissioners as evidence for the claim; and
  - (c) the record or document is incorrect.
- (2) The person who provided the document to the Commissioners, and any person who provided it to anyone else with a view to its being used as evidence for a claim for a tax credit, shall be liable to a penalty.
- (3) The amount of the penalty shall be equal to 105 per cent of the difference between—
- (a) the amount of tax credit that would have been due on the claim if the record or document had been correct, and
  - (b) the amount (if any) of tax credit actually due on the claim.
- (4) The providing of a record or other document shall not give rise to a penalty under this paragraph if the person who provided it satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his having provided it.
- (5) Where by reason of providing a record or other document—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 7 or 9 above,
- that person shall not by reason of the providing of the record or document be liable also to a penalty under this paragraph.”.
- (6) This section shall be deemed to have come into force on 1st May 2002.

**Status:**

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